

**HEARING—COLLECTION, ANALYSIS AND USE  
OF ELECTIONS DATA: A MEASURED  
APPROACH TO IMPROVING ELECTION  
ADMINISTRATION**

WEDNESDAY, MAY 14, 2014

UNITED STATES SENATE,  
COMMITTEE ON RULES AND ADMINISTRATION,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:36 a.m., in Room SR-301, Russell Senate Office Building, Hon. Amy Klobuchar, presiding.

**Present:** Senators Klobuchar and Schumer.

**Staff Present:** Jean Bordewich, Staff Director; Kelly Fado, Deputy Staff Director; Stacy Ettinger, Chief Counsel; Veronica Gillespie, Elections Counsel; Ben Hovland, Senior Counsel; Julia Richardson, Senior Counsel; Abbie Sorrendino, Legislative Assistant; Phillip Rumsey, Legislative Correspondent; Jeffrey Johnson, Clerk; Benjamin Grazda, Staff Assistant; Mary Suit Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; and Rachel Creviston, Republican Senior Professional Staff.

**OPENING STATEMENT OF SENATOR KLOBUCHAR**

Senator KLOBUCHAR. Welcome to today's hearing of the Rules Committee. Good morning, everyone.

We are going to be focusing today on the use of data to improve the administration of elections. I want to thank Chairman Schumer for calling attention to this very important issue and for inviting me to chair this hearing.

I also want to acknowledge Staff Director, Jean Bordewich. Congratulations on your incredible service to this committee, and we wish you well in your new position, and I know that Chairman Schumer wanted to say a few words about Jean.

**OPENING STATEMENT OF CHAIRMAN SCHUMER**

Chairman SCHUMER. Well, thank you, and first, let me thank Senator Klobuchar, not only for chairing this hearing, but being a great member of the Rules Committee and a great member of the Senate.

And, I want to also welcome Heather Gerken, who was my daughter's teacher at Yale Law School, and I got to know her there, so thank you for coming, and all the other witnesses, of course, too—

[Laughter.]

Chairman SCHUMER [continuing]. Who did not have the opportunity to teach my daughter.

[Laughter.]

Chairman SCHUMER. But, today, I want to take a moment to recognize and thank one of the Senate's great public servants, the

Staff Director of the Rules Committee, my dear friend, Jean Parvin Bordewich. Today is Jean's final hearing with the Rules Committee. She is retiring from the Senate after 20.5 years of service to the House and to the Senate, but our time goes back much longer than that.

Jeanie and I met in 1969, when we were both young and impressionable interns on the Hill. I was interning for a Republican, New York Senator Charles Goodell, whose son is now the head of the NFL, but he represented Western New York, Jamestown. Jeanie was on the House side. She was interning for Representative Richardson Preyer of North Carolina. We met each other and almost instantaneously became friends as we learned our way around Capitol Hill and met people from all over the country.

Many years later, our paths crossed again. I was running for the Senate. Jeanie was running for Congress in New York's Hudson Valley. We saw each other out on the campaign trail and our friendship picked up right where it left off. While Jeanie did not win that race, the 22nd District's loss was the Senate's and my gain.

Shortly into my first term, Jean joined my staff and opened up the first office in the Hudson Valley that I think a Senator ever had. It was located in her basement in Red Hook in the Hudson Valley. Eventually, we let her have her house back.

After seven terrific years, Jean left my staff to become Chief of Staff to newly elected Congressman John Hall. She led him to a tough reelection victory, and as soon as she did that—that was her duty, and Jean is a person of duty—I was able to convince her to return to the Senate and help me as Staff Director when I became Chairman of this committee.

Over the past few years, Jeanie has helped guide the Senate community, assisting countless offices, staffs, and Senators, Republican and Democrat, in keeping with the grand tradition of this committee. Probably a week does not go by where a Senator does not come up to me and say thank you for just arranging this administrative thing which seemed impossible, and that has been done by the capable, non-political Rules staff under the guidance of Jean Bordewich.

Among her most noteworthy achievements was her organization of the 57th Presidential Inauguration Ceremony. It is a huge task, but Jean was up to the challenge and everyone said that the inauguration was one of the best. One of my fondest memories of Jean is from that inauguration. The sight of my old friend Jeanie leading President Obama onto the podium as a billion people watched throughout the world was a sight I will never forget. She had sure come a long way from our days as young, impressionable interns.

And now, all good things come to an end, so Jeanie is—you know, she is always an adventurer. She is always interested in new things and new ideas. Well, it is time to start another chapter in her life, and she and her husband, Fergus, who everyone knows is a very well known, insightful author and a delightful person, are ready to start a new adventure. She is retiring from the Senate to go to San Francisco, and I hope everyone—Jean is just public servant par excellence. When they used to talk about the British civil service and dedicated people who would just do the job through

thick and thin and made the British Empire what it was, well, if you had to think of an American version of that reputed, admired British civil servant, it would be Jean Bordewich.

She is a dear friend. She is part of our family, and we will stay friends for life, no matter where she and I end up on this globe. But, I want to thank her for her service to me, to this committee, to the Senate, to New York, to our country and our world. Jeanie, we will miss you.

[Applause.]

Senator KLOBUCHAR. Well, we feel like we should just end the hearing now.

[Laughter.]

Senator KLOBUCHAR. That was just beautiful. We do not usually have so much emotion at the Rules Committee. But, I was thinking as I sat here how I make the segue to the great stories about Jean's service and her steady hand, and I think a lot of the work of the Rules Committee is not just making sure the Senate works and that the inaugurations work, but it is also making sure our democracy works and that our election works, and Senator Schumer has taken a particular lead in looking at these issues.

We had a tremendous hearing last week on campaign finance and what that means to our democracy and this is really a part of that work, because, as you all know, earlier this year, the Bipartisan Presidential Commission on Election Administration came out with a very important report about how we can do things like reduce lines at polling places and improve the experience of people that can vote. When you have 100-year-old women who have to wait in line for hours, as the President pointed out at one of his State of the Unions, then we have a problem.

And, we appreciated the work of both the Bipartisan Commission put together from the counsel of the Romney campaign and counsel of the Obama campaign and coming up with some ideas. And one of the key conclusions of that report was that, quote, "despite the fact that elections drown in data, election administration has largely escaped this data revolution." The private sector has already figured out that using data to improve performance is the wave of the future. People going to the polls to exercise their right to vote deserves no less.

As our witnesses will discuss, collecting and analyzing data about how we run our elections can help us figure out what is going wrong and point us toward some cost effective solutions. Data can help us answer questions about these nuts and bolts things like, why are the lines so long? Did the Ward 2 polling place have enough workers at 8:00 a.m.? We have over 171,000 precincts across America. How do they do things differently and how does this affect someone trying to squeeze in picking the kids up from a soccer practice and getting that moment in to cast their vote, as is their right?

I have introduced a bill with Senator Tester, the Same Day Registration Act, which would try to make the voting process easier by allowing people to register on the same day as they cast their ballot. And we actually looked at the data when we introduced this bill and found that in the States that have some of the highest voter turnout, the vast majority of them, if you look at the top ten,

have the same day registration. And when you look at the ones at the bottom, none of them have same day registration.

And, I would point that these are blue States and red States and purple States and it does not necessarily have to do with their political bent as much as it has to do with the States' interest in having election participation and not limiting people's right to go to the polls.

What have we found from the data? Well, it turns out that something around 70 percent of people needed to update their address because they had moved since the last election. They were already registered, but this change needed to happen before they could vote. That is something that our State discovered from the data.

Because we had this information, our State looked at how we could fix the underlying issue. Just last week, our State legislature passed a bill that lets the Secretary of State automatically update voter registration rolls when people move within our State. We have consistently had one of the highest turnout rates in the country, and that is why Senator Tester and I and Congressman Ellison in the House are so devoted to this idea of same day registration.

With that, we are going to move to our panel of witnesses. We have, as Senator Schumer noted, Ms. Heather Gerken, the J. Skelly Wright Professor of Law at Yale Law School and the author of the book, *The Democracy Index*.

We also have with us Mr. Charles Stewart, who is a Distinguished Professor of Political Science at the Massachusetts Institute of Technology and Co-Director of the CalTech-MIT Voting Technology Project.

We have Mr. Kevin Kennedy, the Director and General Counsel at the Wisconsin—that is our neighbor, we do not always like the Packers—Government Accountability Board—but we will still have you as a witness.

We have Mr. David Becker, the Director of Election Initiatives at the Pew Charitable Trusts.

And, my personal favorite, because I was not wearing my glasses when I came in and saw the name "Justin Riemer" and thought we had Justin Bieber as a witness.

[Laughter.]

Senator KLOBUCHAR. I was wondering why, perhaps, we did not have more press here—

[Laughter.]

Chairman SCHUMER. With you, Madam Chair, have a long history—

Senator KLOBUCHAR [continuing]. Yes, I have a long history which we do not want to get into right now. If someone is out there watching this hearing on C-SPAN, he and I had a dispute about a bill I had.

[Laughter.]

Senator KLOBUCHAR. But, in any case, we have Justin Riemer, who serves as the Deputy Secretary and the Governor's Confidential Policy Advisory at the Virginia State Board of Elections.

I thank you all for joining us today and I would like to ask each of you to limit your statements to five minutes. If you have provided the committee with a longer written statement, without objection, the entire statement will be entered into the record.

