

United States Election Assistance Commission

**Roundtable Discussion: Election Night Reporting for the 2020
Election**

Held at

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Via Zoom Meeting

VERBATIM TRANSCRIPT

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The following is the verbatim transcript of the United States Election Assistance Commission (EAC) Roundtable Discussion that was held on Tuesday, October 20, 2020. The meeting convened at 1:30 p.m. and adjourned at 2:30 p.m.

CHAIRMAN HOVLAND:

Well, good afternoon. I'm U.S. Election Assistance Commission Chairman Ben Hovland, and I'd like to welcome all of our speakers today and everyone watching virtually to this EAC roundtable on Election Night reporting for the 2020 election.

We have conducted a series of roundtable discussions and hearings this year to examine preparations during the COVID-19 pandemic by State and local election administrators through the primaries and in the lead-up to the November general election. It's our hope that this series has been helpful to election officials, but also, for the public as we all prepare for Election Day. Our election system is resilient, and we've seen how State and local election officials have been able to adapt processes, procedures, and resources to account for the COVID-19 pandemic.

Today, we're two weeks away from November 3rd, which has truly become the last day to vote in this election with the expansion of how Americans are participating this year. We're seeing high levels of enthusiasm and record-breaking usage of mail-in absentee ballots, as well as a significant number of Americans voting early in person. The most recent estimates have

at least 34 million Americans having already cast their ballot according to the U.S. Elections Project.

Today's discussion will focus on what happens after the ballots are cast and what we should and should not expect on Election Night. While the results on Election Night have always been unofficial, voters may need to practice patience in waiting for election results this year. We've seen more attention being focused on this fact, but a delay in results reporting is not an indication of something going wrong. Every year, we know that election officials must prioritize accuracy and integrity of elections and have processes and procedures in place to ensure the certified winner of the election reflects the will of the voters.

Today, we are joined by an excellent panel to discuss this topic. We're joined by State election officials, New Mexico Secretary of State Maggie Toulouse Oliver and Iowa Secretary of State Paul Pate. We've also asked Vice President and Managing Editor of the Associated Press, Brian Carovillano, to participate in our discussion today and offer a unique media perspective. And finally, we are fortunate to be joined by Stanford Law Professor Nate Persily.

While our panelists today have different roles, they all share a responsibility when speaking about election results and reporting. I hope today's event will help build and instill confidence in the

election system. Thank you to our speakers and to everyone viewing this discussion online.

Now, I'd like to ask EAC Vice Chairman Don Palmer for some opening remarks.

VICE CHAIR PALMER:

Thank you, Chairman Hovland. I'd like to welcome our guests. Everybody looks great. I look forward to today's discussion on Election Night reporting of unofficial election results and sort of the statutory process to get to final and certified results, and also talk about traditional projections of winners based on unofficial precinct results and how that looks today in the COVID environment.

COVID-19 might result in an increased number of absentee, and I think we will have increased mail ballots, so a delay in the processing and counting of those mail ballots may impact the ability for the media decision desks to project a winner for President or other close elections. Or does it? That's the question. That's an issue I hope the AP can address.

Today, I hope that we'll foster a discussion on what has changed and what remains the same for how results will be reported on Election Night. I have told folks that normally you have to stay up late to find out who might be the winner or projected to be the winner in -- for President or in close elections. However --

excuse me -- however, it is going to be a unique experience, and I advise folks to go to sleep early and wake up on Wednesday morning and see how the winds are blowing.

In addition to those responsibilities of administering elections, election officials are facing a lot of questions about how the counting will be closer to the completion of the election. For many States, early voting and Election Day will be reported significantly on Election Night. However, there will be days of counting provisional or mail ballots that arrived at the election office either on Election Day or shortly thereafter, so different States have different timelines and requirements. I have faith in election officials. They are doing all they can to -- that election results will be timely, promptly, and accurately. Accurate results are, as always, more important than fast results. So there may be discrepancies that need to be identified right after Election Night and addressing the canvassing of results, and this can be very important in close elections.

Again, I look forward to today's -- hearing from today's guests. Thank you, Mr. Chair.

CHAIRMAN HOVLAND:

Thank you, Vice Chairman Palmer.

Commissioner Hicks, do you have any opening remarks?

COMMISSIONER HICKS:

Yes, I do.

While election officials must prepare for Election Night reporting to take longer this year than in past years, voters must be patient. The results presented on Election Night are not the official results of the election, but the official results are produced shortly after. Election officials must go through a lengthy certification canvassing logic and accuracy testing and in some States risk-limiting audit processes before the preliminary results of the election are certified and become official. This process can seem lengthy, but it's all part of the -- it's all in place for a very distinct purpose.

I -- I'm very much looking forward to today's guests and hearing what they have to say. And with that, I'll turn my time back to the Chair.

CHAIRMAN HOVLAND:

Thank you, Commissioner Hicks.

Commissioner McCormick.

COMMISSIONER MCCORMICK:

Thank you, Chair.

After everything that's happened so far in 2020, it's hard to believe we're now just two weeks from Election Day. And of course, as we speak, millions of Americans are casting their ballots. Of course, we're all in suspense as we await the outcome of the

presidential race, but also, so many of the other races that are to be decided. And hopefully, we'll know the outcome on Election Night, but it's quite possible that we may not.

As we all know, the media plays a critical role in Election Night reporting. They're tasked with not only reporting the available information as accurately as possible, but also must reiterate to voters why the results may be taking longer or may seem different than in previous election years. They also have a responsibility not to report speculative or inaccurate information. There are famous examples of elections being called and reported on too soon.

