

Meeting Minutes
United States Election Assistance Commission
Election Night Reporting for the 2020 Election
Virtual Roundtable Discussion
October 20, 2020

1335 East West Highway
Silver Spring, Maryland 20910

The following are the Minutes of the Public Meeting of the United States Election Assistance Commission (EAC) held October 20, 2020. The virtual meeting convened at 1:31 p.m. via Zoom web conference on Tuesday, October 20, 2020 and adjourned at 2:28 pm.

PUBLIC MEETING

Opening Remarks

Chairman Hovland welcomes viewers and participants. He notes that the U.S. election system is resilient, and state and local election officials have been able to adapt processes, procedures, and resources to account for the COVID-19 pandemic. He notes that November 3rd is two weeks away, which is the last day to vote in the election given the expansion of voting methods. Chairman Hovland adds that the most recent estimate shows that approximately 34 million Americans have already cast their ballots. He notes that this discussion will focus on what happens after the ballots are cast and we should and should not expect on election night. Chairman Hovland reminds voters that patience on election night reporting is important, as officials must prioritize accuracy and integrity.

Vice Chair Palmer welcomes guests and notes that he looks forward to the discussion. He adds that COVID-19 will likely cause an increase in mail and absentee voting, so a delay in counting these ballots may also delay media projections of winners. Vice Chair Palmer looks forward to discussion what

has changed in reporting results on election night. He anticipates that the morning after election night will be a better estimate of how the election is going. Vice Chair Palmer adds that different state timelines and requirements will also add some challenges to election night reporting. He adds that accuracy is more important than speed in reporting results.

Commissioner Hicks notes that while election officials anticipate election results taking longer this year, voters must also be patient. He adds that election night results are not the official results, but the official results are presented shortly thereafter. Commissioner Hicks notes that election officials must go through a lengthy certification, canvassing, logic, and accuracy testing process, and some states have risk-limiting audit processes.

Commissioner McCormick reiterates that Election Day is only two weeks away and millions of Americans have already cast their ballots. She adds that there are many elections in addition to the Presidential Election. Commissioner McCormick reminds all that election officials have multiple responsibilities to the public in reporting accurate and honest results. She encourages voters to use state and local election officials for trusted information and results.

Commissioner Hovland introduces the panelists. The panel includes New Mexico Secretary of State and President of the National Association of Secretaries of State (NASS) Maggie Toulouse Oliver, Iowa Secretary of State Paul Pate, Vice President and Managing Editor of the Associated Press (AP) Brian Carovillano, and Stanford Law Professor Nate Persily.

Question and Answer

Commissioner Hovland asks Secretary Toulouse Oliver to explain why election night results are unofficial and what the process is like for certifying results. Secretary Toulouse Oliver explains that election results are always unofficial on election night and Secretaries of State across the

country have been explaining this even more this election cycle because of changes in how people vote. She adds that these changes include a drastic increase in voting by mail, which is a slower process for counting the results. Secretary Toulouse Oliver explains that election officials continue to work for days and weeks after election night to count provisional ballots because of requirements in state laws on the initial count. She adds that the canvass of the election process before results are certified also takes time.

Commissioner Hovland asks Mr. Carovillano to walk through the AP process for calling elections. Mr. Carovillano explains that AP's process includes counting the votes, which includes gathering information from election officials, compiling the information and reporting it, and calling the races. AP also works with partners to conduct a voter survey called VoteCast, which is not an exit poll. Finally, AP covers the election which is journalism on candidates and the election process. Mr. Carovillano clarifies that AP does not do projections but rather issues declarations. AP does not declare a winner until it is 100% certain that a trailing candidate cannot catch the leading candidate. He adds that this year it will likely take much longer to declare winners. Finally, Mr. Carovillano notes that patience is important and results being delayed does not mean that there is fraud or other issues in the process.

Chairman Hovland asks Professor Persily to expand on an Op-Ed he wrote for the Wall Street Journal on the topic of election night results. Professor Persily notes that it is important to manage expectations about what we will know and when we will know it. He adds that we might not know who the winner is on election night. Professor Persily notes that media outlets will make a lot of different information available on election night, which will still provide a good idea on the direction of the election results. He adds that we should not assume there will be a disinformation vacuum, because some states have already started processing ballots. Professor Persily goes on to say that if the election is similar to 2016, or even 2000, then results will take much longer due to counting provisional ballots or election litigation.

Vice Chair Palmer asks the Secretaries what their plans are for dealing with increased provisional and mail ballots. Secretary Pate responds that Iowa learned a lot from the primary elections, and the CARES Act funding helped a lot. Secretary Pate adds that with CARES Act funding, Iowa purchased additional tabulation equipment and is able to cover the cost of additional staff. Secretary Pate also influenced the state legislature to pass an emergency directive that increased the amount of time local election officials have prior to Election Day to start the process of opening envelopes to count ballots. Secretary Pate concludes that state officials are not responsible for calling elections, their priority is making sure the results are accurate. Secretary Toulouse Oliver adds that New Mexico has also expanded the timeline for absentee ballots and used CARES Act funding effectively. New Mexico also worked with the U.S. Postal Service to back up the deadline for applying for an absentee ballot. Secretary Toulouse Oliver also notes that counting ballots in New Mexico will draw to a close at 11:30 pm on election night and resume the following morning so that election workers can rest. She adds that not all states have been able to make similar changes, so it make take them more time to ensure that the ballots are counted accurately.