Ms. Gerken, please proceed.

**STATEMENT OF HEATHER K. GERKEN, J. SKELLY WRIGHT  
PROFESSOR OF LAW, YALE LAW SCHOOL, NEW HAVEN, CON-  
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Ms. GERKEN. Senator Schumer, Senator Klobuchar, and members of the committee, I am a professor of election law and constitutional law at Yale Law School and I have written extensively on data-driven management and election administration. It is an honor to be here to discuss this important topic, although I will say, two Senators are a hard act to follow.

We measure what matters. The public and private sectors routinely collect and analyze data on virtually every aspect of our lives. As you just pointed out, Senator, data-driven management is not the ideal anymore, it is the norm, for corporations and the public sector alike. Good data help us spot, surface, and solve existing problems. They do not just allow us to identify policy making priorities, but they help move the policy making process forward. If you want a democracy worthy of our storied history, you must have 21st century management practices, and 21st century management practices require 21st century data collection.

This hearing could not be more timely, because data collection is at an inflection point in election administration. Things have improved in recent years, with a number of dynamic election administrators and State policy makers deploying data to identify problems and find solutions. Thanks to the effort by the public and private sector, most notably the Election Assistance Commission and the Pew Trusts, we now have the nation's first Election Performance Index, an idea I proposed several years ago but believed would take at least a decade to bring about.

For the first time, we have a baseline to compare State performance and evaluate the effects of reform over time. Thanks to the Pew Trusts and the efforts of, actually, many of the people sitting beside me, that index will provide a crucial policy making tool going forward.

Nonetheless, election administration still lags behind many public and private institutions on the data collection front. We still lack sufficient data on a wide variety of important issues, including the cost of elections, local performance, and voter experience. In some instances, the data are being collected, but they are not collected in a form that is accessible, let alone one that enables comparisons across jurisdictions.

The absence of good data handicaps our efforts to fix the problems we see in the elections process, to anticipate the problems we do not yet see, and to manage the reform process going forward. Unless we capitalize on the data collection efforts of recent years, we will never have an election system that meets the expectations of the American people.

The Federal Government is uniquely well suited to assist the States in nascent data collection efforts. The market variation in State and local election schemes lives up to Justice Brandeis' aphorism about the laboratories of democracy. But the laboratories of democracy can only work if someone is recording the results of the experiments. The Federal Government can provide what the States

cannot supply on their own, a cost effective, easy to use strategy for collecting, aggregating, and comparing State and local data.

As a scholar not just of elections but of Federalism, I know many worry about Federal interference with State policy making. But here, Congressional action will vindicate rather than undermine Federalism by making it easier for States to do their jobs.

All of the States—all of us—benefit from more and better data on election policy. Without more and better data, we risk turning the great promise of decentralization, that it can help us identify and implement better policy, into an empty promise. Data helps States identify the drivers of performance, pinpoint the cost effective strategies for solving shared problems, and decide when the reform gain is not worth the candle.

It would be a terrible waste of time and resources to ask the already cash-strapped States to move toward 21st century data collection practices on their own. Local election administrators are already asked to do too much with too little. The Federal Government must play its proper role. It should fund standardized data collection systems to record the results of the States' non-standardized practices. It should maintain a clearinghouse for policy makers so that States learn from one another's best practices and fix their own worst ones. It should make it easier for States to collect the data that we need with the limited resources that they have. The Federal Government can foster the competition and innovation that Federalism is supposed to produce without intruding on State policy making.

Thank you for your time, and I look forward to your questions.

[The prepared statement of Ms. Gerken was submitted for the record.]

Senator KLOBUCHAR. Thank you very much, Ms. Gerken.  
Mr. Stewart.

**STATEMENT OF CHARLES STEWART III, KENAN SAHIN DISTINGUISHED PROFESSOR OF POLITICAL SCIENCE, THE MASSACHUSETTS INSTITUTE OF TECHNOLOGY, CAMBRIDGE, MASSACHUSETTS**

Mr. STEWART. Thank you, Senator Klobuchar. It is an honor today to be before the committee and to speak about the collection, analysis, and use of data to improve elections for all Americans.

I have three points I would like to make today. The first is, there is a need for a more data-centered approach to making election policy in the United States. Imagine if we had a national debate about the state of our educational system without any reference to measures like graduation rates, enrollment statistics, student-teacher ratios, or school budgets. Yet, this is exactly how we often talk about elections policy in the United States. We struggle to improve access and security in voting without much, if any, attention to metrics in many places in this country. Instead, policy gets made based on anecdote, beliefs that are grounded in sparse facts and wishful thinking.

Now, the good news is that elections are awash in data, as you mentioned previously, Senator Klobuchar. There is a growing network of election officials, academics, and other experts who are developing a fact-based science of election administration to parallel

similar networks in areas like education, health care, and law enforcement. A major barrier to approaching elections policy more scientifically is the continued uncertainty about the future of the EAC, which alone among Federal agencies is charged with promoting research and disseminating best practices in election administration through its research and clearinghouse mandates.

The second point I would like to make is that the two Federal data collection efforts related to election administration in the United States need to be supported and strengthened. The granddaddy of all Federal election data efforts is the Voting and Registration Supplement of the Current Population Survey, which is conducted after each Federal election by the Census Bureau. It is the indispensable source of data that tracks the improvement of elections due to Federal laws, like the Voting Rights Act and the National Voter Registration Act.

The second of these Federal election data efforts is the Election Administration and Voting Survey, or the EAVS, which is administered by the EAC. The EAVS, which was begun in 2004, is the only national census of basic information about local election administration. Because of the EAVS, election officials, legislators, and the general public are now privy to statistics about a wide range of facts on topics ranging from voter registration to the staffing of polling places.

The future of the EAVS remains cloudy, due, again, to the uncertainty about the EAC's continued existence. Thankfully, the Commission staff continues to administer the EAVS in the absence of Commissioners. Still, no important Federal data gathering program can evolve under these conditions. Whatever the future of the EAC, the EAVS needs to be protected.

The third and final point is that local governments need help in converting the mountain of data that is generated in the conduct of elections into information they can use to better manage these elections. Addressing problems at the polling place, such as long lines at the polls, requires that local election officials have very precise information at their fingertips. They need to know basic facts, such as the arrival times of voters at the polls and the amount of time it takes them to cast ballots. Retailers know that service data like this is critical for effective management. Why do not all election officials have access to similar data? A major reason is that election equipment is rarely set up to produce the types of reports that would be useful to election officials as they make their plans to conduct elections.

Two focused Federal actions could help local officials manage their polling places more precisely. First, the EAC could fund a small grant program to spur the development of computer tools to take existing service data and turn it into information that local officials could use to manage elections more effectively.

Second, the Federal Government could continue to encourage the efforts that are underway to develop common data standards that would allow the seamless sharing of data across different types of computerized election equipment. One such effort is being undertaken by a working group under the Voting System Standards Committee of the IEEE computer society. The work of groups like this ultimately depends on forward progress in the EAC's Vol-

untary Voting System Standards. Without a functioning EAC, it is impossible to approve new Voluntary Voting System Standards, and without these standards, the work of creating a common data format for elections-related data will be slowed significantly.

So, to conclude, I thank the committee for their time and for holding hearings on these important topics and I look forward to your questions.

[The prepared statement of Mr. Stewart was submitted for the record.]

Senator KLOBUCHAR. Thank you very, very much for your work. Next, we have Mr. Kennedy.

**STATEMENT OF KEVIN J. KENNEDY, DIRECTOR AND GENERAL COUNSEL, WISCONSIN GOVERNMENT ACCOUNTABILITY BOARD, MADISON, WISCONSIN**

Mr. KENNEDY. Thank you, Senator Klobuchar. I very much appreciate the opportunity to provide information to this committee on the collection, analysis, and use of election data. It is an honor to be here. This is a subject that State and local election officials in Wisconsin recognize as an essential element in conducting elections.

Numbers are what elections are all about. The basic concept of elections is the person with the most votes wins. There are some exceptions, as we know, in Presidential elections and the Electoral College. Rank choice voting also adds some more complicated math to the process. And, we also know that the prayer of all election officials involves numbers: "May your margins be wide."

As Wisconsin's chief election officer, I have developed a mantra when I talk to our local election officials. That is, "know your numbers." Let me give you some numbers related to Wisconsin.

Wisconsin is, arguably, the most decentralized election system in the nation. The State administers elections with the support of 72 counties, and our 1,852 municipalities conduct each election. About 62 percent of those municipal clerks are part-time. We have over 6,700 wards, often referred to as precincts in other States, organized into more than 3,500 reporting units. Those 3,500 reporting units are the data points that we use in elections.

We do not give county-level results or municipal results. We give those reporting unit results when we are collecting data. It helps us identify problems within particular polling places. For example, working with Charles Stewart in our recent reporting, we found that our municipal data was accurate, but within that, we found errors in the polling places where they were misallocating numbers.

Other numbers in Wisconsin, we have 4.3 million voters. We have had Election Day registration since 1976. Like Minnesota, we have learned from those numbers that 80 percent of all of our voters entered the voter registration system through Election Day registration. That is an important fact for us to know. Our numbers are very similar to Minnesota's when it comes to what happens on Election Day. We know what those numbers are, and Wisconsin has had a long history of tracking voter turnout and voter registration numbers.

