

AMERICAN CONFIDENCE IN ELECTIONS: DISTRICT OF
COLUMBIA CITIZEN VOTER ACT

FEBRUARY 23, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. STEIL, from the Committee on House Administration,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4396]

The Committee on House Administration, to whom was referred the bill (H.R. 4396) to amend the Help America Vote Act of 2002 to prohibit noncitizen voting in District of Columbia elections, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 4396, the American Confidence in Elections: District of Columbia Citizen Voter Act, introduced by Representative Mike Bost (IL–12) and co-sponsored by Representatives Nancy Mace (SC–01) and Randy Weber, Sr. (TX–14), prohibits voting by noncitizens in any election held within the District of Columbia, including elections for Federal office, and any ballot initiative or referendum, effectively repealing D.C.’s Local Resident Voting Rights Amendment Act of 2022. In 2022, the District of Columbia enacted this bill, which authorized noncitizens who have resided in the District of Columbia for at least thirty days and are at eighteen years of age or older, to vote in local elections. The Constitution gives Congress complete control over and responsibility for the District of Columbia, and this legislation ensures that to vote in D.C. elections, a voter must be a citizen of the United States.

BACKGROUND AND NEED FOR LEGISLATION

BACKGROUND

Article I, Section 4 of the United States Constitution¹ (“the Elections Clause”) explains that the States have the primary authority to set election law and to administer elections, the “times, places, and manner of holding elections, which includes voter registration.” Conversely, the Constitution grants the Congress a purely secondary role to alter or create election laws only in the extreme cases of invasion, legislative neglect, or obstinate refusal to pass election laws.² As do other aspects of our federal system, this division of sovereignty continues to serve to protect one of Americans’ most precious freedoms, the right to vote.³

The federal Constitution contains several voting rights amendments, all of which only protect “the right of citizens of the United States” in the voting process.⁴ To enforce those rights, federal law makes it unlawful for non-citizens to vote in federal elections.⁵

¹U.S. Const. art. I, § 4, cl. 1 (“[t]he 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 . . .”).

²Although the text of the Elections Clause, read literally and without the benefit of context, might suggest Congress has unlimited authority in this space, an examination of an examination of history, precedent, the Framers’ words, debates concerning ratification, the Supreme Court, and the Constitution itself provide that this is not the case. *See* Report: The Elections Clause: States’ Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), <https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report%20The%20Elections%20Clause%20States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf>.

³*Id.*

⁴*See* U.S. Const. Amend. XV, § 1 “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”; U.S. Const. Amend. XIX, § 1 “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”; U.S. Const. Amend. XXIV, § 1 “The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.”; U.S. Const. Amend. XXVI, § 1 “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.”

⁵*See* 18 U.S.C. § 611. Each of the voting rights amendments listed in the previous footnote provide the authority for Congress to enforce the amendment by appropriate legislation. In *South Carolina v. Katzenbach*, the Supreme Court held that Congress has the power to act under this authority as it would any of its powers under Article I, Section 8 as articulated in *McCulloch v. Maryland*; *See* *South Carolina v. Katzenbach*, 383, U.S. 301, 326–27 (1966). Allowing non-citizens to cast ballots in American elections weakens our electoral system, directly and indirectly impacts Federal policy and funding decisions and candidate choice through the elec-

Similarly, federal law prohibits foreign nationals⁶ from contributing or donating in connection with a federal, state, or local election,⁷ making a contribution or donation to a committee of a political party,⁸ or making an expenditure (including an independent expenditure) or disbursement for an electioneering communication.⁹ Although the Supreme Court of the United States has never been presented with the question whether the foreign national prohibition violates the First Amendment, it has previously affirmed a three-judge court's decision, authored by then-Judge Kavanaugh, which upheld the foreign national prohibition with respect to foreign nationals who wanted to make contributions to federal and State candidates.¹⁰

While the Elections Clause provides States the primary authority over election administration, it and other constitutional provisions also provide States the power to establish voter qualifications. Specifically, "Article I, § 2, cl. 1, provides that electors in each State for the House of Representatives 'shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature,' and the Seventeenth Amendment adopts the same criterion for senatorial elections."¹¹ Similarly, Article II gives State legislatures the power to appoint presidential electors¹² and every State has delegated this responsibility to its voters.¹³ States can establish voter qualifications for voters voting in a presidential election that do not run afoul of other constitutional commands.¹⁴ These ex-

tion of State and local officials, dilutes the value of citizenship, and sows distrust in our elections system; Even if a State has the sovereign authority, no State should permit non-citizens to cast ballots in State or local elections.; See U.S. Const. Amend. XIV; U.S. Const. Amend. XV; U.S. Const. Amend. XIX; U.S. Const. Amend. XXIV; U.S. Const. Amend. XXVI.