Voters must often turn to news outlets for election results, and now more than ever it will be incumbent on the media to explain the process of the counting of the ballots and on any possible delays in Election Night reporting. Accurate and honest reporting will be critical for upholding confidence in the American election system.

As voters are registering to vote and planning how to cast their ballot, we encourage them to use only trusted sources of information. These trusted sources are the State and local election officials. Voters and members of the press still need only to look to these officials and the trusted and accurate information they provide for accurate and up-to-date election results.

So I want to thank all of our panelists for being here, and I also look forward to today's discussion. Thank you, Mr. Chair.

CHAIRMAN HOVLAND:

Thank you, Commissioner McCormick.

I'd like to now introduce our panelists who are joining us today. The Honorable Maggie Toulouse Oliver is the New Mexico Secretary of State and the current President of the National Association of Secretaries of State. Welcome.

We also have the Honorable Paul Pate, the Iowa Secretary of State and immediate past President of NASS.

We're also joined by Brian Carovillano, the Vice President and Managing Editor of the Associated Press. Thank you for being here.

And finally, Nate Persily, the James B. McClatchy Professor of Law at Stanford Law School. Among Professor Persily's accomplishments was serving as the Research Director for the Presidential Commission on Election Administration.

So we have a great panel, and I look forward to the discussion. So I'm going to go ahead and kick things off with Secretary Toulouse Oliver.

I mentioned in my opening remarks that Election Night results are always unofficial. As the current Secretary of State and a formal local election official, I was hoping that you could walk us

through why that is and some of the process of finalizing and certifying the results.

SECRETARY TOULOUSE OLIVER:

Sure. Well, first of all, thank you, Chairman Hovland and honorable members of the Commission, and to my colleague Secretary Pate and our other panelists, really a pleasure and an honor to be here with you all today with 14 days and counting till Election Day, and boy, has this been an election year for all time.

So I think you all in your remarks, your initial remarks, sort of hit it on the nose already. Election results are always unofficial on Election Night, and that's something that we as election officials always talk about before every election, but usually we don't talk about it quite as much as we have this year or quite as far out. I started talking with the media and to public interest organizations about this, you know, starting at least a month ago. Why?

Because we are seeing so many changes because of the pandemic to how people vote, primarily a drastic increase in voting by mail whether it's voting absentee or States even shifting to automatically mailing out ballots to every voter. And that is just a slower process in terms of making sure that every ballot is counted.

So for one thing, on Election Night when everybody's going to sleep and they're looking at all the results that have come in and can have a fairly good idea of the outcome, your election officials

are always continuing to work through days and weeks after Election Day. For one thing, it's important to make sure all those initial votes are counted in the first place, right? Those ballots that come in on Election Day or in some States even after Election Day can be received and counted, as I think Commissioner Palmer mentioned, qualifying and counting of provisional ballots. Your local election officials can't even start opening up and looking at those provisional ballots deciding whether or not to qualify and count those until that initial count has been completed.

And of course, the canvass of the election process before results are certified, which is essentially an audit that every local election official goes through to make sure every ballot issued is equivalent to every ballot cast or spoiled or rejected, right, to making sure that everything adds up so that we know for a fact that the election process was conducted accurately, that the count was released accurately to the public, and that whatever the local board is responsible for certifying those election results or, in other words, making them official can have confidence that the outcome is in fact correct.

CHAIRMAN HOVLAND:

Thank you, Secretary Toulouse Oliver.

With that, I'll turn to Mr. Carovillano. Sir, can you walk us through the AP process for calling elections? I recently reviewed

some excellent information on your website and certainly recommend to anyone who's interested, but I was hoping you could share how the AP goes through ensuring your projections are accurate and not prematurely calling a race.

MR. CAROVILLANO:

Sure. I can start by just kind of giving an overview of AP's overall operation on elections in U.S. elections, which kind of fits into four broad categories. We count the votes, so we gather elections data from county and State elections officials. We compile that and then we report it via our customers and on our own platforms. We call the races, and this year, we'll declare winners in more than 7,000 local, State, and national campaigns, and I can talk a little bit more about that in a sec. We also work with our partners at NORC at the University of Chicago to conduct a massive voter survey called VoteCast, which is not an exit poll. We no longer participate in the exit poll consortium. And then lastly, we obviously cover the election, which means we do journalism on candidates and voters and election security and misinformation and all the other aspects of the election. As the Managing Editor, I am primarily involved and responsible for the latter, but I can talk about all of these things today as much as you like.

Since you asked specifically about race calling and used the word projection, let me start by saying the AP does not do projections. We only do declarations. You might hear a network make a projection. We do not declare a winner until we are 100 percent certain that the trailing candidate cannot catch the leading candidate. And so that is quite a big difference. And this year, because of all the factors that we have been talking about involving the much larger number of early and mail-in votes, we expect that it may take much longer in a lot of races to declare a winner than it normally does.

So we have been out, you know, doing media interviews, participating in panels like this, my colleagues and I, for months now just trying to manage expectations in the same way that you did, Mr. Hovland, at the top to say, you know, we have to be patient. We have come to expect in our democracy that we will have a lot of information on Election Night that we might not have this year. And it's really important to add to that that if certain races, closely watched races are delayed, that is not a sign of problems. That does not mean that there's fraud. It does not mean that the election is flawed in some way. It just means that this is a much more complex election, and that applies to our operations on elections, but it also applies to all of your operations on Election Nights.

