National Association of Secretaries of State (NASS)

Priority Election Issues for Secretaries of State

Summary of NASS Election Administration Roundtable | Las Vegas, NV
May 7, 2013

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OVERVIEW

In the wake of a presidential election cycle where voting access and integrity were high-profile media issues, NASS members issued a bipartisan call to bring together Secretaries of State for the purpose of reviewing the 2012 election cycle and discussing key areas of mutual interest and concern. The importance of such an effort was significantly bolstered in February 2013, when President Barack Obama announced during the State of the Union Address that he would be forming a Presidential Commission on Election Administration to study long lines and other problems that some voters had experienced.

With the understanding that an open-ended discussion on the issues that emerged in 2012 might help states identify cost-effective, practical solutions to voting problems and inform the work of the Presidential Commission on Election Administration, the NASS Election Administration Roundtable was held on May 7, 2013 in Las Vegas, Nevada. The goal of the working session was to conduct an informal assessment of the major issues that Secretary of State offices dealt with in the lead-up to the November 6, 2012 presidential election, thereby identifying administrative successes and areas for improvement, as well as enabling chief state election officials to benefit from the collective expertise and idea-sharing that is available through NASS.

During a full day of dialogue, the NASS members in attendance - representing 23 states - were able to identify a number of policy areas of shared state interest. The morning was largely spent in small groups organized by geographical region, while the afternoon involved breakout sessions by topic, followed by a full group discussion on conclusions and next steps.

This paper is designed to highlight state areas of shared interest or concern that emerged from the roundtable discussions, including policies or practices that worked well for states. As Secretaries of State face a future in which their state agencies are dealing with an increasingly complex range of election issues, funding and resources for election administration remain an underfunded area of government. Given the reality of staff shortages and budget dilemmas in most states, it is more important than ever for states to communicate with each other, exchange ideas and develop shared priorities in order to deliver a pragmatic-yet-positive leadership approach to overseeing elections processes in the states.

At the same time, turnout is highest in presidential election years, and comprehensive planning is always a critical necessity. Election officials must be prepared to allocate their resources accordingly, so the voting process is able to accommodate every voter who wants to take part in the electoral process without undue delays or complications. NASS members remain dedicated to this principle in bipartisan agreement, and look forward to working with all of the hardworking staff members and volunteers at all levels of the process who share this dedication to the continued improvement of election administration in the United States.

The next section contains key issues that were addressed during the roundtable.

PRIORITY ISSUES FOR SECRETARIES OF STATE

In an effort to work together and identify some election administration issues that are shared priorities for Secretaries of State, roundtable discussion leaders urged participants to focus on topics that were likely to enjoy broad support and consensus amongst the diverse group of state officials in attendance. Priority issues are in alphabetical order. The general idea is that devoting time and resources to these issues would benefit most states; however, it should be noted that front-burner issues in each state -- or even each region -- may differ. While state solutions are sometimes mentioned as examples for consideration, roundtable participants were respectful of state differences and did not seek support for one-size-fits-all, uniform approaches.

EARLY VOTING

Early voting was a major topic of discussion at the NASS roundtable, where Secretaries of State eagerly exchanged notes on their respective states' early voting laws and ideas to improve the process. This type of convenience voting allows voters to cast a ballot in person by visiting an election office or another designated location before Election Day.[1] A number of states (Iowa, Louisiana, Maryland, Montana, Nevada, North Dakota & Rhode Island) noted that their early voting numbers in 2012 exceeded their 2008 totals. However, participants also pointed out that early voting did not appear to increase overall voter turnout in the 2012 general election. Instead, they said that it seemed to cause a shift in voter turnout patterns by allowing more ballots to be cast before Election Day. Most participants concurred that the key benefits of early voting are providing a convenience option for voters and enabling local election administrators to mitigate some of the stresses of a busy Election Day, when the largest number of voters show up to vote.

With resources strained in many states, a key early voting issue is determining the number of early voting sites, days and hours (along with legislating authority to decide such matters). Participants noted that local jurisdictions are typically left to make these determinations, sometimes resulting in varied opportunities within the same state.

Early voting was also seen by some as a potential solution to alleviating the long lines that voters encountered in the Nov. 6 presidential election. However, participants noted that if other factors are not addressed (i.e. ballot length/complexity, poor administrative planning, lack of polling place resources and human error), voters may still experience longer wait times at the polls, suggesting that early voting is not a panacea for slow lines.

