

Testimony for Presidential Commission on Elections
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Commissioners and Staff:

Thank you for the opportunity to appear before you and to discuss the administration of elections within the United States.

You have a great responsibility in looking at the concerns expressed by President Obama and others as a result of Election 2012. And those of us in the elections profession and the elections community welcome your focus and attention on the democratic processes that serve voters in American elections.

Faith in the process. The good news is that exceedingly high numbers of voters have great faith in the process and believe that their votes will be counted fairly and accurately. I know that poll numbers vary, depending on how the question was asked and how the data is aggregated, but from our own survey(s) of voters over the years, a nationwide scientific survey of 1058 voters in 2008 conducted by a distinguished research company, 91.4% of voters told us they were confident that their votes were counted fairly and accurately. (We did not repeat this survey in 2012.)

Long Lines. The other side of that coin is the numbers of voters that waited in line to vote during the elections of 2008 and 2012. I know there is some disagreement among election groups and individuals as to an appropriate wait time but the consensus seems to fall for most in the one hour or less category. Clearly, there will be some wait time if voters are lined up well before the polls open and it is difficult to resolve that wait issue when the polls first open. We are unlikely to resolve that issue unless government officials and budget officials are willing to give us the resources to handle “peak period” voting instead of anticipated day-long averages for voting. If resources are fully provided – and that is an enormous IF – then we can make sure voters have much shorter wait periods.

Our concerns, however, are not just the initial early morning “rush” period. The majority of our concern has to be in situations where voters were made to wait two hours or three hours or five hours or in some instances up to eight hours to vote. The extremes of five hours or more were rare, but they were reported and not just by anecdotes but by actual reports of election administrators. That is simply unacceptable. Clearly there can be mitigating factors in some of these that would cause an unusual response time, but the majority of these tended to be systemic problems that can be resolved so that voters do not have to experience this kind of wait.

Fortunately, as a profession, we believe we have the ideas to allow us to solve or resolve the administrative causes of most of these. There are some factors that affect elections that are beyond the

control of the election administrators and we have to rely on politicians and policy makers to find the correct and allowable responses that we can then implement.

- Unless a legislature is willing to refrain in Presidential election years from adding lengthy, numerous or difficult to understand ballot measures such as Constitutional amendments, referendums, or complicated bond measures, then it is unlikely that administrative solutions will work consistently.
- If budget authorities restrict the numbers of polling sites we can open, or force us to select polling places that are too small or too inaccessible, or force us to restrict the numbers of voting devices available to the public, or force us to employ too few election workers, then we will do our best to work within the constraints but our level of success is far more limited.
- If political concerns and political desires override the concept of fairness to all participants, then we have more difficulty making this work correctly.
- Legislatures, at state or federal levels, should refrain from changing laws that will affect elections in the same year, especially if those are passed closer to the election cycle. Those changes cause confusion for voters, for stakeholders, and for election officials, and greatly impact our ability to serve voters – and democracy – well.

Rather than spending more time in this written testimony about the importance of each of these elements, I am attaching an article that appeared in the *2013 Edition of the Book of the States from the Council of State Governments* (reprinted with their permission) that goes over many of these decisions in more detail. Good decisions and good solutions in the election process are not discovered by simply focusing on election administration: knowing where policies, politics and provisions are equally as important as practices helps us to better serve voters.

Our concerns – for both the Presidential Commission and the elections profession – is that we not accept that it is okay to keep voters waiting for two hours or longer. If there was some dramatic event that created an unusual circumstance, that can happen from time to time. However, if there is a systemic problem where voters are made to wait for two hours or longer in the same locations election after election, then none of us wants to accept that as a condition. Clearly, the problem becomes readily apparent in Presidential election years if there is interest by the voters in the candidates that are contesting for the Presidency. Presidential years are where we see less experienced voters, first-time voters, and occasional voters in far greater numbers. And we owe it to all legally eligible voters to make voting possible within a reasonable time.

Early voting options, either by mail or in-person, remain a valuable tool to help reduce wait times on Election Day. Much has been written about which party it favors and from the first looks at the data, it is more likely that early voters are reflective of all voters...if a district is historically Republican, then early voting results are likely to be Republican and if a district is historically Democratic, then it is likely to be Democratic in early voting. Should the Commission take a position to encourage early voting, we trust they will do so without specifying how jurisdictions ought to go about structuring such options. State and local control over the details is vital to ensuring early voting methods best fit the culture and constraints of each jurisdiction.

So we welcome your suggestions and ideas as to how to make this work better. And the profession will work with you to fashion solutions that allow voters to vote within reasonable time periods. We may not always agree with your solutions, but we certainly welcome any ideas or tools that can help.