And in some States we still don't even know exactly how they're going to handle the large -- larger numbers of absentee and mail-in votes, so here we are two weeks out of the election, and last night we had a key ruling from the U.S. Supreme Court on how Pennsylvania should handle mail ballots. So I fully expect that we'll be right up to Election Day without having the absolute clear picture on exactly which States are going to be in which place. We also know that there are States that have a long history of handling high volumes of mail-in votes and are prepared to start counting those and probably will finish counting them. So there's just so many variables heading into this election that we haven't dealt with in the past, and patience, I think, is definitely the watchword.

CHAIRMAN HOVLAND:

Thank you. And I think that's good advice.

Professor Persily, you recently authored an op-ed in the *Wall Street Journal* with Professor Charles Stewart where you discuss the issue of Election Night results and official results. Can you discuss that piece and what you're seeing across the country on this issue?

MR. PERSILY:

Certainly. And thank you for having me talk to this esteemed group here.

I want to be clear about sort of what we will know and when we will know it. It is -- and I think it's important to manage people's expectations. All of us are trying to preach patience. We think that everyone should be in a mindset where they will not know who the winner of the presidential election is on Election Night, as we have historically. That's not necessarily going to be the case, but it's important to sort of prepare for the worst and hope for the best here, that we will have to be patient for results.

However, whether it's the Associated Press or other media organizations, we will have a lot of information on Election Night. And different States will be reporting different totals at different times. And whether it's -- this -- you know, there will be the late-breaking States, the ones that are only going to begin processing absentee ballots on Election Day, that they will be the latest maybe to produce results, but then there will be a lot that will report results very soon after polls close. And from the data that we get from those early reporting States, we will have a good idea about which way the winds are going.

And I think the important thing here is that we shouldn't assume that there's going to be some kind of information vacuum into which the sort of malicious actors can spread disinformation about who's won if it's too premature. There's going to be a lot of information from places like Florida that have started processing

ballots already, places like North Carolina, Maine, New Hampshire, several others, Texas. And from those States, we'll get a sense of the trends.

Now, if this election is like the same -- the election was four years ago, let alone if it's like the 2000 election, well, then we're in for the long haul. And by the long haul means that we particularly would wait for the absentee ballots to be counted in States like Pennsylvania, Michigan, and Wisconsin and possible litigation that would accompany that. But it's too soon to sort of predict that. And it's important for us to sort of keep our antenna up on Election Night to look at not just the fully or nearly fully reported States, but also the nearly fully reported counties in the States that are not yet fully counted. And from that data we'll get a lot of good ideas as to who might have won.

CHAIRMAN HOVLAND:

Thank you very much.

I want to turn it over to Vice Chair Palmer for questions.

VICE CHAIR PALMER:

Sure. Thank you, Mr. Chair.

I guess my initial question for the Secretaries, you know, there will be increased mail or absentee ballots, and, you know, I guess -- you know, I know a lot of States are adding additional resources on the back end to sort of process prior to or on Election

Day and it can be very -- you know, it can be very tiring on Election Day and then have to delve into also processing and tabulating absentee. Sort of what are your plans in your States and sort of how have you addressed perhaps the shift in duties and work and, you know, if you know some other States are handling it, different laws, you know, require different reporting regimens, but how are the States and localities handling how they will be reporting what they receive on Election Night?

SECRETARY PATE:

I'd like to thank the Commissioners for putting this together, and I'm very honored to be on this panel. But I'd just say that, you know, we're making all the accommodations we can to work through this. I can speak for Iowa. We learned a great deal from the primary alone and what we had to do to adjust for all the challenges. And if COVID wasn't enough, we had our own little hurricane come through Iowa, so we're faced with challenges on polling locations and along those lines.

But the CARES Act funding helped a lot because with those funds we were able to get those to the counties, the local level, so they could buy the additional equipment they might need for the tabulation because, you know, we saw the high uptick in the primary for absentee balloting, so we knew we needed to have the best equipment possible to make sure we could get those

processed. It also covered the cost of additional staff and overtime that might be involved, so those are all pieces of it.

But in our case our State law allows the local election folks the day before the election on the 2nd to start processing and putting the ballots through the counter, if you will. But I went and -- to our legislature and asked for an emergency directive to allow them to start the process on Saturday, actually, to be able to get a head start on -- at least getting the envelopes opened and some of the time-consuming tasks done.

This is weed stuff nobody wants to talk about it, but it is the thing that slows it down so that nine o'clock at night when we close off the voting, those ballots are ready to go, particularly when you're looking at, in our case, 800,000 folks who are requesting absentee ballots right now in Iowa alone. We'll have those counted, so we won't be looking at, you know, days and days later.

Let's recognize if I could say for a moment here elections are getting tighter and tighter victory margins. That makes it -- the pressure on us to make sure we're accurate as we come out of the chutes with our results. And I think Maggie will agree with me. I know my auditors and us are on the same page and that is we don't call a race here. That's the media's job. Our job is just to make sure every ballot is counted and is counted correctly, so that's the

pressure we have. And working with making sure that they have those resources is what we're doing and we're focusing on.

And I don't plan on being up till the wee hours of the morning Election Night myself, but I'm confident we're going to have our numbers in. And some of my colleagues in other States, they've got a bigger, steeper hill to climb, and I recognize that, so we've got to be patient for them. And I appreciate all the comments here so far echoing that as we go into the election.

SECRETARY TOULOUSE OLIVER:

We've done a lot of the same in New Mexico that Secretary Pate and his colleagues have done in Iowa. We've backed up the processing time for absentee ballots. We are also starting this Saturday with the process of counting those absentee ballots that are coming in at a record pace. We've used CARES Act funding to help outfit our county clerks' offices with the equipment they need, the extra staffing they need, particularly in this time of COVID when so many of the traditional folks who help work elections are, you know, in the high exposure risk group for COVID.