⁶Federal law defines foreign national as an individual who is not a citizen of the United States and not lawfully admitted for permanent residence under 8 U.S.C. § 1101(a)(20) or a foreign principal, as defined in 22 U.S.C. § 611(b).

⁷52 U.S.C. § 30121(a)(1)(A).

⁸*Id.* at § 30121(a)(1)(B).

⁹*Id.* at § 30121(a)(1)(C). Federal law defines an electioneering communication as "any broadcast, cable, or satellite communication which—refers to a clearly identified candidate for Federal office; is made within—60 days before a general, special, or runoff election for the office sought by the candidate; or 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate."; *Id.* at § 30104(f)(3).

¹⁰See *Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd*, 565 U.S. 1104 (2012). Importantly, the three-judge decision did not rely on Congress' power under the Elections Clause of Article I, Section 4 to justify the foreign national spending prohibition. On November 30, 2023, the U.S. House of Representatives Committee on House Administration passed H.R. 3229, Stop Foreign Funds in Elections Act out of committee. That legislation prohibits foreign nationals from making a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation to a State or local ballot initiative, referendum, or recall election. Like the decision referenced above, the Committee does not believe H.R. 3229 would be enacted pursuant to the Elections Clause. Cf. Report: The Elections Clause: States' Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), [https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report The%20Elections%20Clause States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%202021%2029.pdf](https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report%20The%20Elections%20Clause%20States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%202021%2029.pdf).

¹¹*Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S.Ct. 2247, 2258 (2013).

¹²U.S. Const. Art. II, § 1, cl. 2 "Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors . . ."; See also *Bush v. Gore*, 531 U.S. 98, 104 (2000) ("The individual citizen has no federal constitutional right to vote for electors for the President of the United States unless and until the state legislature chooses a statewide election as the means to implement its power to appoint members of the electoral college.")

¹³See *Chiafalo v. Washington*, 140 S.Ct. 2316, 2328 (2020) ("State election laws evolved to reinforce that development, ensuring that a State's electors would vote the same way as its citizens. As noted earlier, state legislatures early dropped out of the picture; by the mid-1800s, ordinary voters chose electors.")

¹⁴See *Williams v. Rhodes*, 393 U.S. 23, 28–29 (1968) ("State laws enacted pursuant to Art. II, § 1, of the Constitution to regulate the selection of electors must meet the requirements of the Equal Protection Clause of the Fourteenth Amendment."); See also *Bush v. Gore*, 531, U.S.

Continued

PLICIT constitutional commands make clear that States are given the authority to establish voter qualifications, *not* Congress; a principle the Supreme Court has reaffirmed twice in the past decade.¹⁵

Every State has used its constitutional authority to establish voter qualifications often consisting of age, residency, and citizenship requirements.¹⁶ Several States have enshrined U.S. citizenship in their state constitution as a qualification for voters to vote in State elections.¹⁷ The Constitution permits States to enforce their U.S. citizenship qualification in different ways. Some States require applicants to provide documentary proof of citizenship¹⁸ while others only require the applicant to swear or affirm they are a citizen of the United States.¹⁹

Under the Constitution, the District of Columbia (“D.C.”) is not a sovereign State; rather, it serves as the federal capital district entirely under congressional control.²⁰ And unlike the primacy that States enjoy under the Elections Clause, the voter qualification clauses in Article I, Section 2 and the Seventeenth Amendment, the Constitution is clear that Congress can “exercise exclusive legislation *in all cases whatsoever*, over such District”²¹ The Supreme Court has interpreted this language broadly. Under it, Congressional “. . . power is plenary. Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes”, legislating in the first instance for D.C.²² While under the delegation of authority given to its city government by Congress, D.C. can pass election and voter qualification laws in the first instance, *everything* it does is subject to being overridden by Congress. This understanding is buttressed by the language in the Twenty-Third Amendment, pro-

98, 104–05 (“The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”)

¹⁵ See *Inter Tribal Council of Ariz., Inc.*, 133 S.Ct. at 2258; *Husted v. A. Phillip Randolph Institute*, 138 S. Ct. 1833, 1846 (2018) (“The Constitution gives States the authority to set the qualifications for voting in congressional elections, Art. I, § 2, cl. 1; Amdt. 17, as well as the authority to set the “Times, Places and Manner” to conduct such elections in the absence of contrary congressional direction, Art. I, § 4, cl. 1.”)

¹⁶ See *Kramer v. Union Free School District* 395 U.S. 621, 625 (1969) (“. . . States have the power to impose reasonable citizenship, age, and residency requirements on the availability of the ballot.”); See also *Carrington v. Rash*, 380 U.S. 89, 91 (1965) (“There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise.”)