We also have been, as a result of those numbers, competing with Minnesota, we are usually first or second in Presidential voter turnout in every election. A little ahead in Super Bowls.

Senator KLOBUCHAR. Oh, so unnecessary.

[Laughter.]

Senator KLOBUCHAR. You know, my dad wrote a book called, Will the Vikings Ever Win the Super Bowl, in the, I think, early 1980s, and sadly, it is still relevant today, but—

[Laughter.]

Mr. KENNEDY. Well, my son-in-law will let me know when they do, I am sure.

[Laughter.]

Mr. KENNEDY. Also, with these numbers, we have learned that Wisconsin, along with Minnesota, routinely performs in the top five in the Pew Charitable Trusts Performance Index of Elections.

Wisconsin's long history of data collection has been amplified by the fact that in 2008, we took our paper-driven system, where we had our 1,850-plus municipalities giving us paper data, using a grant from the U.S. Election Assistance Commission, we took that data and made that electronic. We now get that data more cost effectively. We no longer have boxes of paper sitting in our office. Instead, we get that data and this is something that can easily be replicated across the States.

We use this data for a number of things. In the last legislative session that just ended, 18 separate pieces of legislation were introduced. We were able, as a result of that legislation, to provide clear data analyzing the impact of, say, reducing the hours of in-person early voting, when those occurred, so that people could actually measure that. We could also measure what would be the cost if we eliminated Election Day registration.

From our experiences collecting and analyzing data, we can identify several valuable lessons learned. Data collection should be purpose-driven. With data, more is not necessarily better. Data collection, audit and analysis requires extensive resources and time and effort should be spent wisely. It is a commitment.

Data should be "smart" data. It should be simple, measurable, actionable, relevant and timely. It is also important that those reporting data clearly understand what you are asking of them and what they are reporting. This requires providing training for our local election officials that is clear, detailed, and easily understood. I cannot emphasize that enough, given the number of election officials we have.

With that, I will end my testimony. I look forward to answering questions from the committee.

[The prepared statement of Mr. Kennedy was submitted for the record.]

Senator KLOBUCHAR. Well, thank you very much.

Next, we have Mr. Becker.

**STATEMENT OF DAVID J. BECKER, DIRECTOR, ELECTION INITIATIVES, THE PEW CHARITABLE TRUSTS, WASHINGTON, D.C.**

Mr. BECKER. Senator, thank you for the opportunity to be here today to discuss this important topic.

We at the Pew Charitable Trusts began to look at the issue of using data to measure performance in the field of election administration several years ago, partially in response to what we heard from election officials who felt bombarded by news stories driven by anecdotes, not data. These stories about long waiting times to vote, or polling places opening late, or registration problems are important, but it is never clear whether they truly represent systemic problems or if they are simply one-time challenges. We knew that in other policy areas, such as health and education, there must be a way to use data and empirical evidence to get a clearer picture of what is happening across the States.

Following important research by Professor Gerken and many others in the elections field, Pew partnered with Professor Stewart and MIT in 2010 to pull together an advisory group of State and local election officials from around the country, as well as leading academics in the field of elections and public administration, to determine what data was available to accurately and objectively measure the performance in this field.

In 2013, Pew unveiled the results of this research, the Elections Performance Index, or EPI, the first comprehensive assessment of election administration in all 50 States and D.C. The release introduced the Index's 17 indicators of performance, including such data relating to wait times at polling locations, voter registration rates and problems, military and overseas voting, and mail ballots. This data, collected from five different data sources, including the Census and the EAC, provided a baseline of performance using 2008 and 2010 data, giving users a way to evaluate States' elections side by side.

Pew's latest edition of the Index, released just over a month ago, adds analysis using data from the 2012 election. This provides the first opportunity to compare a State's performance across similar elections, the 2008 and 2012 Presidential contests, and presents a rich picture of the U.S. democratic process that will be enhanced as new data are added each election cycle.

The results from the 2012 EPI were generally good news for the States and for voters, as elections performance improved overall. Nationally, the overall average improved 4.4 percentage points in 2012 compared with 2008, and the scores of 21 States and the District improved at a rate greater than the national average.

In addition, we had several findings. First, high performing States tended to remain high performing, and vice versa. Most of the highest performing States in 2012, those in the top 25 percent, including States such as Wisconsin and Minnesota, were also among the highest performers in 2008 and 2010. The same was true for the lowest performing States in all three years.

Second, gains were seen in most indicators. Of the 17 indicators, overall national performance improved on 12 of them, including a decrease in the average wait times to vote and an increase in the number of States allowing online voter registration.

Third, wait times decreased, on average, about three minutes since 2008.

Fourth, although voters turned out at a lower rate in 2012 generally, fewer of those who did not vote said they were deterred from

the polls by illness, disability, or problems with registration or absentee ballots.

Fifth, 13 States offered convenient and cost effective online registration in 2012, compared with just two in 2008, which may have contributed to the reduction in voter registration problems.

Sixth, more States offered online voter information look-up tools in 2012.

And, seventh, States are reporting more complete and accurate data. Eighteen States and the District reported 100 percent complete data in 2012, compared with only seven in 2008.

We present all these data in an interactive report, which can be found at [pewstates.org/EPI](http://pewstates.org/EPI), that allows policy makers, election officials, and citizens to dig through each piece of information.

We make a series of recommendations in this report, but two are particularly relevant to this hearing. First, States should work to upgrade their voter registration systems. By adopting innovative reforms, such as online voter registration, better sharing data within a State between motor vehicles agencies, et cetera, and using a tool like the Electronic Registration Information Center, or ERIC, to better share voter registration between States—voter registration data between States, all recommendations of the Bipartisan Presidential Commission on Election Administration, States can see a marked improvement in their performance. For instance, of the bipartisan group of seven States who founded ERIC in 2012, including Virginia, five of those States were among the highest performers in that year.

Second, we encourage that States report and collect even more elections data. Several States, such as Wisconsin, have pioneered efforts to better collect source data from local election jurisdictions, but many do not. As the Presidential Commission notes, if the experience of individual voters is to improve, the availability and use of data by local jurisdictions must increase substantially.

And, we continue our work toward this end. Just last week, we released a report entitled, “Measuring Motor Voter,” where we attempted to rate how well States were providing voters with the opportunity to register or update their registrations at motor vehicles offices. What we found was that States’ performance in this area could not be fully measured because States were not collecting or reporting adequate data to document the provision of these important services. We, therefore, made several recommendations, including that States prioritize, automate, and centralize motor voter data collection. We went on to highlight several States, such as Delaware, Michigan, and North Carolina, that have already made great strides in this area.

Pew continues to see this data-driven approach lead to higher performance in the States. The EPI is being cited by policy makers and others in official testimony and is being used in a geographically and politically diverse group of States to help reform policy and technology in election administration. We will continue this work as we look forward to publishing the 2014 edition of the Index and ensuring the data-driven performance measurement is enshrined in this field for years to come.

Thank you.

[The prepared statement of Mr. Becker was submitted for the record:]

Senator KLOBUCHAR. Thank you very much.  
Mr. Riemer.

**STATEMENT OF JUSTIN RIEMER, FORMER DEPUTY SECRETARY, VIRGINIA STATE BOARD OF ELECTIONS, RICHMOND, VIRGINIA**

Mr. RIEMER. Senator, thank you for the opportunity to address you today regarding data in elections. I am a former Virginia election official and co-author and editor of a recent report from the Republican National Lawyers Association reviewing the Presidential Commission on Election Administration's report and providing additional suggestions to improve election administration.

I would first like to discuss issues pertaining to ranking State election performance, then to offer a few reasons why we have such challenges in obtaining good data, and, finally, to express concerns regarding how ever-increasing election data and records requests have become an administrative burden on local election officials.

Using data to rank States' performance has value to identify both deficiencies and best practices, but there are also concerns. First is a worry that graders will penalize States for not adopting policies, such as expanded early voting, vote by mail, and election day registration. The RNLA, many nonpartisan election officials, and other stakeholders, have significant policy reservations regarding these issues and they should not be included as indicators of performance.

Similarly, graders should reward, not penalize, States for implementing voter integrity measures, such as reasonable voter ID requirements and enhanced voter registration list maintenance activities. Election officials and organizations with particular concern for the integrity of our elections will be more likely to embrace these performance indexing efforts if they recognize State efforts to prevent fraud.

Second, I would like to discuss a few of the many challenges election officials have when gathering and reporting election data. The first lies in limitations with State voter registration databases, and second is a difficulty in collecting accurate data from the polling place.

Statewide election databases, created as a result of requirements in the Help America Vote Act, suffered from many problems commonly associated with large government IT projects. In the scramble to meet implementation deadlines, building in adequate data reporting and analytics capabilities became a secondary concern to complying with the specific database requirements outlined in HAVA.

In Virginia's case, it was impossible to reverse-engineer the system after it was launched to add better data collecting and reporting capabilities. While HAVA's database requirements mostly address voter registration functions, many States design these systems to be much more comprehensive. For example, Virginia's database administers most of the electoral functions at the State and local levels, including absentee voting, voter registration, and data collected at the polling place on election day, and part of the

system's job is to gather data related to those processes. Consequently, these database limitations impact a broad array of a State's electoral functions and make it difficult for officials to provide the data sought by the EAC and other interested parties.