And we also backed up the deadline to apply for an absentee ballot, working together with the Postal Service to understand what their limitations are, what their best practices are, seven-day period to mail any piece of mail one way or the other. So today is actually our deadline here in New Mexico to apply for

that absentee ballot so our clerks can get it in the mail no later than tomorrow. We're urging everybody to get those ballots in as quickly as they can, and we've expanded the drop-off capacity at every single polling place throughout the State because we don't want, you know, a vast number coming in at the last minute on Election Day.

But we also introduced a little humanity into our process here, and we are seeing the process of counting ballots is going to draw to a close at 11:30 on Election Night recognizing, as you said, Commissioner Palmer, the exhaustion level. That's when you begin to insert human error and mistakes and allowing folks to get a good night's sleep and come back the next morning to continue the process.

You know, States -- other States have done what Iowa and New Mexico have, rolling their processes, backing their processes up on the front end so they can start the process sooner. States like Michigan, Secretary Benson there got at least an extra day in advance of Election Day to begin processing her ballots. But as Secretary Pate said, we know a lot of States are really -- they have their hands tied by their statutes about when they can start, and so it's those States, of course, that, especially as Secretary Pate said, if there's a close race that, you know, all eyes are going to be on in the ensuing days.

VICE CHAIR PALMER:

Thank you. I have a question for the AP, Brian Carovillano. You know, there have been over the years some criticisms of the exit polls, and you noted -- and I didn't know the specifics until I was reading some of the materials. And could you tell us a little bit about Vote Cast and how that's a little bit different? And how do you -- you know, how does that work into your model of projection? I think that's important for folks that have been doing this for a while but don't quite understand how exit polls have worked in the past and what VoteCast of the polling is doing for you now.

MR. CAROVILLANO:

Sure. I would just add on what Secretary Pate was saying before about, you know, weed stuff. You'd be surprised at how interested people are in weed stuff in this election.

[Laughter]

MR. CAROVILLANO:

You know, we've been doing a lot of explanatory reporting just to try and help people to understand what's different and what's happening. And the level of engagement in those stories is like off the charts. So, you know, things like, you know, when will the envelopes being opened I think would have been weed stuff in any other election. This year, it actually is something that people are pretty interested in.

Yeah, so on the question of VoteCast and exit polling, so the AP was part of a coalition up through the 2016 election -- and that coalition still exists; we're just not part of it anymore -- which included the U.S. networks to do exit polling outside polling locations in all 50 States to gather information from people about who they voted for and also why they voted the way they did.

I mean, I think one of the untold stories about exit polling, in general, is that it's usually a lot more valuable after Election Day in terms of understanding the trends and how people voted and why they voted the way they did and, you know, what groups went this way, what groups went that way, and asking detailed questions about it.

But the AP pulled out of the NEP and parted ways with the exit poll coalition because we felt that exit polling no longer had the value it once did in helping to call elections and understand the electorate because of the way that people vote. So already by 2016, as you all know, obviously, a large percentage of ballots cast in the presidential election were not cast at polling places on Election Day. And now we're going to see a huge increase in that because of all the reasons that we've been talking about, so that really creates a lot of limitations because you're already missing, you know, in 2016, 40 percent of the electorate, and in this election

by some estimates up to 60 percent of the electorate, and so it really doesn't paint you a very complete picture of voter behavior.

And so, we partnered with NORC, which is a public research outfit at the University of Chicago -- which is not strictly a political polling operation, which is an important point here -- to create essentially a new alternative to exit polling, which is called VoteCast. And what VoteCast does is it tries to reach voters where they actually are, so it uses phone, online, and actual mail surveys to survey a very large number of people across all 50 States in the days leading up to and on Election Day itself. This year, we expect to get about 140,000 surveys back.

And so, heading into this election with all of the uncertainties around the number of mail votes and how people are going to vote and everything, it turns out to be a much more effective way to reach a much broader cross-section and a much more complete cross-section of voters, so we hope and expect that we're going to get a pretty rich mosaic of how people voted and the way that they voted.

But again, since we don't do projections in close elections, VoteCast is but one data point that we're looking at as we're calling races. And there's nothing more important than actual vote, especially when we get into the closer elections. I mean, there are States where I think we know the outcome of a presidential or

senatorial or House election already, and then there are States where we really won't know. And VoteCast is just one of many data points that we're looking at, along with historical voter behavior, the early vote and how that broke down, and then of course actual vote. And there's no substitute for actual vote.

And so, when we get down to the handful of States that are really going to decide this election, VoteCast is of limited use. But what it is really useful for is in the days and weeks and months and even years afterward really understanding what were the issues that people -- that brought people out to vote this year, why did they choose the candidates they chose, to break that down demographically, look at it regionally, and, you know, it gives us a really, really rich amount of information that we'll be reporting for years after the election.

VICE CHAIR PALMER:

Thank you. A real quick question for Professor Persily. You know, I think I interpret your comments as sort of like what happened in 2000 is, you know, I think that we could be in for weeks of a recount situation if it's so close that's in a battleground State. You know, at the time -- and I think Secretary Toulouse Oliver will appreciate, in 2000 the New Mexico race was like razor thin, but it didn't have the attention because it wasn't going to decide the race for President, so it didn't go weeks. And of course

then the litigation got involved in Florida. But is that sort of what you're saying is that we may have results in the day or two after the election unless one of the key battleground States is sort of so close that we have to go through recount that could involve litigation?