¹⁷ See Laws permitting noncitizens to vote in the United States, Ballotpedia, available at https://ballotpedia.org/Laws_permitting_noncitizens_to_vote_in_the_United_States.

¹⁸ See, e.g. A.R.S. § 16–121.01; MS Code § 23–15–15.

¹⁹ See MINN. STAT. 201.071 (2023) (explaining that an applicant must certify they are a citizen of the United States when they register to vote, but no documentary proof of citizenship is required.) See also National Mail Voter Registration Form, U.S. Election Assistance Commission (Dec. 29, 2023), <https://www.eac.gov/voters/national-mail-voter-registration-form> (the National Mail Voter Registration Form only requires applicants registering to vote in a federal election to swear or affirm they are a United States citizen.)

²⁰ U.S. Const. art. I, § 8, cl. 17 “The Congress shall have Power . . . [t]o exercise exclusive Legislation in all Cases whatsoever, over such *District* (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States”; See also U.S. Const. amend. XXIII (this amendment was adopted to give the District of Columbia representation in the Electoral College because it is not a State under the Electors Clause of Article II, § 1, cl. 2); See also *Bolling v. Sharpe*, 347 U.S. 497, 498–99 (1954) (holding that the Fourteenth Amendment’s Equal Protection Clause did not apply to the District of Columbia because it is not a State.)

²¹ U.S. Const. art. I, § 8, cl. 17.

²² *Palmore v. United States*, 411 U.S. 389, 397–98 (1973).

viding D.C. the ability to appoint presidential electors, but “. . . in such manner that *Congress* may direct.”²³

Before D.C. enacted the Local Resident Voting Rights Amendment Act of 2022, voters in D.C. local elections were required to be citizens of the United States. But the Act changed voter qualifications, giving all noncitizens the ability to cast a ballot in local races, so long as the voter is at least eighteen years of age and has resided in D.C. for thirty days.²⁴ This change also allowed noncitizens to be elected to the positions of Mayor, Chair or member of the Council, Attorney General, Member of the State Board of Education, or Advisory Neighborhood Commissioner.²⁵

Estimates as to the number of non-citizens of voting age living in the D.C. range from 21,000 to 50,000, potentially half of whom are illegal aliens.²⁶ As such, there are more than enough non-citizens of voting age living in D.C. to impact election outcomes in some wards.

The National Voter Registration Act (“NVRA”) was signed into law by President Bill Clinton in 1993 “to establish procedures that will increase the number of eligible *citizens* who register to vote in elections for Federal office; . . . protect the integrity of the electoral process; and . . . ensure that accurate and current voter registration rolls are maintained.”²⁷ The legislation is commonly referred to as the “motor voter” law because it requires States to provide individuals with voter registration materials when they apply for a driver’s license.²⁸

D.C. allows noncitizens to receive driver’s licenses or non-driver identification cards.²⁹ This means that in D.C., before the enactment of the Local Resident Voting Rights Amendment of 2022, there was always the possibility that, due to human error in the process at the counter or in the computer system, noncitizens could be given voter registration forms and might unlawfully register to vote in at least some of these situations. This is not a hypothetical as Pennsylvania admitted that just a few years ago it had inadvertently allowed over 10,000 noncitizens to register to vote via a similar process,³⁰ and Texas has had similar problems with nearly

²³ U.S. Const. amend. XXIII.

²⁴ Local Resident Voting Rights Amendment Act of 2022, D.C. Law 24–242, 69 DCR 14601 (2023).

²⁵ The Local Resident Voting Rights Amendment Act of 2022 removed the requirement that a voter needed to be a citizen of the United States to vote in a District of Columbia local election. As such, noncitizens are now “qualified electors” for local elections in the District of Columbia. See D.C. Code § 1–1001.02(2)(B). Each of the positions listed require, at least, for the candidate to a “qualified elector”, but none require the candidate to be a citizen of the United States. See *Id.* at § 1–204.21; *Id.* at § 1–1001.08.

²⁶ Jason Richwine, *Over 42,000 Non-Citizens, Including Perhaps 20,000 Illegal Immigrants, Could Vote in D.C. Elections*, Center for Immigration Studies (Feb. 4, 2023), <https://cis.org/Richwine/Over-42000-NonCitizens-Including-Perhaps-20000-Illegal-Immigrants-Could-Vote-DC-Elections>; See also The Editorial Board, *D.C. is considering legislation to let noncitizens vote. That’s a bad idea.*, The Washington Post (Oct. 17, 2022), <https://www.washingtonpost.com/opinions/2022/10/17/dc-voting-noncitizens-legislation/>.