Interestingly, a significant number of roundtable participants expressed the need to conduct more outreach that clearly explains how so-called "early voting" works in a particular state. They noticed that during the 2012 election cycle, media outlets and political parties sometimes used the term "early voting" to describe the in-person absentee voting process, which can be quite different from in-person early voting. This may seem insignificant at first, but members believed that it

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[1] It is important to point out that some participants characterized no-excuse absentee mail voting as their form of early voting.

caused a great deal of confusion for voters who expected a "polling place-like" experience but later learned they had to fill out a significant amount of paperwork when they showed up to vote, sometimes causing delays.

State Suggestions for Improving the Voting Process Prior to Election Day:

➢ States that are seeking to increase their numbers of early voters may want to change from in-person absentee voting to an experience that is more like Election Day (no paperwork to complete for the absentee process).

➢ Some states that require an "excuse" to vote absentee are working to move to "no excuse" absentee voting (West Virginia, Connecticut and Minnesota). Connecticut is in the process of amending its state constitution to accomplish this goal. A new Minnesota law taking effect in 2014 will allow all voters to vote absentee without an excuse (current law requires an excuse to vote absentee, both in person and by mail).

➢ South Dakota, a state with vote centers and electronic poll books, found these technologies to be highly useful in the effective implementation of early voting. Some states utilize "ballot on demand" at vote centers, while others use DREs. Still others make all ballot styles available for the voters in each jurisdiction. Nevada offered a unique option: Clark County implemented the use of three mobile early voting trailers that could move around to different locations with DRE equipment. These trailers could also be utilized as emergency voting sites, when the need arose.

➢ Some states (Alaska, Maryland) have expanded - or are looking to expand - online ballot requests and blank ballot delivery. The goal is to make these options, which are currently utilized for military and overseas voters, available to all absentee voters.

POST-ELECTION AUDITS

Post-election audits, or PEAs, are checks to ensure that equipment and voting procedures have worked properly and yielded a correct result. Roundtable participants largely focused on "process" audits, which some states have adopted to assess how things were done in the lead-up to Election Day. Unlike an audit that is strictly focused on recounting some portion of votes, a process audit provides a holistic review of election procedures, with guidance and feedback that can help to improve the administration and training for future elections. Such reviews can increase the degree of accuracy and transparency in elections, thereby improving election administration practices and bolstering public confidence. However, audits are expensive processes, and leaders must decide what costs are reasonable when it comes to conducting such work. Some states have also encountered resistance from local officials who do not want to participate in PEAs.

During the discussions, Secretaries of State cited a need for best practices and cost-effective processes that yield proven results. They believe this information would help state leaders decide whether to adopt process audit requirements for their states, in addition to regular vote count PEAs.

State Suggestions for Considering or Conducting Post-Election Audits:

➢ Several states indicated that their post-election audits tend to include random equipment testing, which can address equipment security and accuracy concerns expressed by citizens' advocacy groups.

➢ Michigan and Minnesota noted that they conduct post-election audits of the entire election process in each state, covering everything from voter registration to tabulation. Jurisdictions are selected randomly in MIchigan, while Minnesota uses a random selection process by a county canvassing board.

➢ Oregon and Idaho reported that they have installed cameras in their ballot storage areas, as well as in their vote counting rooms.

➢ Connecticut partners with the University of Connecticut to conduct reviews and testing of equipment and to troubleshoot software and hardware. State law provides that 10% of precincts must be audited for accuracy after every election and primary by hand count (Connecticut uses optical scan technology).

ONLINE VOTER REGISTRATION

More and more states are considering online voter registration. With a dozen states currently offering some form of paperless voter registration, and more states getting ready to add this service for voters, many Secretaries of State spent 2012 exploring legislation and logistical/implementation issues related to online voter registration. As always, getting buy-in from local election officials and legislators is critical to success, along with establishing clear information security protocols.

A key issue discussed at the roundtable was the fact that most systems currently utilize digitized signatures already on file with divisions of motor vehicles (DMVs), sometimes leading to jurisdictional impediments. Participants stressed the imperative of working closely with DMV officials, beginning early in the online registration implementation process.

For those states that have not yet adopted online voter registration policies, Secretaries of State have had success in implementing online voter address updates. During the discussion, states exchanged information on their DMVs and the online processes they currently offer. A key issue was whether federal law, per the National Voter Registration Act (NVRA), would require DMVs with online services to provide for online voter registration processes as well.

State Suggestions for Considering Online Voter Registration:

➢ Some states, such as Michigan, found that taking an incremental approach to online voter registration was more palatable. They are starting with DMV online address changes as a way to begin updating voter files. New Mexico is also taking a multi-step approach by adopting online voter registration through its DMV offices, to be followed by a Secretary of State web portal that will allow online registrants to update their information.