Vice Chair Palmer asks Mr. Carovillano to explain how VoteCast is different from traditional exit polls and how it works in AP's projection model. Mr. Carovillano explains that exit polling asks people outside the polling places on election night who they voted for and why they voted that way. He adds that this information is usually much more useful after Election Day. Mr. Carovillano explains that AP no longer conducts exit polls because it no longer holds as much value in calling elections or understanding why people vote the way they do. VoteCast tries to reach voters through phone, online, and mail to survey voters up to and after Election Day. Mr. Carovillano adds that this year AP expects to get 140,000 surveys back. He adds that this is a much better way to reach a broader cross section of voters. Mr. Carovillano concludes that Vote Cast is only one data point in declaring winners, but nothing is more important that the actual vote count.

Vice Chair Palmer asks Professor Persily if he thinks we will have results from most states following election night, but a true delay would be caused by election litigation similar to the 2000 Presidential Election. Professor Persily says yes, and adds that there has been a lot of pre-election litigation. He adds that if it is like 2000, where the election comes down to one or a few states with a lot of absentee voting, then there will be a lot of litigation.

Commissioner Hicks asks the Secretaries what their plan is for getting accurate information out to voters if the election is close in their state. Secretary Toulouse Oliver responds that New Mexico has improved the overall administration of elections since 2000, which includes a unified reporting system at the state level that this includes flagging the close races for voters. Secretary Toulouse Oliver adds that New Mexico has an automatic recount law for close races. She goes on to explain that New Mexico will know exactly how many absentee ballots are still outstanding, how many have come back, how many have been rejected, and what is still left to count so these figures can also be reported to voters. Secretary Pate notes that the media has shown a great interest in what Iowa's plan is as a purple state. Secretary Pate adds that his office has been doing outreach with the media to set expectations based in reality. He goes on to explain that narrow margins are a norm in Iowa State Elections. Secretary Pate concludes by saying that they will only report accurate information as walking back incorrect information is much harder to do.

Commissioner Hicks asks Mr. Carovillano how voters can get local information from the AP. Commissioner Hicks adds that the AP is viewed as a trusted source. Mr. Carovillano responds that local newspaper websites will have the AP's data and the AP's main sites will also have granular information.

Commissioner Hicks follows up and asks Mr. Carovillano if VoteCast has a way to figure out why people do not vote in down ballot races. Mr. Carovillano says he would need to revisit the survey, but understanding non-voters is an element.

Commissioner Hicks ask Professor Persily if there are parallels between this election and the 2000 election so far. Professor Persily says no, as no one predicted the 2000 election challenges. He adds that one of the most important things for this election is to have clear rules, which is up to the courts that are currently adjudicating election challenges. Professor Persily notes that there have been a lot of positive changes in the electoral system since 2000.

Commissioner McCormick asks Secretary Toulouse Oliver to explain the process and timeline for counting mail-in or absentee ballots. Secretary Toulouse Oliver responds that it is a little different in every state, but most jurisdictions use a combination of technology and humans. For in-person voting the ballot machine tabulates votes as they happen, but mail-in ballots have additional voter information requirements that need to be verified. Secretary Toulouse Oliver goes on to explain that mail ballots also have an outer envelope that requires verification as well as an inner ballot envelope that requires verification. She notes that when election officials can start counting, or even opening, mail ballots also makes a difference.

Commissioner McCormick asks Mr. Carovillano what the process is for declaring a winner when all precincts have not reported. Mr. Carovillano explains that the AP considers historical voting patterns, geographic areas of outstanding votes, the VoteCast survey, and primarily the actual vote as it comes in. Commissioner McCormick asks how the early voter turnout this year impacts the historical voting pattern data. Mr. Carovillano responds that it changes the timing and may impact the time it takes to declare a winner in close races.

Commissioner McCormick asks Professor Persily what happens if there are not certified electors by December 8th. Professor Persily responds that under the Electoral Count Act if an electoral slate has been determined prior to December 8th then it becomes the presumptive slate for the electoral college. Electors have to vote by December 14th and on January 6th, Congress would begin the proceedings to open the certificates of the electoral slates. Professor Persily says the question is if there is no electoral

slate coming from a state. He explains it does not stop the process itself, but determines if Congress would be adjudicating controversies over the electoral slates.

Chairman Hovland asks the Secretaries to explain why voters accessing trusted source information is so important. Secretary Pate explains that it is important to get ahead of misinformation and disinformation. Secretary Pate adds that misinformation on long lines and civil unrest are currently the biggest issues for Iowa. He notes that social media is a way for Secretaries and officials to get ahead of the misinformation. Secretary Toulouse Oliver echoes Secretary Pate's comments and adds that partnerships with social media platforms have been helpful.

Closing Remarks

Chairman Hovland thanks the participants and all election officials and poll workers administering elections. He encourages all to participate as a voter and use trusted source information.

The Public Meeting of the Election Assistance Commission adjourned at 2:28 p.m.