²⁷ 52 U.S.C. § 20501(b).

²⁸ *Id.* at § 20503(a).

²⁹ Driver License for Non-US Citizens, District of Columbia Department of Motor Vehicles, <https://dmv.dc.gov/service/driver-license-for-non-us-citizens>.

³⁰ Rowan Scarborough, Stephen Dinan, *Pennsylvania admits to 11,000 noncitizens registered to vote*, Washington Times (Jan. 30, 2019), <https://www.washingtontimes.com/news/2019/jan/30/pennsylvania-11000-non-citizens-registered-vote/>; See also Pam Fessler, *Some Noncitizens Do Wind Up Registered To Vote, But Usually Not On Purpose*, National Public Radio (Feb. 26, 2019), <https://www.npr.org/2019/02/26/697848417/some-noncitizens-do-wind-up-registered-to-vote-but-usually-not-on-purpose>.

100,000 registrations.³¹ But now that noncitizens can vote in local elections in D.C., they can register to vote when they get a driver’s license or non-driver identification card.

The NVRA allows States³² to remove registered individuals from its voter rolls if the registrant requests it, if State law prohibits those individuals from exercising the franchise by reason of criminal conviction or mental incapacity, or if the State carries out a general program to remove voters that have died or moved.³³ With the exceptions provided for in the preceding sentence, a State, within 90 days prior of a primary or general election for federal office cannot undertake a program with the purpose of *systematically* removing ineligible voters from its voter rolls.³⁴ In addition, the NVRA also imposes strict guidelines the State must follow in carrying out a program to remove voters that have moved.³⁵ Although the NVRA does not explicitly provide for the removal of noncitizens from the voter rolls, the United States Court of Appeals for the Eleventh Circuit has held it is a lawful removal basis.³⁶

While the NVRA provides several permissible grounds for removing voters from the voter rolls, D.C.’s recent history shows it has taken little to no action in keeping its voter rolls clean. During the 2020 and 2022 Federal and local D.C. elections, D.C. chose to mail every registered voter a ballot. In the 2020 general election, the Board of Elections (“the Board”) mailed 421,791 ballots, and 48,018 of them were undeliverable—more than 11 percent.³⁷ This rate was more than eight times the national average.³⁸

In 2022, the Board mailed every registered voter a ballot for the midterm primary election. In that election, the Board mailed 402,323 ballots, and 65,398 ballots, or about 16 percent, were undeliverable.³⁹ This is an increase of 17,380 in undeliverable ballots between the 2020 general election and the 2022 primary election. Despite the Board’s previous failed attempts to administer an effective mail-in ballot system during the 2020 general election and 2022 primary election, it mailed every registered voter a ballot for the November 2022 general election. The Board mailed 508,543 ballots, and 87,921 were undeliverable.⁴⁰ The rate of undeliverable ballots mailed out for the general election in 2022 was 17 percent, an increase of about six basis points from the 2020 election. In addition, D.C. mailed over 500 voters an incorrect ballot.⁴¹

³¹ Alexa Ura, *Texas’ renewed voter citizenship review is still flagging citizens as “possible non-U.S. citizens”*, The Texas Tribune (Dec. 17, 2021), <https://www.texastribune.org/2021/12/17/texas-voter-roll-review/>.

³² The National Voter Registration Act’s definition of State includes the District of Columbia. See 52 U.S.C. § 20502(4).

³³ *Id.* at §§ 20507(a)(3)–(4).

³⁴ *Id.* at § 20507(c)(2)(A).

³⁵ *Id.* at § 20507(b)–(e).

³⁶ *Arcia v. Florida Secretary of State*, 772 F. 3d 1335, 1348 (11th Cir. 2014).

³⁷ Martin Austerhuhle, *Audit finds high number of D.C. mail ballots returned as ‘undeliverable’ in 2020*, NPR (Nov. 17, 2021), <https://www.npr.org/local/305/2021/11/17/1056487637/audit-finds-high-number-of-d-c-mail-ballots-returned-as-undeliverable-in-2020>.

³⁸ *Id.*

³⁹ Martin Austerhuhle, *Tens Of Thousands Of D.C. Mail Ballots Were Returned As ‘Undeliverable’ In Recent Elections*, DCist (Dec. 12, 2022, 12:16 PM), <https://dcist.com/story/22/12/12/large-numbers-dc-mail-ballots-returned-undeliverable/>.

⁴⁰ *Id.*

⁴¹ Julie Zauzmer Weil, *D.C. Mailed Incorrect Ballots to More than 500 Voters*, The Washington Post (Oct. 24, 2022), <https://www.washingtonpost.com/dc-md-va/2022/10/24/dc-mailed-incorrect-ballots/>.