➢ South Dakota and other states are reviewing legal arguments to determine if DMVs that allow for online licensing/licensing updates & changes must also allow for online voter registration under NVRA statutes.

➢ West Virginia participants suggested that if appropriate, states should take steps to support local election officials in retaining the authority to give final approval to all names being added to a precinct. In these states, voters who utilize online registration are not automatically added to the voter rolls until a local authority approves their request.

➢ Oregon addresses security concerns by clarifying that current systems are linked to DMV files and the voter data is matched to those files. Voters are entering their own information into the system, and thus, the registration process is not reliant upon temporary data entry employees or groups that hold voter registration drives.

➢ States that wish to adopt online voter registration may find it useful to highlight cost and labor-savings for local election officials, as these efficiencies are typically major selling points.

➢ Some states have found that legislators may not trust the term "online" registration, so it may be best to clarify from the start that it is "electronic" registration.

POLLING PLACE MANAGEMENT

Local election officials/clerks typically make the majority of decisions on how Election Day will run, including: the number and location of polling sites, ballot layouts, poll worker recruiting, staffing and training, accessibility options and polling place layouts, voting equipment usage, and overall security features. Secretaries of State focus a great deal of their time and resources on developing good working relationships with local officials and assisting them with this work. However, different levels of professionalism (i.e. full-time local officials versus volunteer or part-time officials) and the quality of the state-local dynamic can yield varying results. In many cases, the Secretary of State often has little to no authority over local decision-making. Even when the state elections division enjoys a positive, robust relationship with local election offices, problems at polling places can be driven by many factors, including human error, poor planning, poor communication, lack of appropriate facilities, and lack of financial resources.

During the 2012 election cycle, redistricting and the consolidation of districts and polling places (often done for budgetary reasons), were major challenges for election administrators at all levels of government, possibly increasing voter wait times at the polls and resulting in greater numbers of provisional ballots. Some redistricting efforts (Minnesota) resulted in extremely large precincts that, when coupled with a lack of facilities large enough to accommodate more voters, created longer lines. However, the conventional wisdom that fewer voters per precinct would mean shorter wait times did not always pan out, either. Places with fewer than 3,000 registered voters had lines more than an hour long, while places with 15,000 registered voters did not experience any significant wait times (New Hampshire).

Roundtable participants also noted that while same-day registration can be of great benefit when increasing access to voting, it can also cause longer lines. (NOTE: Election Day registration also generates additional paperwork that local

election officials must contend with after the election, which adds to the post-election functions that need to be completed.) Additionally, the size, layout, and capacity of voting facilities had a significant impact on voter wait times. County or local-level mismanagement of voter information was also cited as a contributor to long lines at the polls.

Replacing a pool of aging election judges or poll workers remains a continual challenge for states, which found that poll worker shortages contributed to longer voter wait times in the 2012 election. As this void continues, roundtable participants acknowledged that our nation's societal and demographic changes require fresh new ideas for recruiting poll workers, to include lowering the minimum age for poll workers and looking to new sources of volunteer recruitment.

Were there any state ideas that worked well to help polling sites run smoothly in 2012? Secretaries of State touted the success of vote centers, electronic poll books, innovative poll worker recruitment efforts (i.e. allowing high school and/or college students to volunteer), voter outreach programs and centralized poll worker training programs (i.e. utilizing uniform manuals, videos and/or e-learning centers) in their states. Early voting and absentee voting (both by mail and in-person), as well as voting by mail, were also suggested as potentially helpful solutions for alleviating problems at polling sites on Election Day.

In general, roundtable participants agreed that it would be difficult to address polling place issues, such as wait times, with uniform solutions. Budget constraints also have a major impact on polling place resources and efficiency levels.

State Suggestions for Improving Polling Place Operations:

➢ Some states may have, or may be considering, digital voting records with electronic poll books, laptops, or other computer devices that carry voter-registration records. These technologies can aid poll workers in quickly processing voters in the polling place. They also reduce or eliminate lines created by check-in procedures based on alphabetization. South Dakota uses electronic poll books to help with determining the proper voting location for voters, because they can hold voter files for a much broader area than the traditional single-precinct poll book.

➢ The Connecticut Secretary of State's office, in partnership with the Connecticut Bar Association, implemented a volunteer legal assistance program in 2012 to help resolve polling place issues on Election Day. Non-partisan attorneys could be dispatched to polling places, as needed. The state also adopted legislation allowing the Secretary of State, or her designee, to enter a polling place on Election Day to ensure that election laws are being followed, and this plan was used to implement this legislation.