A second challenge is that much of the data used to analyze elections is collected on election day by poll workers who receive minimal training, work only a few days out of the year, and are paid very little. Poll workers must complete a significant amount of complex paperwork after a long day and frequently make mistakes or omit important information on forms. This information is often impossible to correct or collect later if not captured properly on election night. Poll workers also, understandably, treat supplemental data reporting as a secondary priority to reporting precinct vote totals and ensuring the security of ballots, voting equipment, and other important election materials.

Fortunately, State and local officials are gradually overcoming some of these hurdles. First, States have improved their databases and analytics capabilities. In addition, the adoption of electronic poll books at the polling place will result in better data collection on election day. The nationwide trend towards online voter registration and electronically sending registration applications completed at DMVs to registration officials will also help improve the quality of voter registration records. Multi-State data sharing programs, like the Interstate Voter Registration Cross Check and ERIC, are also further helping improve the quality of States' voter registration data.

The PCEA and RNLA endorse these reforms, and RNLA also recommends that States pair electronic poll books with ID card bar code scanners to improve the reliability of voter history data.

A final issue for policy makers to consider is how increasing demands for data and records impose significant administrative burdens on election officials. Survey obligations from the EAC, Federal Voting Assistance Program, and other stakeholders are tedious, but manageable. However, adding an increased request from FOIAs, State and local governments, litigation, and a public records disclosure provision in the National Voter Registration Act have turned basic data and records reporting obligations into a significant administrative burden. Combined with an increasingly shorter election off-season, because of 45-day absentee ballot mailing deadlines and expanded early voting, these obligations make it more difficult for election officials to perform their core job functions and make improvements to their election processes.

Thank you for the opportunity to appear before this committee. [The prepared statement of Mr. Riemer was submitted for the record:]

Senator KLOBUCHAR. Thank you very much to all of you.

I will start with you, Ms. Gerken. I know you have made the point that it is hard for us to really take advantage of the States as the laboratories of democracy, as you noted, if we cannot figure out the way to compare what they are doing. And, States and localities have a big role to play in actually carrying out our elections, but that makes it harder to have uniform data. So, I figure we need to make sure we are not comparing apples and oranges and that we are actually trying to compare things in the right way to figure

out how we make the voting experience better and how we get more people to vote. What do you think the Federal Government's role is in improving election administration, and what should Congress be doing to increase the supply of quality data while respecting our State and local partners who carry out the election?

Ms. GERKEN. There are many things that the Federal Government should do, in my view, and I will just begin by agreeing with Professor Stewart that one of the most important things is to support current ongoing efforts to provide data from the States, which is done through the Elections Assistance Commission. The Elections Assistance Commission has a somewhat inconsistent reputation among election administrators. However, I think there is little question that—

Senator KLOBUCHAR. Why is that?

Ms. GERKEN [continuing]. Because I think that there has been some frustration with the way that it is administered, both its grants and its surveys. While those criticisms are well taken, the importance of the EAC survey cannot be underestimated. It is the best set of data we have on a variety of practices. The EAC has also done something very useful, which is to help us standardize what kinds of terminology are used, so we are comparing apples and apples rather than apples and oranges.

As Professor Stewart has mentioned, I think there are many other ways that the Federal Government can be supportive here. Some of them are as simple as assisting the States through modest funding to figure out how to get the data that they do have and put it in an accessible form that everyone can share.

I would also love to see more work on the costs of administering elections. One of the things one begins to believe in working in these areas is that there will be no reform unless Almighty God comes down to dictate it. But sometimes the almighty dollar does the trick. One of the real reasons why we have seen such a push for online registration has been the immense cost savings that come from it. Having data on those kinds of questions is extremely important to the States in helping do their job—

Senator KLOBUCHAR. You mean how much money it saves to do the online?

Ms. GERKEN [continuing]. Exactly. It is not only more accurate, but it turns out to be much more efficient in terms of cost. So, having just that kind of information in no way intrudes on State policy making, but enables them to make better decisions going forward.

Senator KLOBUCHAR. Okay. Why do we not move on to the online, since you brought that up, and whether a State allows online registration is one of the 17 factors included in the Index. Why do you think—I will start with you, Mr. Stewart, and maybe Mr. Becker—why do you think this is a good thing to do online registration, and how do you think we get the other States to adopt it?

Mr. STEWART. Well, maybe I can say why this is a good thing and Mr. Becker probably has some well thought out ideas about getting States to adopt it.

I think there are two good things about online registration. One, picking up from what Professor Gerken said, is the cost. The second, as well, is accuracy. I think we all wish to see more accurate

voter rolls. It is easier for voters. More accurate rolls dispel many concerns about fraud and can help us to hone in on where there are, in fact, problems with people coming and trying to vote who should not.

So there is the accuracy side and the cost side, and I know Mr. Becker has thought a lot about getting States to say yes.

Senator KLOBUCHAR. Mr. Becker.

Mr. BECKER. Yes, that is right. We just put out a brief on this in January called "Understanding Online Voter Registration," which can be found at [pewstates.org/OVR](http://pewstates.org/OVR). And, what we found in our research in this field over many years is that online voter registration is one of those rare win-wins in government. It saves money and it produces a better product by making voter registration more complete, more accurate, and more convenient.

So, for instance, with regard to costs, every State that has kept data on this has found tremendous cost savings, ranging—

Senator KLOBUCHAR. Now, maybe you told me this in your testimony, Mr. Becker—

Mr. BECKER. Yes—

Senator KLOBUCHAR [continuing]. But do we know how many States are doing it?

Mr. BECKER [continuing]. So, by our count, we show 19 States that are currently offering their citizens an opportunity to register to vote online without ever having to print, mail, or—

Senator KLOBUCHAR. And, how long has it been going on?

Mr. BECKER [continuing]. Since 2002. Arizona was the first State, but it took six years until the second State offered online voter registration, Washington in 2008. They were the only two States that offered it in 2008. That number went up to 13 in 2012, and now it is up to—

Senator KLOBUCHAR. Okay. You really know these numbers, so—

[Laughter.]

Senator KLOBUCHAR [continuing]. Let us continue on. It went up to 13 when?

Mr. BECKER. It went to 13 in 2008, and now there are 19 States, almost 100 million Americans who currently can complete a voter registration application entirely online, without ever having to handle a piece of paper in any way or mail anything in. And, this is leading to huge cost savings. States are seeing cost savings ranging from about 70 to 80 cents in States like Colorado, Arizona, to over \$2 per registration transaction in a State like California. California—

Senator KLOBUCHAR. And they still make the mail available for people that do not have—

Mr. BECKER [continuing]. Absolutely.

Senator KLOBUCHAR [continuing]. And, what is the resistance in some of the States?

Mr. BECKER. I do not think we are really seeing much real resistance.

Senator KLOBUCHAR. It is just—

Mr. BECKER. I think it is just a matter of time. There is a capital expenditure that is needed to put it in place. Our research indicates that, on average, it costs about \$240,000, which is not very

much, to install an online voter registration system. But, still, some States are working towards that end. But, we are going to see many more States. I think, easily, half the States will be offering it, if not many more, by the 2016—

Senator KLOBUCHAR [continuing]. And, have you been able to show direct correlation with increasing voting?

Mr. BECKER [continuing]. I do not think we have been able to see that online voter registration directly leads to turnout. We have not had a controlled experiment in that regard. What we do know about online voter registration is it transfers a lot of the not cost effective and not convenient paper activity that would ordinarily occur that can lead to duplicates and errors to electronic activity, which is much more convenient and cost effective. So, at a minimum, it is saving election offices a lot of money and leading to a lot more convenience for the voters.

Senator KLOBUCHAR. Very good. Anyone else want to comment on that? Do you have that in Wisconsin yet?

Mr. KENNEDY. We do not have that in Wisconsin.

Senator KLOBUCHAR. Ah, that is why I asked that question.

[Laughter.]

Mr. KENNEDY. I know that Minnesota just did. I will tell you that Wisconsin has done a cost-benefit analysis on this. We partnered with our University of Wisconsin La Follette School of Public Policy and have determined that, if properly implemented, we will save over a million dollars, most of that at the local level, where it is really effective. It is the cost of that. So, Wisconsin has been using our data for things like that.

Senator KLOBUCHAR. Mm-hmm.

Mr. KENNEDY. We had a hearing on that two weeks ago and that data was prominent.

Senator KLOBUCHAR. And, you have same day?

Mr. KENNEDY. We have Election Day registration.

Senator KLOBUCHAR. Yes. I think that is probably why—probably, in States like ours that—while I think it is a good thing, it maybe matters a little less when we already have the higher—you will not see quite the dramatic increase because of the fact that people can always register.

Mr. KENNEDY. No, and it is not really a question—turnout is driven by so many other things, but one of the things I always emphasize is that we talk about numbers. We talk about election administration. Ultimately, it is all about the voter, and certainly, online registration, which is one thing that was not mentioned, provides a service to the voter. It makes it convenient.

This is why Election Day registration has worked very well in Minnesota and Wisconsin, because we find it serves the voter. It provides them convenience. They are not thinking about elections every day. They are thinking about it when the elections come around. That means being prepared. So, online registration fits in very well with that. It is a nice pairing with Election Day registration.

Senator KLOBUCHAR. Mr. Riemer, what do you think about the electronic registration?