D.C.’s Local Resident Voting Rights Amendment Act of 2022 became law on February 23, 2023.⁴²

Under the federal D.C. Home Rule Act, Congress has a 30-day review period for any legislation intended to become law and to decide whether the legislation should go into effect.⁴³ On February 9, 2023, the U.S. House of Representatives favorably voted on the disapproval resolution.⁴⁴ But because the U.S. Senate has yet to act on the House’s disapproval resolution at the time of printing, non-citizens are currently allowed to vote in D.C. local elections.

In the 117th Congress, former Ranking Member on the Committee on House Administration, Representative Rodney Davis (IL–13), introduced H.R. 8528, the American Confidence in Elections Act.⁴⁵ That legislation included the same prohibition on noncitizen voting in local elections in D.C as does H.R. 4396, sponsored by Representative Bost.

In the 118th Congress, Representative Bryan Steil (WI–01), introduced H.R. 4563, an updated version of the American Confidence in Elections Act⁴⁶ (“ACE Act”), which includes Representative Bost’s H.R. 4396 in its entirety.

NEED FOR LEGISLATION

Representative Bost’s American Confidence in Elections: District of Columbia Citizen Voter Act prohibits noncitizen voting in any election that takes place in D.C., including elections for Federal office, and any ballot initiative or referendum. This legislation overturns the Local Resident Voting Rights Amendment Act of 2022.⁴⁷

Congress has a responsibility to exercise its constitutional authority over D.C. to enact common-sense election reforms that give voters confidence in the capital city’s elections. The nation’s seat of government should administer the best elections in the country, serving as an example of seamless democracy. As of the publication of this report, it does not.

The framers of the Constitution’s voting rights amendments only protected the “right of citizens of the United States” in the voting process because they understood that citizenship was a necessary prerequisite to participating in our democracy. The oath that every naturalized citizen must take requires them to give up all prior allegiances to any other nation, swear allegiance to the United States, serve the United States when called on, and to “. . . support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic . . .”⁴⁸ The nat-

⁴² Maggie More, *DC’s Noncitizen Voting Bill Might Not Become Law After All*, NBC Washington (Feb. 28, 2023), <https://www.nbcwashington.com/news/local/dcs-noncitizen-voting-bill-might-not-become-law-after-all/3289043/>.

⁴³ Pub. L. 93–198, 87 Stat. 774. The District of Columbia Home Rule Act simply provides one avenue for Congress to override legislation enacted in the District. It does not prohibit Congress from acting in other ways, under its constitutional authority, to legislate directly over the District, including repealing local laws.

⁴⁴ Disapproving the action of the District of Columbia Council in approving the Local Resident Voting Rights Amendment Act of 2022, H.J. Res. 24, 118th Cong. § 1 (2023).

⁴⁵ American Confidence in Elections Act, H.R. 8528, 117th Cong. § 2 (2022).

⁴⁶ American Confidence in Elections Act, H.R. 4562, 118th Cong. § 1 (2023).

⁴⁷ *Supra* note 25.

⁴⁸ Naturalization Oath of Allegiance to the United States of America, U.S. Citizenship and Immigration Services (July 5, 2020), <https://www.uscis.gov/citizenship/learn-about-citizenship/the-naturalization-interview-and-test/naturalization-oath-of-allegiance-to-the-united-states-of-america#:~:text=%22I%20hereby%20declare%2C%20on%20my%20oath,the%20United%20States%20of%20America>.

uralization oath is a good example that naturalized citizens are able, willing, and ready to support and defend the United States. They have established sufficient ties to the United States to enjoy all the rights and privileges of citizenship, including the right to participate in American democracy.

In contrast, noncitizens have not established sufficient ties to the United States to enable them to participate in American democracy. The process to become a citizen of the United States can be challenging, but the United States welcomed almost one million citizens in fiscal year 2023, and almost eight million citizens over the last decade.⁴⁹ Allowing noncitizens to participate in our elections would dilute the constitutional right of citizens to vote. It would also cheapen the meaning of U.S. citizenship and allow individuals without sufficient ties to the United States to determine the future of D.C. when they will likely not remain in D.C. to see the consequences or effects. As estimates predict between 20,000 and 50,000 noncitizens will be allowed to vote in D.C., there are several races where the votes these noncitizens cast might be outcome determinative. That result is not fair to the millions of naturalized citizens that earned their right to vote.