➢ Michigan is launching a new, Internet-based e-learning center for poll worker and election official training. The online, interactive program is designed to ensure consistency, ease of access and high standards for all volunteers.

➢ Louisiana encourages local jurisdictions to find interesting facilities to function as polling places, such as libraries and state museums (which may have voting-related displays or artwork).

➢ An elections app released by the New Mexico Secretary of State's Office in 2012 allowed poll workers to enter wait times that were publicly available, so voters would know how long it might take to cast their ballot.

➢ In New Hampshire, polling place greeters helped to manage polling place lines by keeping the process orderly, informing voters about wait times, handing out sample ballots, making announcements about identification requirements, and guiding voters to the proper lines. The state has also implemented an online certification and training program to help with poll worker training.

➢ Iowa utilized rope lines, similar to those used in amusement parks or theaters, to successfully direct voters. Volunteers were able to make announcements to prepare voters for when they reached the front of the line.

➢ Rhode Island established a Commission on Poll Worker Training to develop uniform standards and training methods for poll workers. The Commission includes the Secretary of State as a member.

➢ Some states utilized public service announcements (PSAs) about voting during off-hours, when lines were not as long. The states also used social media channels to inform voters about Election Day issues and news.

➢ West Virginia is exploring innovative teaching/training methods for poll workers, including YouTube videos and role-playing situations for poll worker preparation.

➢ To combat the problem of aging poll workers, some state suggestions included adopting vote centers (South Dakota), splitting poll worker shifts (Minnesota), using high school or college workers for credit or pay, depending on the state, adopting early voting/absentee voting and vote by mail options, and encouraging the business community to provide time off for employees to serve as poll workers - and by law, to do so without loss of pay (Minnesota).

➢ States with Election Day registration should still consider encouraging people to register to vote before Election Day. Participants noted that while waiting to register until Election Day is certainly an option, it will add more time to a voter's Election Day experience (Minnesota, Iowa). Connecticut, a state that is implementing Election Day registration this year, is identifying one location in each town where someone can register and vote in person, with the election officials using a terminal connected to the voter registration system to cross-check the voter. (Officials say offering this service at the polls would require moving the system from mainframe to cloud.)

SCOPE OF AUTHORITY OF SECRETARY OF STATE

While the responsibilities and characteristics of the Secretary of State's office can vary greatly from state to state, there is an operative consensus among the officials who represent these offices concerning the scope of their legal authority. Roundtable participants, perhaps not surprisingly, suggested that issues over which they had some legal authority tended to be the ones that were easier to manage, particularly when they had to mitigate serious challenges.

The importance of the state-local dynamic served was a persistent issue for Secretaries of State in 2012. While some Secretaries of State may be authorized to issue directives or other types of written guidance to local election officials, there are many issues over which they have no real authority. Much of the day-to-day decision-making lies with local election officials in the nation's more than 9,000 different election jurisdictions.

Many state concerns have to do with compliance and litigation. The federal government has adopted laws such as the National Voter Registration Act (NVRA), the Help America Vote Act (HAVA) and the Military and Overseas Voter Empowerment Act (MOVE/UOCAVA), which hold the Secretary of State's office legally accountable for certain aspects of compliance. However, without any legal authority to conduct oversight or compel local election officials to action, Secretaries of State find themselves facing only costly remedies, such as being sued by the U.S. Department of Justice (the fact that local jurisdictions may not always be familiar with the details of federal law only compounds the problem).   For example, NVRA requires the Secretary of State to compel the division of motor vehicles and social services agencies to conduct voter registration activities. However, the Secretary of State typically has no legal authority over these other state agencies.

State Suggestions for Mitigating Scope of Authority Problems

➢ Some participants suggested that it would be helpful to have a state law that provides administrative/rulemaking authority for the Secretary of State as chief state election official. Pending legislation in Connecticut would clarify that the Secretary of State's directives, which under current law are presumed to be correct, must be followed subject to enforcement by the State Election Enforcement Commission.

➢ Some states create and maintain a file of written communications with locals regarding federal requirements for various laws (i.e. UOCAVA, NVRA) and provide these materials to U.S. Department of Justice/federal officials, when requested by authorities.

➢ Some states provide a quality control checklist for local jurisdictions, which can also help with compliance issues and ensure consistency at the local level.