Mr. RIEMER. Well, Senator, Virginia implemented online voter registration approximately a year ago. It was passed with broad bi-

partisan support and it is very popular. The voters love it. The local election officials love it and the State Board of Elections, the State election officials love it, as well. It works well, and for all the reasons described.

Senator KLOBUCHAR. Okay. Good. A different topic, now. Ms. Gerken, I was interested in your testimony about using the Census as a model for comprehensive gathering of information on election administration. You advocated for some basic information to be gathered nationwide, but with a deeper dive into some randomly selected polling places. Can you elaborate on how this system would work and the challenges it would face. Having been at hearings, I think it was with the Joint Economic Committee, about the Census and some of the political things that surround it—whether true or not—we all know it is very important and many of us are always working to protect the Census and making sure it continues. Let me hear what you think we could do to make it even better, and then try to put on my political hat and figure out if we could get it done.

Ms. GERKEN. Sure. The analogy to the Census was simply that the Census has a very widely known strategy for getting information. It asks for a little bit of information from everyone, and then a lot of information from a few people, and in doing so is able to get at the kinds of things we need to know.

This strikes me as a particularly good model for local elections. One of the things that you learn very quickly whenever you talk to Secretaries of State is that they all know of one or two localities that really are outliers within the State. They all are nervous that those outliers are going to make the State the next Florida 2000, or the next Ohio in 2004, but they have very little ability to influence what is going on there because, one, they do not have data, and two, they do not actually have much by way of regulatory authority over localities. In many places, localities are very powerful.

Having more and better information on the variation within localities is just as important as it is to have information about variation among the States for the same kinds of reasons. The trouble is, and here, I agree entirely with Mr. Riemer, localities are strapped and they are often staffed by people who work part-time, or who run the elections and run many other things in their towns, so you cannot ask them to do the kind of sophisticated data drops that you can ask from State officials.

That is why the Census is a nice model, to get a little information from all of them and then have more and better in-depth information from a number so we can learn how things are going.

And, the last thing I will say on this—

Senator KLOBUCHAR. I am not an expert on the Census, so, this would be, like, additional questions you would add on, or—

Ms. GERKEN. It would be like a short form and a long form. I do not know if you have ever gotten the long form. It takes a while to fill out.

Senator KLOBUCHAR. Oh, yes.

Ms. GERKEN. But, the other thing I actually just added, and again, I will agree—

Senator KLOBUCHAR. And so in the long form, they sometimes add different questions.

Ms. GERKEN. Yes, a lot of different questions. Exactly.

Senator KLOBUCHAR. So, this would be something, and this would be to supplement what we are getting from the Election Administration and Voting Survey?

Ms. GERKEN. Exactly. If you randomly selected localities, it would help us glean information about the variation among them.

And, the last thing I will just say is I agree with Mr. Riemer that one of the great dilemmas of election administration is that a lot of the data comes from poll workers who are part-time and not always well trained. Here, I think the way to think about that problem is to think about it in exactly the way that Burger King and McDonald's think about that problem. If I remember from high school, the pimply faced 16-year-olds that used to work behind the counter there were not sophisticated data collectors, and yet they were part of a sophisticated data collection system that was adapted to their abilities. And so anything that the Federal Government can do to help us think about how to get information from poll workers without having to train them or to expect more than we can expect from them would be very useful.

Senator KLOBUCHAR. Very good.

Mr. Stewart, do you think this Census idea is a good one, or do you think there is more we should be doing with the Election Administration and Voting Survey?

Mr. STEWART. As you can tell from my testimony, I am a big EAVS fan. I would emphasize assisting the States that are currently not reporting and complying with the EAVS data requests to actually report the data that they need to report. So, that is one thought.

The other thing, I think that you hear a lot of agreement on this panel—is that diving deeply into precincts and localities requires the creation of a technology that allows relatively untrained and unsophisticated poll workers to gather the data that is needed. That is why things like electronic poll books are very promising, because you can automate a lot of this data gathering. If you could automate a lot of data gathering in electronic poll books, in the voting equipment that is used, then county officials or State officials who have the capability to aggregate data could become more involved.

So, I would push a bit more on the technology side and on encouraging States to report the EAVS data. It seems to me if Wisconsin can do it, and Mr. Kennedy and his folks are my data heroes in this regard, I think any State can do it.

Senator KLOBUCHAR. Very good. And, so, this is an example where you got some funding, Mr. Kennedy, from the Election Assistance Commission, a \$2 million grant. So, how did you use that money?

Mr. KENNEDY. Basically, because Wisconsin already was committed to collecting certain data, we wanted to get it as granular as possible, and we recognized when we applied for the grant we could go from municipality-based reporting right down to the reporting unit. You know, Milwaukee has 202 polling places, but there are 324 separate reporting units, and knowing how each of those wards collects that data.

So, what we did is provide a portal where that data can be easily entered. We are using the polling place data. And what we learned is it is training. Now, we did start out with a bribe. The first time around, we paid every municipal clerk \$100—

Senator KLOBUCHAR. Now, not everyone in elections wants to use the word “bribe.”

[Laughter.]

Mr. KENNEDY. I understand. I understand.

Senator KLOBUCHAR. We are in a small room.

Mr. KENNEDY. It was an incentive.

Senator KLOBUCHAR. There is not a lot of media here, but I—

[Laughter.]

Mr. KENNEDY. It was an inducement or incentive—

Senator KLOBUCHAR. An inducement. An incentive.

Mr. KENNEDY [continuing]. To get them to do this.

Senator KLOBUCHAR. Uh-huh.

Mr. KENNEDY. And I think it is important to find some way to convince election officials why this is important. In 2011 and 2012, Wisconsin got a lot of attention because we had a number of recall elections. We had 16 separate recalls.

Senator KLOBUCHAR. I remember hearing about those.

Mr. KENNEDY. Yes. And one of the big policy debates was, if we are going to have a Statewide recall, what is that going to cost? And it landed in 2012. We did some surveying to estimate that, and then, based on that surveying, we built a data collection cost tool with a lot of give and take with the municipalities. We were able to demonstrate that the \$37 million that we spent on administering elections at the county and municipal level in 2012, 14 million of that was directly related to the 2012 recall elections, money that was not budgeted for. That provided good information for the governing bodies that had to support this, you know, why did the costs go up? Where did they come from?

Senator KLOBUCHAR. Another issue that we talked about or touched on with the long line issue—and who was giving me the numbers, was it you, Mr. Becker, on the decreasing—that there was some decrease in three minutes per voter, was that what it is, from the last Presidential—was it from 2008 to 2012?

Mr. BECKER. That is right, from 2008 to 2012, three minutes—

Senator KLOBUCHAR. So, then, how is the—what is the total wait? What is the—

Mr. BECKER [continuing]. Right now, it is at 11 minutes, on average, nationally.

Senator KLOBUCHAR [continuing]. So, what we are dealing here with—because I think most people think they can wait ten minutes—so, what we are dealing with here is the fact that there are some—would it be, in Ms. Gerken’s words, outliers of some areas that have really bad problems that we have to try to get at?

Mr. BECKER. Well, of course, that is one of the reasons that the work of people like Professor Stewart is so important and why we hope the Index can be helpful, is that it is important to assess this not based on just the anecdotes of all the cable news stations outside that one polling place in Miami at 2:00 a.m. on election night, but to really see what is going on all across the country, because

the cable news stations are not camped out at polling places in other States looking at what is happening.

So, what we found was, in fact, yes, Florida was the worst reported wait times, of around 45 minutes in 2012. Many States saw wait times of below ten minutes. The Presidential Commission, I believe, came to the—

Senator KLOBUCHAR. The average in Florida was not 45, was it?

Mr. BECKER [continuing]. I am sorry?

Senator KLOBUCHAR. Was the average in Florida 45—

Mr. BECKER. That was the average reported wait time of those that were surveyed on this issue.

Senator KLOBUCHAR [continuing]. So, would that mean across polling places in Florida?

Mr. BECKER. Yes, across the State, across polling places—

Senator KLOBUCHAR. That seems like a real problem—

Mr. BECKER [continuing]. In a survey conducted by Professor Stewart.

Senator KLOBUCHAR [continuing]. And that would seem like a deterrent to getting people to vote.

Mr. BECKER. It is probably not a good thing. I think election officials in Florida would be the first to say that. They did see an increase in their reported wait times. The Presidential Commission came to the conclusion in their research that about—that under 30 minutes was the target. I think that was a reasonable conclusion. And, I think States getting that data is very important to them, because once they can assess the depth of the problem, they can start looking at ways to try to correct that problem.

Senator KLOBUCHAR. Yes.

Mr. BECKER. One of the conclusions we consistently reach is that having inaccurate voter rolls is one of the key things that can drive lines, that can lead to delays at the polling place and cause a logjam when people are trying to get their ballot and cast their ballot. So, States that are seeing improvements in that area are seeing lower lines—smaller lines.

Senator KLOBUCHAR. And this would be because of technology, they are seeing improvements? This is the voting roll issue? What do you think, Mr. Stewart?

Mr. STEWART. Well, part of it is technology, in terms of shorter lines. Part of it is technology. Part of it is also that some States and localities are becoming more sophisticated in using data to move resources around. I mentioned in my testimony the field of industrial engineering, which does these things. Some of the larger jurisdictions are able to put some brainpower behind optimizing where their resources go.