The practical problems with D.C. allowing noncitizens to vote in local elections are overwhelming. As described above, D.C. will likely need to provide noncitizens with voter registration forms when they get a driver's license or non-driver identification card. D.C. will need to be diligent to ensure that noncitizen voters are separated from citizen voters who can vote in D.C. local and Federal elections. This will likely require two separate voter lists, which D.C. estimated would cost at least three million dollars.⁵⁰ With two voter lists, there is always the real possibility that a noncitizen voter ends up on the wrong list, receives the wrong ballot, and unlawfully casts a ballot in a Federal election.⁵¹

Unfortunately, D.C.'s history with outdated voter rolls also increases the possibility that noncitizens receive an incorrect ballot. D.C. chose to mail every registered voter a ballot in the 2020 general and 2022 midterm elections. In 2020, 11 percent of ballots were sent to undeliverable addresses, and that number increased to 17 percent in 2022. D.C. does not have a history of cleaning its voter rolls, and it is not clear it attempted to do so between the 2020 and 2022 elections. Now that D.C. will need to create two different ballots for voters within the same ward, precinct, and advisory neighborhood commission district, one that includes only local D.C. elections and one that includes local D.C. elections and federal elections, there is a high possibility that ballots are sent to the wrong voters. In 2022, D.C. sent over 500 ballots to the wrong ward.⁵² With two voter lists and two different ballots for voters in the same ward, there is high likelihood that human error will re-

⁴⁹ Naturalization Statistics, U.S. Citizenship and Immigration Services (Jan. 12, 2024), <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics#:~:text=USCIS%20welcomed%20878%2C500%20new%20citizens,naturalizations%20over%20the%20past%20decade>.

⁵⁰ The Editorial Board, *D.C. is considering legislation to let noncitizens vote. That's a bad idea.*, The Washington Post (Oct. 17, 2022), <https://www.washingtonpost.com/opinions/2022/10/17/dc-voting-noncitizens-legislation/>.

⁵¹ 18 U.S.C. § 611.

⁵² Julie Zauzmer Weil, *D.C. mailed incorrect ballots to more than 500 voters*, Washington Post, (Oct. 24, 2022), <https://www.washingtonpost.com/dc-md-va/2022/10/24/dc-mailed-incorrect-ballots/>.

sult in noncitizen voters receiving mailed ballots that feature federal races.

Finally, because D.C. is our nation’s capital city, the Local Resident Voting Rights Amendment Act of 2022 could truly create some absurd results. The Chairman of the Committee on House Administration, Representative Bryan Steil (WI–01), argued that the law would allow Russian citizens who work in the Russian Embassy and live in D.C. for 30 days to vote for Mayor of D.C.⁵³ While Committee Democrats called this interpretation crazy, the Washington Post Editorial Board agreed with Chairman Steil. When arguing against D.C. adopting the Local Resident Voting Rights Amendment Act of 2022, the Editorial Board argued, “[t]here’s nothing in this measure to prevent employees at embassies of governments that are openly hostile to the United States from casting ballots. Or foreign students who are studying abroad in Washington for a semester.”⁵⁴ These truly absurd results will become reality if Congress does not act to overturn the Local Resident Voting Rights Amendment Act of 2022.

In their dissenting views, Committee Democrats do not defend the substance of the Local Resident Voting Rights Amendment Act of 2022. Instead, they defend the notion of popular sovereignty under the belief that D.C. voters should decide what happens in D.C., not Congress. This is a particularly strange view coming from Committee Democrats who pushed H.R. 1, the For the People Act⁵⁵ in the previous two Congresses, a bill that overrode thousands of State election laws and mandated election procedures all across the country. As explained above, the Constitution gives States the primary authority over election administration while also granting Congress complete control over D.C. Therefore, it is appropriate for Congress to treat the District of Columbia differently than the sovereign States.

Committee Democrats also argue that Committee Republicans, through the ACE Act, “are trying to mandate” election procedures on every city, county, and State.⁵⁶ The ACE Act does not mandate any election law or procedure in any State as the Elections Clause⁵⁷ does *not* allow that result. The ACE Act mandates several election procedures in D.C. because the Constitution authorizes direct congressional action and demands congressional attention.⁵⁸

COMMITTEE ACTION

INTRODUCTION AND REFERRAL

On June 30, 2023, Representative Mike Bost (IL–12), joined by Representatives Nancy Mace (SC–01) and Randy Weber, Sr. (TX–14), introduced H.R. 4396, the American Confidence in Elections:

⁵³ Ricardo Torres, *Fact Check: Steil’s claim on immigrants voting in local DC elections is “Mostly True” but not unprecedented in U.S.*, Milwaukee Journal Sentinel (Nov. 28, 2023), <https://www.jsonline.com/story/news/politics/politifactwisconsin/2023/11/28/steils-claim-on-immigrants-voting-in-local-dc-elections-is-mostly-true/71720121007/#>.