Elections have to be fair. That sounds like a given concept that all should be able to agree on for American democracy. But, unfortunately, for many groups and organizations, “fair” is a moving target and has a different definition than many of us might be willing to accept. As election administrators and as election professionals, we have to rely on laws, court decisions and approved practices to administer elections fairly. But for many in America, “fair” means interpreting rules to favor their candidates or their party. The conflicts that arise all too often are because political people sincerely believe manipulation of the process, or the courts, or of administrative practices is okay if it results in the election of their candidates, or their philosophy, or their party.

Election administrators have to be fair. Election administrators have to stand up to the political groups and political operatives to insure fairness for all voters, not just selected groups of voters. Our function is to assure that every election is an accurate reflection of the public will within the confines of allowable rules.

I have been at this for many years now and I have been in public policy work for more than 40 years and in my role at the Election Center for 20 years. I can say to you with great confidence that election administrators in your local communities throughout all of America want this process to work for voters.

Every one those election professional men and women strive to have a good election and they grieve when an election has caused concerns for voters. I am fortunate to work with such dedicated and responsible professionals nationwide that truly believe in democracy; they live it, they nurture it, and they are dedicated to making this a positive experience for voters.

Their objective and their role is often misunderstood and we need to assure this Commission that there are some things that are not our responsibility. Voter turnout is not our responsibility. That is the appropriate concern for political organizations and political operatives and special interest groups. Our role is to make the process available to all legally qualified voters and to see that voters have the full opportunity to exercise their right to vote, and to have their vote counted accurately and fairly. We owe it to society to conduct elections within the rules and regulations that are in place at the time of the election and to see that all the participants follow the rules. Essentially, we become the “referees” of the process and that means that we cannot engage in interpreting practices and procedures that are designed to favor one party over the other.

Political parties and partisans can do more to foster faith in the process. Our concern is that the two parties engage in behavior that alleges the process is “unfair” and yet rarely is either side able to provide real proof of the allegations.

Has it occurred to partisans and media folks that if we damage the fundamental faith in the fairness of elections that no one can believe in the government that results from the election? We beseech all partisans to understand that faith in democracy itself is more important than passing partisan gains. The

hyper-partisanship that exists in American political life today is one of the greatest dangers to the continued health and survival of democracy as a form of government.

The beauty of the way this Commission was constructed is that two great and honorable partisans, representing each of the major parties in the US, were conjoined with elections professionals and citizens to look at these issues. My guess is that those involved in this process have found there is much greater agreement than imagined when we consider how best to serve voters. Election professionals come from partisan backgrounds or have some empathy for political viewpoints, but they find a way to seek solutions that are balanced and not shaded to favor a certain political viewpoint.

Voter Registration – Electronic Registration is a current trend. Electronic registration is growing and more states will do this on their own, but encouraging this trend is important. Clearly there are some state legislators who fear that their needs may not be well served by establishing electronic registration, but electronic registration is good for voters and good for democracy because it provides a form of “immediacy” for the voter, it reduces voter registration costs and improves the accuracy of voter rolls. The key here, however, is to assure that the process has integrity and that the voters are already in the state DMV file (or its equivalent for those who don’t have driver’s license but still need a state card for other services). Verification within the state’s DMV files is absolutely necessary for electronic registration. Voters need to have confidence and trust in the registration process as well as understand that states employ ongoing list maintenance activities to ensure voter rolls remain accurate and include only eligible voters. Electronic registration needs to have methods by which we can assure all stakeholders that the process has high integrity.

Voting Equipment and Testing Process – Not working well yet. Much has been reported by states and local jurisdictions, as well as the voting equipment manufacturers, that indicate there is a continuing problem with improving and updating voting equipment. We hear continuously that the current process stifles innovation and is so convoluted that voting equipment is out of date before it gets through testing let alone before it gets purchased or implemented by a local jurisdiction. While it would be easy to point fingers and blame the US Election Assistance Commission (EAC) or the National Institute of Standards and Technology (NIST) or even Congress for confusing policy decisions, none of that solves the issue of how to best assure that the voting equipment used in American elections is accurate and dependable. And from personal experience with the initial stages of standards and testing development through NASED, much of the criticism of the EAC is not well founded, but the criticism persists. While we have not had the time or resources to study these issues in a formalized manner to determine how best to reshape this effort, it is clear that no single entity should shoulder the entire blame for the beleaguered process.

Let me make this as clear as I can related to the Testing and Standards area: American democracy is at risk as long as this program remains in limbo. I have worked with the EAC for a number of years and we have been supporters of the efforts of the EAC generally for their functions in government and specifically on the testing and standards efforts. However, I also have listened well to the growing concerns of local election administrators, of state policy makers, and of the manufacturers, that the process needs substantial revision.