It is also the case, that States are beginning to experiment with moving some voters off of election day into the early voting period. One of the things that does is take some of the pressure off of election day voting. Little bits and pieces here and there can take pressure off and can reduce lines.

Senator KLOBUCHAR. So, you know, I used to administer—prosecute the cases for eight years of any voting issues that came out of our county in Minnesota. We had the biggest county. It was over a million people and was an urban county, but also had 45 suburbs. And we had a Secretary of State who was pretty aggressive

at the time, and so I was very careful that we would look at every case that came our way. And so I have actually had this on-the-ground experience with this.

We would have, at first, hundreds of cases that looked like they were a problem, and I had a full-time investigator—I do not know why we—but this was my job—that would look at these cases, and 80 percent of them were father and sons that had the same name and so they were not voting fraud. Then we would have a number of ones where felons would still be on probation and they would actually, I think, be either gotten some wrong information or just not understood that they were still on probation, and those were sort of sad cases, because then we would prosecute these felons on probation for voting. They would attempt to, then not be allowed to vote the next time, and then would be restored or something like that.

But, there were not that many of those cases, and so that is going to be one of my questions, because I am wondering if with this online—and, I know States have different rules—if we could do a better job of taking care of that, because a lot of times, they just did not quite understand. They were still on probation. Minnesota puts tons of people on probation. We use less prison time.

And then the second one, which I will just tell you for your own amusement, my investigator called a guy and said, “Sir, it looked like you voted twice,” and the guy goes, “Yeah, I did.” And the investigator goes, “Well, sir, do you mind if I turn on my tape recorder here so I can get your story,” because we had to legally do that, and the guy goes, “No, no, I will just write you a letter, because I live in Minneapolis and it is so hard for a Republican to get elected, I just decided to vote twice.”

[Laughter.]

Senator KLOBUCHAR. So, the guy wrote him a letter and went on and on about how he had voted twice, and then we had to issue some kind of a complaint, and then he was much more sheepish when he came in, and I think he was banned from voting one more time.

But, we had a few of those type of cases, but they were very, very rare. And what bothers me, having looked at this, like, around the five years, having been in a State that had this dramatic recount in the Franken-Coleman race, that we did have some issues with felons voting, there is no doubt, but a lot of it, from my view, was mistakes. It was not some intentional thing, both on the election administrator side and on the felon side.

And then the ones that actually deliberately voted twice, like the person who—this was another one I had—the school board line goes through their house, and the husband and wife decided that they are going to vote in both elections because they wanted to vote in both school board races, but then did not really realize that they were then actually also voting double, and they would each vote on each race for President. And then when we told them we had to do research for them, because they wanted to know where they should vote when the line goes through your house, we said, well, you vote where you sleep, and then they called back and said, well, what if we say we sleep in separate rooms?

[Laughter.]

Senator KLOBUCHAR. That was the level of detail we got to with them.

[Laughter.]

Senator KLOBUCHAR. Those cases, where someone actually votes twice, either for some crazy reason, because a line is going through their house and they do not understand it, or because their mom fills out the form and then they then vote—they voted by mail, and then they vote again—were very rare. And what bothers me is that a lot of our election laws and these reasons that we are not talking about today, about some of the things that ban people from voting or do not allow them to register to vote, we have so used one or two examples of these when the vast majority of them, to me, could most likely be solved by data, especially some of the felon information, so we get that straight.

And I just wondered if you think that this technology could help us to ferret through what is clearly mistakes in most of the cases, as opposed to this guy who was intentionally voting twice, which is such a rarity. So, a lot of times, it might involve mental illness when people do it. But, the point is, it is a rarity, and so, yes, it is used as the defining reason why we have to have all these strict registration laws and why it makes it so hard so people cannot same day register like they do in Minnesota and Wisconsin, which, by the way, produces very different results, as you know, Mr. Kennedy, in our Governors' political parties, in our legislators' political parties, and yet we make it easy for people to vote.

So, if you could just address this, if there is some way we could get at this online with some of this technology to make it not even—not just the voting experience better, but also to make it so that we have a defense, almost, against some of these claims so that we do not keep limiting people's ability to register and make it easier for them to sign up. Does anyone want to go for that one?

Mr. KENNEDY. I could mention that in Wisconsin, we have similar rules in terms of felon voting, and there has always been an issue about what is the extent of voter fraud, and most of the cases that we have identified, I mean, the technology that has been put in place since 2006 with our Statewide voter registration system, we have identified those rare cases of double voting. Usually, it is because they own property in two places and want to vote because they pay taxes and it is a conscious decision, or they have just moved, and again, very rare. But, mostly, it is the felons, and so we have—we do—

Senator KLOBUCHAR. And you understand what I mean about that they are on probation, but it is not clear. Like, they really do not want to commit another felony by voting, most likely.

Mr. KENNEDY [continuing]. Well, using those numbers, we have built in a couple of checks. We have Election Day registration, at the polling place we have access to a list of all the felons in that municipality or county, depending on the size, so it can be double-checked so that people can be advised.

I mean, the best anecdote was someone who came in to vote who was on the felon list, was not eligible. The person said, "Oh, one more thing I cannot do," once the poll worker said, "I am sorry, we cannot let you vote because of this." But, the technology was there. It was available. I think that is very helpful.

But, it also allowed us to build some checks into the process so that when the person is sentenced, part of the instructions the judge gives is, you will not be allowed to vote until you complete the terms of your sentence. When they are released from incarceration, they get the same information, and they also sign paperwork. So, we use that—

Senator KLOBUCHAR. Now, some States, when they get released from incarceration, then they just get to vote, I think, right? Or, can they vote while they are on probation? I mean, that is the other way to think about it.

Mr. KENNEDY [continuing]. A few States can do that, but the general norm is you have to complete the terms and get off paper, as they say.

Senator KLOBUCHAR. Right. Exactly. And, I think that is what creates that confusion. If someone has been in prison, they get out and they think they can vote then, like everyone else, even though they may have been—so, I am just trying to find a way to double-check this so they do not get in trouble and so it does not create this aura about our elections.

Mr. KENNEDY. And it is something that, by matching the data with the Corrections Department, you can have that so that they are flagged in the voter registration list. As I said, Wisconsin produces lists that we make available for the clerks to download that give that information.

Senator KLOBUCHAR. Does anyone want to add to that?

Mr. BECKER. I would just add that I think you are absolutely right. Technology is important in two very key areas. First, it can help ensure that all eligible voters, but only eligible voters, have access to the process, using things like e-Poll books to ensure that people do not sign on the wrong line in a paper poll book, which can lead to these problems. Things like online voter registration, which can actually walk someone through the voter registration process, require that they affirmatively click on and check a box that clearly describes what the eligibility requirements are before they proceed, and as you pointed out, often accidentally come into a violation of the law. Things like ERIC, which can help whittle down the number of people that might be reached out to that should not be—that are not eligible to vote and should not be encouraged to register. Doing that, all these things can help ensure that all eligible, but only eligible, can take part.

And, I think a very important thing that technology can also do is ensure that we correct some of the data collection problems that we currently experience. So much of data collection right now is done after the election, where local election officials have to reconstruct the election after the fact, report up to the State election officials, who then report that to the Election Assistance Commission, often without many checks in between in each of those processes. So, the data often is not of high quality. We have to go through and reconnect with all of the States and many of the localities to ensure that the data is correct and up to date.

And what we see with technology now is there are systems put in place—election management systems, e-Poll books, et cetera—that can be designed at the start with collection of data in mind. So, the data is collected as it is ongoing and you can just push a

button and report it out after the fact. I think Wisconsin has done some tremendous things in that regard.

Senator KLOBUCHAR. You know what I love about this data collection is that you can then get the information out there and then it creates incentives—as opposed to bribes, Mr. Kennedy—

[Laughter.]

Senator KLOBUCHAR. It creates incentives for States, because they want to compete with each other. And, I just think about when we talked to our electric companies, one of the things they found is the best way to get people to turn down the heat and save electricity—it is so interesting—it is not, oh, it is good for the environment. It is not, oh, you can even save money, and showing them how much money they save. It is showing what an unknown neighbor saves in a similarly sized house. And then they see that and they think, well, why am I not saving that much?

And with elected officials, of course, it is much more public, so that if you have a State, like your story of Florida, where the lines are so much longer than other places and you can get that data out, it creates incentives for the citizenry to start asking their elected officials, what are you going to do to improve this? This is outrageous.

So, when I hear this, in a very marketplace way, Mr. Riemer, I am thinking that there is a huge advantage to getting this data out, just to create the incentives so the States can change their processes. But, if we do not get the data out, we are just putting our heads in the sand and hiding.

So, I assume most of you agree with that, but, so, what do you think is the best thing we can do? I know—if we could go down the line here, from the Federal Government perspective. It is keeping on funding the Voter Survey. Is it also expanding into Census, from your line, Ms. Gerken, from your perspective, or what can we be doing?

Ms. GERKEN. Well, I have already given a little bit of my spiel on this one, but the one thing I will add is just to build on the point that you made. It is remarkable how much the right to vote is protected by a well-run bureaucracy that believes in best practices.

Senator KLOBUCHAR. Yes.