MR. PERSILY:

Well, that's right. I think that, you know, we're seeing this already, that there's a considerable amount of pre-election litigation. And I guess the way to put it is if we have a replay of 2000 where it does come down to one or a few of these Midwestern battleground States with a lot of absentee balloting, we should expect there to be considerable disputes over those absentee ballots.

And so, assuming -- look, as you know, the election administrator's prayer is, oh, God, whatever happens, please don't let it be close, right? And if it is a close election, then all of the sort of contentiousness that we've seen over absentee ballots will then come into full bloom into court. I have actually behind me my Palm Beach butterfly ballot machine. I wouldn't say it's a good luck charm. It's a historical reminder of what we went through 20 years ago.

But, yes, if it's close, you know, and one State is dispositive, we should expect everyone to be going into court. But since there's been so much conflict between the campaigns over absentee

balloting, I think that if it does come down to one State and the absentee ballots in those States, I mean, it could be still a substantial number of votes that would be in that middle category of being contested that then would -- know, it would delay the counting considerably.

VICE CHAIR PALMER:

Thank you, Nate.

Mr. Chair, I'll hand it back to you.

CHAIRMAN HOVLAND:

Thanks, Vice Chair Palmer.

Commissioner Hicks, do you have questions?

COMMISSIONER HICKS:

Yes, I do. Thank you.

I want to thank everyone for being here today, and I want to go on a little bit about what Vice Chair Palmer was talking about a little bit there, as well, particularly to the Secretaries. If the results are extremely close, what are your plans to get the information out to voters to be patient basically and rely on you as the trusted source of information? I think back to 2000 with Florida, as Vice Chair Palmer had said. Was it -- Florida wasn't the closest race; it was New Mexico with basically 633 votes, but we didn't hear much about New Mexico because of the way that they did the recounts, and so forth. But the final results were not in until November 17th.

So how do we keep people calm for those -- that -- you know, that time frame?

SECRETARY TOULOUSE OLIVER:

Well, thanks for that question, Commissioner. First of all, we have done a lot of good work here in New Mexico to improve our overall administration of elections. I was a baby undergraduate student working for the Democratic Coordinated Campaign back then, and the most I could do was just, you know, go to the county voting machine warehouse and get sworn in and, you know, sort of help the process along.

But, you know, we -- one of the things that we have done since then, of course is, you know, between HAVA and, you know, the work we've done here at the State levels, we now have a unified, you know, reporting system at the State level. All local election results get reported up to our centralized State reporting system. And a feature of our system is that we actually flag, for voters, the close races, particularly those -- we have an automatic recount law here in New Mexico that, you know, if a certain race is within a certain margin, it will automatically go to recount no matter what, you know, once the results are certified. We will flag those races as the night progresses and as the unofficial count progresses, so that you could go to our website at any point and look up any race that's flagged as a possible recount. Of course,

you know, that's just informational. It's not official until the State Board of Canvass orders it to be official. So that's one way.

We are also working on a system to ensure -- with our election management system that we use in the State, we'll know exactly how many absentee ballots are still outstanding, how many have come back, how many have been rejected, what is still left to count. We'll be able to report those numbers to them as well, so that, you know, if you can do a little rudimentary math, you can make a determination as to whether, you know, the outstanding ballots are greater or less than the number of -- you know, the margin of error in the race. So, we're hoping all of that information and just being proactive in helping get it out there to the public is going to help.

But I agree. You know, I definitely don't want New Mexico to be in a position of saying thank God for Florida like we were in 2000 --

[Laughter]

SECRETARY TOULOUSE OLIVER:

-- and, you know, that's what we're trying to avoid here.

SECRETARY PATE:

I don't know how to follow that one. I agree. We're all very focused on this one, Commissioner. And the media has definitely shown a significant interest nationally. My staff here gets calls on a

regular basis asking the same question, you know, what are you going to do? Iowa is a purple State so, you know, when you look at Election Night, which way will they fall? And we want to know right away. As I said earlier, you know, our roles as commissioners of elections in our States isn't to call the race. We're here to make sure that the ballots are counted and that they're counted correctly.

But we do try to set reasonable expectations, and that's what we're doing right now. We're spending a lot of time, you know, reaching out to the media. Today, for an example, I think I have at least eight or ten Zoom outreaches to media just telling them just exactly what we're discussing right now, but I have to do it in such a way that it doesn't look like it's a problem, because it's not. It's actual reality. This is just the way it works. You know, there are a lot of votes being cast, we want to make sure we get it right.

We have postelection audits in Iowa. We have, of course, a lot of other checks and balances in line to ensure that we are getting that accuracy. But this isn't new. I mean, in our State on a regular basis we have many legislative races that are won and lost by less than 100 votes, so we have to be very careful on those razor thin margins that you're looking at. And there are State Houses that are up -- that are very significant. You know, losing their House or Senate are just as important. Congressional races as well, so it is a domino effect when you start looking at all the

races from the local level right up to the presidency. So, we are going to continue to educate and communicate to the public on this front.

And the last thing that any of us want to do is give them the wrong information, because walking it back is really dangerous and really hard to do. So, I would much rather tell the media no comment or we don't have the answer yet, we'll get it to you and give them a reasonable timeline, and that's safer in the end. We don't -- we do not want to be walking it back.

And Maggie can attest to this. You know, her role as President of NASS is working with all of us in our different systems we might have in our States, but we share the same common goal on Election Night, and that is getting the information out there, the accurate information out there, and making sure voters are comfortable that the system is working the way it's supposed to.