My initial suggestion is a simple mindset change for everyone at the Federal level, not just at the EAC: the standards and testing process needs to view its role differently. There needs to be an attitude of providing a “service” environment where the Federal government looks at this as its role is to enhance the ability of state and local governments to have the best voting equipment and the best software for safe and secure elections and that state and local governments are their clients. States must be able to update existing equipment to meet current standards and to do that in ways that are secure and it is affordable for voting equipment already in service. The voting systems program’s own self-measurement needs to be determined by how well state and local governments indicate the process has served their needs. Additionally, the testing program has to find ways to encourage innovation, allow for pilot studies or even fund such studies, and then to shorten the time it takes to develop standards and test to those standards before products can be delivered to the local level. Our current system means a minimum three years (including standards development and acceptance) but more often extends far longer. And manufacturing to those standards and testing comes after all the prior work is done so we are constantly far behind the curve.

Clearly, the Testing and Standards program needs to be quicker and far more responsive to the needs of state and local governments. There HAS to be open dialog with the manufacturers in order to make the process work better. But the concerns surrounding the program and its agency must be resolved.

Either there has to be a strong commitment of the Federal government to make this entire process work and fund and staff the EAC or the Federal government needs to find a way to fund a states’ controlled process, and it needs to be done soon. Further delays put safe and secure elections at risk.

Military and Overseas Citizens Voting – Most of the issues have been resolved but clearly we need to think about the special needs for returning ballots in locations that don’t have fax machines or where paper is not a good solution. Balancing the needs of military voters is not an easy issue to resolve to everyone’s satisfaction. Clearly, using mail to return ballots for military personnel in dangerous areas is a difficult problem that most voters don’t ever have to face. For a state like Texas with its astronauts there is no way to receive a mailed ballot from those who are in space.

But society is also faced with requirements from modern courts that ALL voters be treated equally and when we make exceptions for military voters modern judges often indicate that such provisions then need to apply to all voters. Historically, past courts have allowed a distinction to be made for the unique circumstances faced by military voters especially those in hazardous duty areas, but modern judges seem more reluctant to endorse such exceptions citing Constitutional equal protection concerns.

We are aware there are some states that have been less effective in assuring that ballots are transmitted to UOCAVA voters on-time but these are exceptions and need to be dealt with as exceptions rather than more rules and unnecessary reporting requirements. We endorse prosecuting the local jurisdictions or states that do not comply with the 45-day mandate for transmitting ballots even if that means they have to perform that function on a weekend.

Accessible Voting – Voters with access needs have been a continuing concern for Congress and for election administrators. All too often, segments of our society have ignored and marginalized the needs

of voters with disabilities. There has been a belief in some quarters that this is a small percentage of society and that we have limited resources to serve accessible voting even though we know from government data there are at least 36 million citizens with disabilities and some estimates are considerably higher. Accessibility as an election issue is about to become a major problem. We must all recognize that the US voting public is aging fast and many now have vision problems, mobility problems, hearing impairment, cognitive difficulties, language issues, and a host of other accessibility needs. Baby boomers are considered by US Census an 18-year cohort ranging from those born in 1946 to 1964. This is the largest voting segment of American society. And they are living (on average) 20 to 25 years longer so we *must* have methodologies to serve accessible needs – and the problem is likely to last for 35 to 45 years. This means that we have to prepare now for the likelihood that elections will need to be organized differently to address the needs of a major segment of society.

Poll Worker Training – Virtually every group who studies or reports on elections makes poll worker training improvement as a recommendation. Poll workers are better trained today than they were 30 years ago. They are better now trained than they were 10 years ago. Our understanding of how adults learn has changed and improved but there are limits to how much we can make “memorable” in two hours or so of training.

The fact remains that we are expecting too much from poll workers now. We cannot train them enough to become experts at election law, to have psychological training on how to deal with voters’ personal issues, to know where every polling place in the jurisdiction is located (which number in the hundreds or even thousands), and how to fix all voting machines whenever a hiccup occurs. Democracy is lucky to have these folks be willing to serve and we are at the point of “diminishing returns” in our expectations.

We need to think more about making sure they do the basics well so that voters are processed efficiently and courteously and how best to have successful voters. The fact remains, that in many of our urban areas we need so many poll workers that they serve as long as they breathe (and maybe even beyond that). For more than the 40 years I have been around elections, there has been the continuous recommendation of better poll workers. Better connotes choice and the assumption that we have a surplus to choose from when the opposite is more often true in our urban areas. On any given election day, there are a percentage of those who volunteered for poll worker duty and went to poll worker training, but still don’t show up when they are supposed to. And then we scramble to fill in the holes that only become known to us when it is already too late. While we have dramatically improved poll worker training over the last 30 years, the last 20 years and even more in the last 10 years, expectations that we are now going to make additional quantum leaps in poll worker training is likely to lead to disappointment.