Ms. GERKEN. And one of the things you quickly learn about election administration is that it does not have yet the sense of robust professional practices the way, for example, lawyers or doctors or accountants do. Anything that the Federal Government can do to support that—and that means something as simple as providing a clearinghouse with a menu of options for different States, because States do look to one another in trying to figure out what they do. The peer pressure that you described works as well for States and institutions as it does for teenagers, and as a result, they will look to each other.

Giving them an accessible, easy to use system where they can see what other States are doing to solve the same problems is very, very useful. That is something the Election Assistance Commission is all but built to do. It is nonpartisan. It does not interfere with States' decision making. It just helps them make better decisions.

And so I would certainly encourage the Federal Government to do that, as well.

Senator KLOBUCHAR. Mr. Stewart.

Mr. STEWART. Much of the same record. The clearinghouse and research function of the EAC are invaluable, and that is really the core of the EAC. They do this one big election data gathering effort and they fund basic research. I think if that core can be maintained and developed, that would be a—

Senator KLOBUCHAR. How about getting the research out there? So, you get the research. So, I am finding this out for the first time. I kind of watch the news, read things probably more than a lot of people, very aware of the States that are at the top for voting. And, I even gave, like, an hour-long talk on this, but I did not really have—I was not conversant with which States had these long lines and things like that. How do we get that out there nationally so it gets States to have that incentive to move themselves up in the rankings?

Mr. STEWART [continuing]. Well, part of it is the Election Performance Index and ideas in Professor Gerken's book. Another thing I have seen develop which I mention in my testimony is that we need a marriage of election officials and researchers together who can understand each others' worlds. Quite frankly, there has been mistrust between the two, because researchers oftentimes just want data to write papers and do not understand the challenges that are faced by local election officials. So, part of it is the creation—

Senator KLOBUCHAR. And there are a lot of challenges.

Mr. STEWART. Yes. Part of it is creation of this network of people with shared interests and concerns with each others' problems. That is an important thing. The EAC has a role in that, but universities and foundations also have a role in that, too.

Senator KLOBUCHAR. Mr. Kennedy.

Mr. KENNEDY. I would say that the States have a very prominent role that needs to be done here. You know, one, the Wisconsin idea in our education has always been to bring the University of Wisconsin and its satellite campuses into the communities, and one of the reasons we are very successful is that we have a tremendous relationship with the University of Wisconsin's political scientists and they show a lot of interest. We have been trying to feed their needs by giving them a lot of data. So, the marriage that Professor Stewart talked about is very important and it is something that comes natural from our experience.

The other thing is for the State to be taking a leadership role. I mentioned in my testimony how important it is to get buy-in from our local election officials, giving them reasons why this data is important, addressing their very real concerns about, well, it is not fair that we are getting compared against each other, and it is, like, well, this is part of the exchange of information. It is going to help you improve and it forces you to explain your case, why your costs might be higher, for example, because it is something we have gotten a lot of data on.

But, the other thing is the State can take a leadership role in the technology that we are talking about. Electronic poll books, we have been talking about, is going to make sure that that data is

collected in real time. We know what time people are coming into the polling places with electronic poll books. Making sure that the voting equipment that people are using has—will also show the kind of data that can then be—you know, the State can take the lead in taking it, as long as it is in electronic format, leveraging technology. So, this is where the State provides a leadership role to the locals on that. So, that is where I would see it.

Senator KLOBUCHAR. Okay. Thank you.

Mr. Becker.

Mr. BECKER. Well, I would say several things. First, obviously, we should make everyone aware that there is a baseline that exists out there. At [pewstates.org/EPI](http://pewstates.org/EPI), the Index exists. And not only the 17 indicators, but you can isolate any particular indicator. If you just want to look at wait times or voter registration rates or turn-outs, or look at a combination, or compare States, that is all available.

And I think one of the things that comes up—

Senator KLOBUCHAR. Well, maybe we could have, like, some kind of a little press event on the Hill when the numbers come out, or—

Mr. BECKER [continuing]. We have got them—

Senator KLOBUCHAR [continuing]. The Rules Committee, we could do a very exciting press conference—

Mr. BECKER. We have got a wonderful interactive that people can play with that enables them to compare regions, States, one State over time, look at any particular indicator or combination of indicators.

Senator KLOBUCHAR. Yes.

Mr. BECKER. You know, some of the interesting things that come out of it is though Florida was the worst on wait times in 2012, Florida actually performed about in the middle of all the States—

Senator KLOBUCHAR. I saw that in the thing. So, I did not mean to, like—

Mr. BECKER [continuing]. No, I—

Senator KLOBUCHAR [continuing]. There are a bunch of people from my State who move down there and everything, but I—

[Laughter.]

Mr. BECKER. A bunch of people from every State move down there.

[Laughter.]

Mr. BECKER. But, it is one of those things, that if anecdotes drives this debate, everyone would think Florida is ground zero for worst election administration—

Senator KLOBUCHAR. No, but there are other issues, and so it is trying to rationally get that out there, and hopefully in a bipartisan way—

Mr. BECKER [continuing]. Exactly.

Senator KLOBUCHAR [continuing]. Which was so much of the issue with this. It can be very—okay.

Last, Mr. Riemer, and then I have to go to another hearing on bulletproof vests, which will be a little different than this one.

Mr. RIEMER. Thank you, Senator. I think the combination of the EAC survey, the Census data, combined with organizations like Pew doing these performance index measures, is the way to go.

And, I think the States are beginning to produce better data. The EAC survey was, in many ways, just—it floored State election officials about the amount of data that was asked for, and I think, while we have been doing this for a decade, it is only done once every Federal election. So, this survey has only been done four or five times and States are getting progressively better at it.

I know in Virginia, our first EAC survey response was, frankly, a joke. I do not think—I think we only reported about a quarter of the information that was asked for. Now, we are getting much better at it. We have made changes to our database and polling place practices to obtain this data. So, I think we are getting there.

And, I think what has been discussed is the more that things are automated at the polling place, from electronic poll books, to scanning IDs, to the equipment having better metrics, I think we are going to get there—

Senator KLOBUCHAR. Right, and you have all these decentralized local election people that are really into this stuff. As much as some of them are overburdened, they do like to—I think it is their thing they do. And, I would think that, eventually, for some of them, getting that data is kind of fun and interesting and they are able to look at what is going on across the country and how the State, at least, measures up. So, do you think that is true, or is it not fun, Mr. Riemer?

Mr. RIEMER. Virginia is a very diverse State—

Senator KLOBUCHAR. Yes.

Mr. RIEMER [continuing.] From very cosmopolitan and urban in Northern Virginia—

Senator KLOBUCHAR. Yes.

Mr. RIEMER [continuing]. To Appalachian—

Senator KLOBUCHAR. Right. Well, we have this, too. Yes.

Mr. RIEMER. Exactly. So, I think some definitely are. You have election policy wonks that are the local registrars. And then some, frankly, are just there—some of them are part-time. We have 17 part-time registrars in Virginia—

Senator KLOBUCHAR. Yes.

Mr. RIEMER [continuing]. And, I will be honest, they are not really that interested in what you are talking about.

Senator KLOBUCHAR. What is happening across the thing, yes.

Mr. RIEMER. Not all of them, and I do not mean to—

Senator KLOBUCHAR. I will have to check in on Finland—Finland, Minnesota. I just know the rural ones that I have worked with, they get really concerned about the cost issue, and so they are interested in it that way, that if they think things can make it better or things can make it worse, they are going to be outspoken. So, in that way, I just think that while they may not be into the wonkish part of it, they actually may be into knowing some facts about how it is going and what is working and what is not working, because they do speak out on it. I know that from having been around our State, and I am sure you know that, too, so—

Mr. RIEMER [continuing]. Absolutely. They care very much about the process.

Senator KLOBUCHAR. They do.

Mr. RIEMER. They still want to fix the process, it is just—

Senator KLOBUCHAR. They do, and so that is why I think getting that information out there is a good thing.

Well, with that, I am going to include Senator Schumer's statement, without objection, that he asked to have entered into the record.

[The prepared statement of Chairman Schumer was submitted for the record.]

Senator KLOBUCHAR. And, on behalf of the Rules Committee, I would like to thank all of our witnesses today for their important testimony this morning.

This concludes the panels, and without objection, the hearing record will remain open for five business days for additional statements and post-hearing questions submitted in writing for our witnesses to answer.

We will miss you, Jean, but we know you are going to do great out there.

Thank you. The hearing is adjourned.

[Whereupon, at 10:51 a.m., the committee was adjourned.]

## **APPENDIX MATERIAL SUBMITTED**

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**Testimony of Professor Heather K. Gerken**  
**J. Skelly Wright Professor of Law**  
**Yale Law School**  
**Submitted to the United States Senate Committee on Rules and Administration**  
**May 9, 2014**

*We measure what matters.* That's an old saw in the private sector and true of most of the public sector as well. Election administration is the mysterious outlier in this respect. We know more about the cars we drive and dishwashers we buy than we do about our precious non-commodity – the right to vote. “Big data” drives financial investments and baseball-team trades, it dictates environmental policy and which pop-up ads appear on your computer screen. And yet we lack access to basic information about how well our election system is working, let alone how to make it work better. Part I of this testimony explains why data collection is essential if we are to have an election system worth revering. Data provide an essential management tool, enabling us to spot, surface, and solve the problems that plague election administration. Good data help us identify problems and find cost-effective solutions. They show us where our policymaking policies should lie and provide realistic benchmarks for solutions. And they provide the allies of reform with the tools they need to push for change. Good data not only set the policy agenda, but push it forward.