COMMISSIONER HICKS:

Great. Thank you both.

Brian, I just have a quick question of how can people get the information from the AP? And so, I know, you know, if you go to the website, yes, but if -- if I want local information, how do I get local information? And the reason I ask is because I'm viewing the AP as a trusted source. Both Secretaries, back in February, were part of the NASS conference and were part of the trusted source

campaign with this poster that I have behind me, and so I just wanted to know, you know, as the AP is looked at looked at as a trusted source, how do I get local information as opposed to the national races?

MR. CAROVILLANO:

Yeah, we are primarily a wholesaler of news and information, and so most U.S. news organizations are members of the AP and get AP's vote count and race call information. So if you're looking at your local newspaper website on Election Night, the chances are that they are using AP's data and the data that is displayed there, which is coming, again, from, you know, county election offices and from Secretaries of State, but distributed by the AP, is ending up on local news sites all across the country, and there are about 3,000 U.S. members, as well as thousands of -- outside the U.S. organizations that also rely on us for that information.

We also have consumer-facing platforms called APnews.com and the AP news mobile app where you can drill as deep as you want. You can find very granular local information on there and so -- if you're interested in what's happening in your local State legislative race. You can also find it by coming to the AP's platform. But we tend to point people to their local news site because there's also a lot of coverage and context around those

races that we just can't get that local. So, you know, your local newspaper is not only going to be able to provide you local data, but they're also covering those races and can put context around, you know, what we do and don't know about the information that's available so far. So, you know, that's important.

I think in this election it's also incredibly important to say what we don't know and to be very transparent about what the information we have tells us and what it doesn't tell us. I already mentioned this once, but I'll say it again. This is a time for explanatory journalism, which is maybe not the sexiest form of journalism, but it's the type of journalism where we explain what's happening, why it's happening, and why it matters in very simple and accessible terms, and we've been doing a lot of that. I expect we will be doing even more of that in the two weeks ahead and certainly on Election Day and the immediate aftermath as we just try and explain to people and give them some -- you know, some easily accessible information about what we know, what we don't know, you know, what are the questions that still need to be answered, and how long do we expect it to take to answer those questions.

COMMISSIONER HICKS:

Great. The follow-up that I have to that is the down ballot races, do you -- when you do the VoteCast for information on that,

is it a way to figure out why people don't vote or do vote in the down ballot races as well?

MR. CAROVILLANO:

I don't have the survey in front of me. That's a good question. I believe the answer is yes, but I'd have to look at the survey and see what we're asking about whether people do or don't vote in down ballot races and why. But understanding the non-voter is definitely one of the goals of this whole --

COMMISSIONER HICKS:

I'm fascinated, yeah.

MR. CAROVILLANO:

It's a third or more of the electorate in any U.S. election, and so understanding why people don't vote and what their motivations are for not voting is one of the things that we try to get at. So --

COMMISSIONER HICKS:

Great. Great. Nate, one quick question for you. Do you see any -- it might not be quick -- but it's the -- do you see parallels between 2000 and 2020, in terms of the way that the election has gone so far?

MR. PERSILY:

No, I mean, I think that no one could have predicted in 2000 that it would end the way that it did. In some ways, right now, we are in a better position in predicting what the areas of concern may

be even if there are so many moving parts. And so, obviously the shift to early and absentee voting is the thing that people are most focusing on, but we don't know what's going to happen in polling places on Election Day, for example.

But, you know, as I'm sure the election officials on the call would agree, one of the most important things is that we have clear rules in place for this election before Election Day. Hopefully, the remaining courts that are adjudicating various controversies will get their decisions out soon, but that means that some of the rules with respect to deadlines for ballots or witness signatures and the like, those are the legal issues that are crystallizing right now, and so I think that we -- if we are in a postelection litigation situation, that that's -- that makes this a little bit different than Florida in 2000.

But we've also made a lot of changes in the electoral system since the 2000 election, and I think that we all, you know, recognize that this is not an election that's going to be decided by dangling chads or the like, but it's one that -- where absentee ballots would be a pretty important factor in who wins.

COMMISSIONER HICKS:

Great. Thank you. Mr. Chairman.

CHAIRMAN HOVLAND:

Thank you, Commissioner Hicks.

Commissioner McCormick, do you have questions?

COMMISSIONER MCCORMICK:

I do. Thank you, Mr. Chairman.

Secretary Toulouse Oliver, I know we've touched on getting into the weeds and opening envelopes. And for those who don't know, what exactly is the process and the timeline for counting mail-in or returned paper ballots? And why does it take so long?

SECRETARY TOULOUSE OLIVER:

Thanks for the question, Commissioner. And obviously it looks a little bit different in every State. The requirements are a little bit different, the timelines are a little bit different, but fundamentally, you know, the process is the same in that, you know, most jurisdictions use a combination of technology and humans to do this process. You know, when you go and vote on Election Day and you get your ballot or use a direct recording machine, you, you know, fill out your vote and the machine tabulates it right there on the spot, and so, all an election official has to do once those polls are closed is turn off the machine and print the tapes or the report and get that memory card over to the local election official to be, you know, aggregated and counted and put out on websites.

But with mail-in ballots, there are always requirements for voters to provide information with that ballot, whether it be as simple as just a signature that needs to be verified, using, you

know, voter verification software or human eyes, a combination of both, whether it's other information, a birth date, in my State the last four digits of the Social Security number, some other kind of information. States require notaries or witness signatures, right, so verifying that all of that information is in place before a ballot envelope can be opened.