⁵⁴ The Editorial Board, *D.C. is considering legislation to let noncitizens vote. That’s a bad idea.*, The Washington Post (Oct. 17, 2022), <https://www.washingtonpost.com/opinions/2022/10/17/dc-voting-noncitizens-legislation/>.

⁵⁵ For the People Act, H.R. 1, 116th Cong. § 1 (2019); For the People Act, H.R. 1, 117th Cong. § 1 (2021).

⁵⁶ Dissenting Views at 1.

⁵⁷ U.S. Const. art. I, § 4, cl. 1.

⁵⁸ See U.S. Const. art. I, § 8, cl. 17.; See also Palmore, 411 U.S. at 397–98.

District of Columbia Citizen Voter Act. The bill was referred to the U.S. House of Representatives Committee on House Administration.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, in the 118th Congress, the Committee held three full committee hearings and one subcommittee hearing to develop H.R. 4396.

1. On April 27, 2023, the Committee held a full committee hearing titled, “American Confidence in Elections: State Tools to Promote Voter Confidence.” The hearing focused on Title I of H.R. 4563, the American Confidence in Elections Act, what tools States need to boost voter integrity and strengthen voter confidence, and how the federal government can provide States with access to the information needed to accomplish these goals. Witnesses included the Honorable Ken Cuccinelli, Chairman, Election Transparency Initiative, the Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, the Honorable Mac Warner, West Virginia Secretary of State, the Honorable Donald Palmer, Commissioner, U.S. Election Assistance Commission, and Mr. Joseph Paul Gloria, Chief Executive Officer for Operations, Election Center.⁵⁹

2. On May 24, 2023, the Committee on House Administration Subcommittee on Elections held a subcommittee hearing titled, “American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law.” The hearing highlighted the strong election integrity reforms that have passed throughout several States and how important it is for States to learn from other States’ successes in the election arena. Witnesses included: Mr. Joseph Burns, Lawyer, Law Office of Joseph T. Burns, PLLC, Ms. Lisa Dixon, Executive Director, Lawyers Democracy Fund (now the Center for Election Confidence), Mr. Thor Hearne, Founding Partner, True North Law, LLC, The Honorable Scot Turner, Executive Director, Eternal Vigilance Action Inc., and Mr. Deuel Ross, Deputy Director of Litigation, NAACP Legal Defense and Educational Fund, Inc.⁶⁰

3. On June 7, 2023, the Committee held a joint committee hearing with the Committee on Oversight and Accountability titled, “American Confidence in Elections: The Path to Election Integrity in the District of Columbia.” The hearing focused on election administration problems in the District of Columbia and the national importance of implementing necessary reforms in the nation’s capital city. Witnesses included: The Honorable Ken Cuccinelli, Chairman, Election Transparency Initiative, Mr. Charles Spies, Member, Dickinson Wright, PLLC, Ms. Monica Evans, Executive Director, D.C. Board of Elections, and

⁵⁹*American Confidence in Elections: State Tools to Promote Voter Confidence: Hearing Before the H. Comm. On Admin., 118th Cong. (2023).*

⁶⁰*American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law: Hearing Before the Subcomm. On Elections of the H. Comm. On Admin., 118th Cong. (2023).*

Ms. Wendy R. Weiser, Vice President, Democracy, Brennan Center for Justice.⁶¹

4. On July 10, 2023, the Committee held a full committee field hearing titled, “American Confidence in Elections: The Path to Election Integrity Across America.” The hearing outlined the newly introduced H.R. 4563, the American Confidence in Elections Act, and highlighted the successes of S.B. 202 (Georgia), 2021. Witnesses included the Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, the Heritage Foundation, Dr. Kathleen Ruth, former Vice Chair, Fulton County, Georgia, Board of Registration and Elections, Mrs. Vernetta Keith Nuriddin, Elections Consultant, City of Milton, Georgia, and Ms. Cathy Woolard, Chair, Fulton County, Georgia, Board of Registration and Elections.⁶²

COMMITTEE CONSIDERATION

On November 30, 2023, the U.S. House Committee on House Administration met in open session and ordered the bill, H.R. 4396, American Confidence in Elections: District of Columbia Citizen Voter Act, reported favorably to the House of Representatives, by a record vote of six to three, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following vote occurred during the Committee’s consideration of H.R. 4396:

1. Vote to report H.R. 3162 favorably to the House of Representatives, passed by a record vote of 6 ayes and 3 noes. Ayes: Steil, B., Loudermilk, B., Murphy, G., Bice, S., Carey, M., Lee, L. Noes: Morelle, J., Sewell, T., Torres, N.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- Article I, Section 8, Clause 4—“To establish an uniform Rule of Naturalization, . . . throughout the United States;”⁶³
- Article I, Section 8, Clause 17—“To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States; . . .”⁶⁴
- Article IV, Section 4—“The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; . . .”⁶⁵
- Article I, Section 8, Clause 18—“To make all Laws which shall be necessary and proper for carrying into Execution the

⁶¹American Confidence in Elections: The Path to Election Integrity in the District of Columbia: Hearing Before the H. Comm. On Admin. and the H. Comm. On Oversight and Accountability, 118th Cong. (2023).