➢ Michigan sued local jurisdictions in an effort to ensure full state compliance with the 2009 MOVE Act.

➢ Some states suggested a grading system for counties based on performance. Grades are broken down into items like list maintenance, operational equipment, voter turnout, and poll worker recruitment and training. If a county is performing well, it receives awards and public recognition.

➢ Some states focus on project management by issuing calendars, memos, and plenty of reminders to help local officials remain in compliance with federal law.

VOTER REGISTRATION LIST MANAGEMENT & MAINTENANCE

Under HAVA, states have been tasked with developing statewide voter registration databases and developing list maintenance programs that meet the provisions of NVRA and other applicable laws. Secretaries of State at the roundtable noted the relative success of interstate database matching agreements, which have allowed states to compare voter registration databases in order to identify and purge duplicate registrations. However, they also cited data-matching issues

and list clean-up processes as ongoing concerns. The lack of reliable sources of matching information (some participants noted that while the Pew Charitable Trust's Electronic Registration Information Center (ERIC) program has helped, gaining access to the federal government's SAVE database remains a major priority), the tensions that arise between state and local offices with split authority for maintaining the state databases, and 2010 Census information that sometimes showed registered population figures that were higher than the actual number of people living in a jurisdiction, were all cited as issues to be addressed by states.

While most of the states' data matching and maintenance work is now digital in nature, one participant cautioned that some states are still dealing with paper-based processes for transferring information between the DMV, social service agencies and registrars' offices, introducing another potential hurdle. Paper registration forms transferred from these other agencies also create problems with incomplete/irregular information. Participants noted that it would also be beneficial for DMVs and social service agencies to track how many people decline to register. Some states have also encountered DVM resistance, citing privacy law concerns, to certain data sharing required under ERIC, but have generally resolved these through memoranda of understanding.

Other related issues that emerged in 2012 include the following: DMV relationship-building, differences over efforts to streamline the registration process or to offer same-day registration, and list purging processes/authority for removing voters. Dealing with photo identification laws/proposals and change of address issues under NVRA were also briefly mentioned, along with citizenship verification processes and the need to have more coordination between states in enforcing laws that prohibit double voting.

State Suggestions for Managing & Maintaining Voter Registration Data:

➢ Some states, such as Colorado, have begun using the federal government's SAVE database and found its data to be fairly accurate for the purposes of matching, suggesting that other states consider this option.

➢ In some states, there is difficulty in getting prosecutors to move forward with charges against those accused of voting multiple times, or those accused of having an invalid voter registration. Minnesota is considering legislation that would have law enforcement investigate potential violations, instead of overburdened, under-resourced county attorneys.

➢ Oregon is considering an automatic voter registration law. This pending legislation, which aims to ensure that eligible voters get registered when they turn 18 (unless they opt-out), calls for driver's license information (age, citizenship, residency and digital signature) to be provided to the Secretary of State's office for voter registration purposes.

➢ Funds from sales of South Dakota's voter lists go to pay for annual maintenance of the state's voter registration system.

FUNDING FOR ELECTION ADMINISTRATION

Funding for elections is particularly critical as states begin their long-term planning for midterm elections in 2014. Many states are dealing with increases in their voting population and the number of elections held, resulting in added costs. Any additional litigation costs, coupled with the important need for hi-tech solutions that offer accessibility and security, add significant amounts to the tab. However, few states set aside dedicated streams of funding for election administration, including the expensive legal challenges that may accompany policy changes. Local election officials are often required to pick up extra costs when election costs are greater than any available state or federal funds provided.

Some participants (Connecticut and Rhode Island) suggested that many of the solutions discussed at the roundtable require significant financial investments in technology. For example, cutting-edge tools and software related to the adoption of electronic poll books, online voter registration and on-demand ballot printing for regional voting centers are costly to purchase or develop, implement and train people to use. These participants also noted concerns about funding the replacement of first-generation, post-HAVA voting machines, which are reaching the end of their life cycles. They proposed that states and localities would greatly benefit from a federal investment in voting technology, focused on technology enhancements. They believed this infusion of resources would help the states implement the many solutions outlined in this paper without micromanaging elections from Washington.

However, the federal government has yet to close the funding gap on HAVA, which promised states $3.86 billion for election reform. To date, Congress has appropriated just $3.54 billion, far less than what is owed. Recent White House budgets have not included any funding for this one-time infusion of federal funding for states.

Several Secretaries of State said they often find themselves reminding federal, state and local leaders who want to consider new laws and programs that, in most cases, there is a continued reliance upon the underfunded status quo.