And then, in every place where you have a mail-in ballot, you have an outer envelope that has that identifying information, so before it's even opened, you can make sure that you've got the ballot from the person who is representing themselves to be the voter. And then, you've got to separate that outer envelope from an inner envelope that's protecting the privacy of the ballot. And you have to do that in a systematic way. You can't do it both at the same time because then you're compromising the privacy of the ballot, of the voter's choices. So you first have to separate those inners from those outers and get those completely put into a different pile, and then you have to go about removing the inner -- the ballot from the inner envelope and get those separated, get them straightened out, flattened out, whatever you have to do in some places.

Then you begin feeding them through the machine to be scanned. That takes a while. If there's an overvote, let's say, or a mistake or a stray mark on a ballot, either -- either computers or

humans or both need to try to determine how the vote was cast, right? So, it's not the quick, simple in-and-out process, and that is why it takes so long.

And as we mentioned earlier, Commissioner, it's also a matter of when can you start, right, because, you know, early votes or Election Day votes, you know, those votes are being counted as you go along and added to the totals, but if you cannot start even opening those ballots until Election Day or the day before, obviously, that creates a bottleneck and it makes the process longer.

COMMISSIONER MCCORMICK:

And take that process and multiply it by thousands or hundreds of thousands of ballots, sometimes truckloads of ballots, and we understand why it might take long.

SECRETARY TOULOUSE OLIVER:

That's right.

COMMISSIONER MCCORMICK:

Yeah. So, Brian, can you tell me how you declare a winner, what factors you use in declaring a winner when you might not have all the precinct data in yet? I read something about you even take into consideration the impact of outside money on a race. So, I found that kind of interesting and I wondered how that -- those factors, you know, enter into your declaration of winners.

MR. CAROVILLANO:

That's not one of the factors usually.

COMMISSIONER MCCORMICK:

Oh, it isn't?

MR. CAROVILLANO:

We look --

COMMISSIONER MCCORMICK:

Okay.

MR. CAROVILLANO:

Yeah, we're looking at historical voting patterns. You know, we're looking geographically at areas where there's outstanding vote and how those places have voted historically. We are looking at the VoteCast survey as another input. But primarily, we're looking at the actual vote as it comes in and those unofficial election results and looking for basically a balance among those data sets that gets us to a point where we are confident that the trailing candidate can no longer catch the leading candidate, and that's the point at which we would declare a winner of the race.

COMMISSIONER MCCORMICK:

And given that the apparent expanded turnout in early voting this year, how does that impact the historical data in declaring a winner? I mean, does that change the calculus at all?

MR. CAROVILLANO:

It does change the calculus, especially in terms of timing. You know, we get pretty good data from all of you about the complexion of the early vote, how much early vote and, you know, what is the party affiliation of the people who have requested ballots in States that require that or who have voted, and those are all -- you know, those are all inputs that go into the process of calling the race. In this case, because it's going to be such a high percentage, that's going to be a bigger factor than it is in the past and, you know, one of the reasons why it may take longer to get to a declaration in races that are close.

COMMISSIONER MCCORMICK:

Thank you. Professor Persily, what happens if we don't have certified electors, say, by December 8th? I know we're kind of jumping the shark there a little bit, but, you know, what is the process? I mean, what can voters expect if we don't know what the results are?

MR. PERSILY:

Well, the question is whether December 8th or December 14th is the magical date here.

COMMISSIONER MCCORMICK:

Right.

MR. PERSILY:

So, let's start with the -- why you mentioned that date, which is that under the Electoral Count Act, it says that if a slate of electors has been chosen by a process in place before that date, that then that becomes the presumptive slate for the electoral college. We -- the short answer is we don't really know what will happen and the role of the State legislatures and the courts and the Governor and then ultimately, Congress. But just to put the legal machinery out there, right, in the event -- there is a question as to by what date do you have to have the electors essentially vote? That's December 14th, right, that they have to have voted by then, the electoral slate. And then on January 6th, the -- in Congress, they would open up -- Vice President Pence would preside over the preceding that would open the certificates of the electoral -- of the electoral slates.

Now, the question is if there is no electoral slate coming from a State, what does that mean? And that is not -- that doesn't stop the process, but it depends whether Congress itself would be adjudicating controversies over electoral slates, right? When there's a process in the Constitution where both houses participate. If there is -- if the failure to have an electoral slate be part of the -- the certificate doesn't arrive in Congress, then there's a question as to whether either candidate has won a majority of the electors, in

which case then there's a process in the Constitution where the House of Representatives votes by State in order to decide that.

So, you know, it's -- we've never tested -- we've never sort of kicked the tires on the Electoral Count Act process, and no doubt the courts would be intimately involved both in the run-up to that in the event that we don't have a victor, as well as afterwards if there are competing slates of electors.

I hope that answers your -- I could certainly go into greater detail.

COMMISSIONER MCCORMICK:

It sounds very complicated, and I hope we don't get there actually. We're hoping we actually do have an answer on Election Night or shortly thereafter, so -- but I -- just out of curiosity because a lot of people have been asking me, you know, what happens if we don't know? So, you know --

MR. PERSILY:

Right, and so the question is whether -- so the Constitution says that each State shall in a manner determined the legislature thereof appoint a number of electors, so there's constitutional power vested in the State legislature. However, the Electoral Count Act gives sort of presumption to slates of electors that were determined on -- by that date, and then, also the certificate that is

signed by the Governor is then given presumptive validity when it comes to the electoral college.