Voter Satisfaction – There has been a movement in some circles to make “voter satisfaction” a measurement tool for whether an election is successful. We caution you to think this through and be very specific in any such recommendations related to voter satisfaction. It is a murky concept and potentially can be used through subjectivity to shape elections that are favorable to one viewpoint over another. We want to recognize the good aspects of what sounds so wonderful but protect against the dangerous aspects that can lead to distortion. From the national surveys we have studied, we note that satisfaction with elections is hugely dependent on whether your candidates or viewpoints are winning.

If we are to establish “satisfaction” as a standard then there has to be a commitment to greatly improving the resources available to conduct elections. It likely means we need to have better polling sites, better parking, more equipment, more staffing, and better customer feedback tools. All of that involves spending more money which society and governments have been reluctant to provide throughout our previous 237 years as a nation for the conduct of elections.

Conclusion: What election officials know they can provide is a fair process: one in which eligible voters can be confident that they have had a fair opportunity to vote for the candidates and issues of their choice, that their ballots, if correctly voted by the voter, will be counted and that the outcomes will be an accurate reflection of the public will. They should have faith and confidence that process is not shaded to favor one political viewpoint over another and that election administrators will protect the privacy of their votes and the assure the accuracy of the final outcomes.

While our profession is not perfect, our administrators strive always to reach perfection. As a Commission you need to know that the men and women who do this job without much support, with limited resources, with even less understanding of how the process works, are people of good will and are honorable. America gets a much better democracy than society is usually willing to pay for. These are dedicated servants who exhibit the best traits in making democracy possible for American citizens.

We will listen and learn from your suggestions and recommendations. We welcome anything that proves to be truly useful. Our willingness to improve and to make the election process a wonderful experience is tempered only by restrictions that others may place upon us. This is still about policies, which are affected by politics, which depend on adequate resources, so that we can administratively perform to your and our own expectations.

Finally, we caution you to refrain from endorsing “uniformity” throughout the nation. The genius of American democracy is its diversity among the states. We have laboratories for different approaches and the voters in Oregon love the way their state conducts elections; the voters in NY love theirs even though it is very different from Oregon; and Texans always want it to be the Texas way. We don’t have to force the “one size fits all” formula in order to have excellent elections. The richness of the diversity is that it gives us new ideas and new methods which are then copied and adapted to fit the local circumstances and laws in other locations. That is not to say that we can’t have common goals and common objectives, but how we get there should be left to those closest to the voters.

American democracy is an amazingly resilient and dynamic process. Whenever we make mistakes, we are usually responsive to correcting our errors or our methods. Whenever we swing too far in any political direction, we have been able to find our way back to a centered foundation. Know that people of good will do serve this process well and we do stay “voter centered”. Democracy in the United States is healthy as a result.

About the Election Center

For 28 years, the Election Center has been dedicated to making democracy work better. It is the reason we offer training consistently year after year to focus only on voter registration and election administration issues and train hundreds of election professionals annually.

- We are the largest organization of election professionals in America.
- We have built, in conjunction with Auburn University's MPA program, the best professional education program in the world for election administrators resulting in the highest designation possible for election professionals as a Certified Election Registration Administrator (CERA). We have proven the value of pairing dedicated academicians in the public administration program with a nonprofit that has dramatically improved the elections process in America since the program was developed in 1994.
- We have worked to even provide state specific professional education and we certify the local election administrators in our Registered Election Official program in several states.
- We have a Professional Practices Program which encourages innovation in programs that serve voters well. Our program has resulted in more jurisdictions learning about the "best" or unique practices of other state and local governments. Many of those ideas take new shapes and forms as other jurisdictions implement their versions of the programs.
- We have served as a catalyst for change and innovation.
- We have created and promoted the Code of Conduct and Standards for elections as the code of ethics for this profession.
- We have served as a voice of election professionals when it comes to policy and laws affecting elections.
- We have served as consultants to make election offices better.
- We have been a force for strengthening the ability to conduct excellent elections in this nation.
- We work, through our members and the state and local governments, to make democracy fair to all.

We have worked well over the years with the Federal Election Commission; the US Justice Department; the Federal Voting Assistance Program; the US Election Assistance Commission; the US Postal Service; the Government Accountability Office; Health and Human Services; the National Institute of Standards and Technology; the Federal Access Board and the US Congress to assure good elections and good policies.

We have worked with each of the Presidential Commissions on elections because we believe in focusing on what is best about democracy and why things work the way they do.

I am grateful to you for allowing us to share in the important work you are doing. We thank you for the invitation.