⁶²American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. On Admin., 118th Cong. (2023).

⁶³U.S. Const. art. I, § 8, cl. 4.

⁶⁴U.S. Const. art. I, § 8, cl. 17. See also *Palmore v. United States*, 411 U.S. 389, 397–98 (1973).

⁶⁵U.S. Const. art. IV, § 4.

foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”⁶⁶

- The Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-sixth Amendments—“The right of *citizens* of the United States to vote . . .”⁶⁷

- The Twenty Third Amendment—“The District constituting the seat of Government of the United States shall appoint in such manner as Congress may direct . . .”⁶⁸ This amendment allows American citizens residing in the District of Columbia to vote for presidential electors, who in turn vote in the Electoral College for President and Vice President, and reaffirms congressional authority over the District of Columbia provided for under Article I, Section 8, Clause 17.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be no additional costs attributable to H.R. 4396.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 4396 are to prohibit noncitizens from voting in any election in the District of Columbia, including any election for Federal office, and any ballot initiative or referendum, in order to protect the right of U.S. citizens to vote in the District.

⁶⁶ U.S. Const. Art. I, § 8, cl. 18.

⁶⁷ See U.S. Const. Amend. XV; U.S. Const. Amend. XIX; U.S. Const. Amend. XXIV; U.S. Const. Amend. XXVI.

⁶⁸ U.S. Const. Amend. XXIII.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 4396 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 4396 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

ADVISORY COMMITTEE STATEMENT

H.R. 4396 does not establish or authorize any new advisory committees.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

The section provides the short title of the bill, the American Confidence in Elections: District of Columbia Citizen Voter Act.

Section 2. Ban on noncitizens voting in District of Columbia elections

Section 2(a) adds a new section into the Help America Vote Act of 2002, codified at 52 U.S.C. § 21081.

Under this new section, the legislation prohibits noncitizens from voting in elections in the District of Columbia unless the voter is a citizen. It also defines the District of Columbia election to cover any election for public office in the District, including elections for Federal office, and any ballot initiative or referendum.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Help America Vote Act of 2002”.

(b) **TABLE OF CONTENTS.**—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

* * * * *

Sec. 304. *Ban on noncitizen voting in District of Columbia elections.*

Sec. [304] 305. Minimum requirements.

Sec. [305] 306. Methods of implementation left to discretion of State.

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TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

* * * * *

SEC. 304. BAN ON NONCITIZEN VOTING IN DISTRICT OF COLUMBIA ELECTIONS.

(a) *IN GENERAL.*—No individual may vote in a District of Columbia election unless the individual is a citizen of the United States.

(b) *DISTRICT OF COLUMBIA ELECTION DEFINED.*—In this section, the term “District of Columbia election” means any election for public office in the District of Columbia, including an election for Federal office, and any ballot initiative or referendum.

SEC. [304.] 305. MINIMUM REQUIREMENTS.

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.

SEC. [305.] 306. METHODS OF IMPLEMENTATION LEFT TO DISCRETION OF STATE.

The specific choices on the methods of complying with the requirements of this title shall be left to the discretion of the State.

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TITLE IV—ENFORCEMENT

SEC. 401. ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF.

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and non-discriminatory election technology and administration requirements under sections 301, 302, ~~and 303~~ 303, and 304.

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DISSENTING VIEWS

Committee Democrats believe in popular sovereignty for the residents of Washington, D.C. House Republicans, however, are unenthusiastic about equality under the law for the people of the District of Columbia. H.R. 4396 would override the express will of D.C. voters, denying them the political self-determination promised by Home Rule.

House Republicans are focused on non-citizen voting in the District of Columbia because they are trying to distract Americans from the unpopular, restrictive, antivoter policies Republicans are trying to mandate—not only for the capital, but for every city, county, and state in our nation through their extreme and partisan ACE Act.

Further, the Republican Conference is trying to draw attention away from the fact that this Congress has been an unmitigated disaster for their majority. Congressman Chip Roy, of Texas, recently noted that he knows of not one “material, meaningful, significant thing the Republican majority has done.” Regrettably, this measure continues the pattern of inaction noted by Representative Roy.

JOSEPH D. MORELLE,

Ranking Member, Committee on House Administration.