But what you ask is also suppose none of that happens, that we don't actually have any electors coming from a State, and then that doesn't prevent us from deciding who a President is, but then it depends on how many electors each candidate has garnered.

COMMISSIONER MCCORMICK:

I think it's interesting that this year -- I mean, I've been in this business for many, many years, but this year -- and I think Mr. Carovillano mentioned this -- voters are intimately interested in these questions, and they haven't been in the past, so I think it's really an interesting year. And the voters are very curious about what the process is and how we're going to get there. And, you know, I think it's important that we all put the right information out, because there is a lot of confusion over, you know, what this process is. It's a lot more complicated than folks realize. So, thank you.

Mr. Chair, I'll return it back to you. I know we don't have a lot of time left.

CHAIRMAN HOVLAND:

Thank you, Commissioner McCormick. That is right, we are getting close, but you did just hit on something I want to give the Secretaries a chance to talk about.

You know, there is some confusion out there, but certainly we at the EAC have been proud to participate in the #TrustedInfo2020 effort that the Secretaries led. Obviously, there's an intersection here. You know, certainly some of the concerns around Election Night reporting are the potential for disinformation in this space.

And so, Secretary Pate, Secretary Oliver, if you could talk a little bit about that and why it's so important for people to get that trusted source information from their local and State election officials.

SECRETARY PATE:

Well, we thought it was important, as Secretaries, during my term as President to get out ahead of this. It's -- obviously, it's a very serious problem we're facing, and it's not just going to go away by itself. And it's not one we can just quickly resolve because we have a thing called freedom of speech, so balancing out freedom of speech with misinformation and disinformation, who's going to be the referee? Who's going to decide is that? So, we take the initiative by at least dealing with the technical side. We want to make sure that anything that's being put out there that's misrepresenting that fact, we want you to know, as a voter, you can go to your Secretary of State or you can go to your local county auditor to get the hard facts.

I wish there was an easy answer for some of those other things that come up about candidates and their positions and all that stuff, but that's another battle. But right now, you know, we face things like people posting misinformation out there about, you know, long lines at polling sites, or frankly, right now, the one that concerns me is we're seeing a lot of this stuff going out there about planning to see that there's going to be civil unrest at the polling sites this election cycle. That makes me uncomfortable. And I don't want to sit here and say it can't happen, but by planting that out there, now you've created another problem that isn't really there, and we need to be staying ahead of that.

During the primary, we were faced in Iowa with questions about civil unrest, you know, was it going to impact polling locations because protesters might be there or will it inhibit how we get the votes all back to the courthouse to count them if people are out protesting, some of the things that we have to work as Secretaries to be -- stay ahead of. And we utilize social media just like everybody else doing programs like this. We want to make sure we're ahead of it.

So that's definitely not going away, and I'm not even touching on the fact that we've got people in Russia and China and Iran who are pushing this one just as aggressively as sometimes

the campaign candidates themselves can get out ahead of it and cause some issues.

SECRETARY TOULOUSE OLIVER:

Yeah, I would just echo everything that Secretary Pate just said and thank him as well for, you know, his leadership during his presidency of NASS, sort of bringing this campaign to fruition and, you know, kind of handing the baton over me to continue it forward. Everything that he just described is exactly what we're all sort of dealing with in our daily lives as election administrators.

One thing that I just want to add to what Secretary Pate said is that it has been really helpful to begin close working relationship with and communication with the social media platforms.

That was my kiddo. We're between classes, so he hasn't learned the rule yet, don't interrupt Mom when she's on a Zoom, but hey, here we are.

[Laughter]

SECRETARY TOULOUSE OLIVER:

But the social media platforms have been particularly helpful in, you know, working with -- working together with election officials, so we had a perfect example sort of, you know, the exact thing you would not want to see circulating on social media here a couple weeks ago. You know, the Governor's going to close all the polling places on October 15th, so get out and vote now before, you know,

you lose your chance to vote in person, of course was totally untrue, had no basis in fact. It had already circulated, been shared about 200 times. But once we got wind of it, contacted Facebook right away, they took the post down right away. And then, as Secretary Pate said, we were able to engage our social media and put out a misinformation alert by the next day. That had circulated around about 1,500 times already, you know, the counternarrative of, this is incorrect information and go to your trusted sources.

But when I -- one thing I am deeply learning this election that I've learned before, and many of us have, is that old saying that, you know, a lie is spread around the world, you know, while the truth is still getting its clothes on in the morning. And, you know, this is the challenge is being able to react quickly and take it down quickly and combat it. But, you know, this is something we're going to have to continue to contend with over the long term, I believe.

CHAIRMAN HOVLAND:

Well, thank you for that. It's certainly an important piece of this discussion.

Sadly, we are running out of time. We could probably talk about this all day. But I want to thank our panelists again for taking the time to join us today for this discussion.

For those of you who are joining us virtually, I hope this conversation was helpful for what to expect as we get closer to November 3rd.

This is an incredibly busy time of year, particularly for our election officials who joined us today and all those working at the State and local level across the country. I'd like to thank all the officials who have been working tirelessly to serve voters this year. Administering elections too often is a thankless job, and 2020 has been a true test.

So, on behalf of myself, the EAC Commissioners, and the staff, thank you to all the State and local election officials and poll workers who are on the ground making sure elections are safe, secure, accessible, and accurate. Please remember this year the importance of being a prepared, participating, and patient voter, and please rely on and share trusted source voting information as we enter the last days before Election Day. Thank you all for joining us.

[The Virtual Public Hearing of the United States Election Assistance Commission adjourned at 2:30 p.m.]

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