Part II of this testimony describes where we are on the data-collection front and where we ought to go from here. Things have improved since I wrote my book, *The Democracy Index: Why Our Election System is Failing and How to Improve It*.<sup>1</sup> There I proposed ranking states based on how well they run their election system. Thanks to the extraordinary efforts of the Pew Trusts, such an index now exists. Pew's Elections Performance Index (EPI) is a crucial first step toward catching election administration up to 21<sup>st</sup> century management practices. But it is only a first step. As I will explain in this testimony, there is still a good deal more work to do to collect new data and pull together the data that do exist in a form that allows for cross-jurisdiction comparisons.

Finally, Part III will examine federal data-collection efforts not just from the perspective of an elections scholar, but from that of a federalism scholar. The United States has a proud tradition of state-run elections. There is so much variation among and within the states that our election system easily lives up to Justice Brandeis' aphorism about the “laboratories of democracy.” But the laboratories of democracy can only work if someone is recording the results. We need consistent definitions and an easy means for collecting and aggregating data so we can draw comparisons across jurisdiction. This is exactly the role that the federal government ought to play in a decentralized system like our own. The federal government can create the lingua franca needed to compare state policies and performance. It can fund standardized data-collection systems to record the results of the states' non-standardized practices. It can help states learn from one another's best practices and fix their own worst ones. It can foster the competition and

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<sup>1</sup> Heather K. Gerken, *The Democracy Index: Why Our System is Failing and How to Fix It* (Princeton University Press, 2009). Portions of this testimony is derived from that book.

innovation that federalism is supposed to produce without intruding on state policymaking. We should not mourn the variation in our system. We should *harness* it, fueling the race to the top that federalism is designed to produce.

### **I. Data: The Essential Ingredient of Good Policymaking**

Date collection, analysis, and comparison are routine activities in the private and public sectors, and with good reason.

#### **A. Data-driven management: the norm in both the private and public sector**

The private sector measures what matters. My colleague Ian Ayres, has written about how “supercrunchers” use data-driven analysis to build sports teams, diagnose disease, evaluate loan risk, assess the quality of a new wine, predict the future price of plane tickets, choose which passenger will be bumped off an airline flight, and inform car dealers how far they can push a customer on price.<sup>2</sup> Wal-Mart’s data are so precise that it knows that strawberry Pop-Tarts sell at seven times their usual rate just before a hurricane. Data-crunching and benchmarking, in short, are routine practices in Fortune 500 companies.

The public sector measures what matters as well. Government agencies at the state<sup>3</sup> and federal levels<sup>4</sup> routinely rely on data-driven analysis to improve their performance.<sup>5</sup> One of the most well-known programs is called CitiStat, which was modeled on the Comstat program that brought the New York Police Department so much success.<sup>6</sup> CitiStat was first used in Baltimore with impressive results.<sup>7</sup> The city’s mayor met regularly with department heads to create performance targets and assess progress toward them using data generated and collected by the city. For instance, the mayor decided that every pothole should be fixed within 48 hours of someone reporting it. The city then used performance data to evaluate its progress in reaching that goal.<sup>8</sup> Data-driven analysis has been used in a variety of public institutions, ranging from police departments to housing agencies, from transportation agencies to education departments.

Data-driven analysis has a long and distinguished historical pedigree. Just think about the vast amount of economic data that the government collects. We’re all familiar with the GDP, which aggregates the value of goods and services over a set time period.

<sup>2</sup> Ian Ayres, *Supercrunchers: Why Thinking by the Numbers is the New Way to Be Smart* (2007).

<sup>3</sup> See, e.g., Julia Melkers & Katherine Willoughby, *Staying the Course: The Use of Performance Measurements in State Governments* (IBM Center for Business and Government 2004).

<sup>4</sup> For a survey, see Harry P. Hatry et al., *How Federal Programs Use Outcome Information: Opportunities for Federal Managers* (IBM Center for Business and Government 2003).

<sup>5</sup> For a useful sampling of these programs, see Daniel C. Esty & Reece Rushing, *Governing by Numbers: The Promise of Data-Driven Policymaking in the Information Age* (2007).

<sup>6</sup> See, e.g., Paul O’Connell, “Using Performance Data for Accountability: The New York City Police Department’s CompStat Model of Police Management” (IBM Center for Business and Government 2001).

<sup>7</sup> For a comprehensive but perhaps unduly cheerful analysis of CitiStat, see Robert D. Behn, “What All Mayors Would Like to Know about Baltimore’s CitiStat Performance Strategy” (IBM Center for Business and Government 2007).

<sup>8</sup> *Id.* at 9.

The GDP has become a key metric for evaluating economic performance, providing a universal quantitative reference point for evaluating economic conditions. Without the GDP, we would have no sense of how we are doing economically. The GDP maps where we are and helps us chart our future path.

The economy isn't the only area where our government constantly measures. We conduct a full-blown census every ten years. Almost a hundred federal agencies and programs boast data-collection programs.<sup>9</sup> We collect statistics on the environment, transportation, crime, prisons, farming, disease, housing, childcare, immigration, aging, patents, the labor market, international development, medical services, imports and exports, and gas prices. We even try to measure things that many people believe can't be measured, like the quality of a public education.

#### **B. Election administration: the mysterious outlier**

Given how pervasive data-driven policymaking is, the mystery is why something that so naturally lends itself to measurement – election performance -- is not measured consistently. In some instances, as I discuss below, the data aren't being collected. In others, the data are being collected, but they aren't available in a form that is accessible, let alone provides for cross-jurisdiction comparisons.

One might think we don't need more data on our election system. Most of the arguments against data-driven analysis in the public sector boil down to a worry that institutional performance can't be measured. People argue, with some justification, that quantitative measures can't possibly capture how well a school educates its students or whether the government is providing the right social services.

The main thrust of these arguments is that gauging institutional performance requires us to make value judgments, and data can't make those judgments for us. Data-driven analysis may be a natural tool in the business arena, some argue, because the goal is clear: businesses are supposed to make money. Government agencies and educational institutions, in contrast, are supposed to carry out a variety of tasks that necessarily require more complex normative assessments.

While it is plainly true that judging performance requires us to make value-laden decisions about what matters and why, some government activities lend themselves more easily to measurement than others. Election data fall on the comfortable end of this sliding scale. Academics call election administration practices the “nuts and bolts” with good reason. These aren't the issues that have divided the elections community, like campaign finance or felon disenfranchisement. Even if the parties have a tendency to play politics on some issues, there's actually a good deal of agreement on how an election system should work. Moreover, much of what we value in election administration can be captured in a statistic: how long were the lines? how many ballots got discarded? how often did the machines break down? how many people complained about their poll workers?

<sup>9</sup> Federal Agencies with Statistical Programs, <http://www.fedstats.gov/agencies/> (last visited May 8, 2014).

### C. Good data is necessary for good policy

Just as we measure what matters, it matters what we measure . . . or don't measure. The dearth of data in election administration handicaps our efforts to build a system worthy of our storied democratic traditions.

Without good data, we lack the information we need to be confident that we've correctly identified the problem and chosen the right solution. Take two of the most controversial issues in election administration right now: photo ID and early voting. The conventional wisdom is that the first favors Republicans and the second favors Democrats. But as political scientists have begun to amass data on these issues, they have begun to question *both* conventional wisdoms.

What's true of controversial issues is just as true of mundane ones. We cannot run an election system by relying on necessarily atmospheric judgments about what problems exist and how to solve them. Data provide what we need: concrete, comparative information on bottom-line results. Good data help us figure out not just what is happening in a given state or locality, but how its performance compares to similarly situated jurisdictions'. Good data help us spot, surface, and solve the problems that afflict our system. Data, in short, give us the same diagnostic tool used routinely by corporations and government agencies to figure out what's working and what's not.

*Identifying problems and solutions.* The absence of good data poses the most basic of dilemmas for those who care about our election system: it is hard to figure out whether and where problems exist in a world without information. Election experts can name the symptoms they see routinely. But if you were to identify a specific election system and ask whether the problem existed there, experts might not be able to answer your question. Problems are hard to pinpoint in a world without data.

*Distinguishing between a glitch and a trend.* Even when we can identify a potential problem without good data, it's hard to figure out where that problem looms largest or to distinguish between a statistical blip and a genuine pattern. No election system is perfect. Problems occur regularly, if only because human beings are involved in every step of the process. The key is to figure out when the source of the problem is a one-off incident or a systemic error. That cannot be done without good data.

*Benchmarking.* Good policy requires something more than a bunch of individual jurisdictions collecting data on their own. It requires us to benchmark. Benchmarking is a routine practice in the business world, as corporations constantly compare their performance with that of their competitors to identify best practices and figure out where they can improve.

One cannot benchmark without a large amount of data that can be compared across jurisdictions. Election administration is simply too complex and too varied to be captured by studying a small sample or a single piece of data. As several scholars have

explained, an election system is like an “ecosystem. . . . [C]hanges in any one part of the system are likely to affect other areas, sometimes profoundly.”<sup>10</sup> When ecosystems vary as much as they do in the elections context, large-scale, cross-jurisdictional studies are essential.

Put differently, without high-quality, easily compared data, we find ourselves in the same situation as doctors of old. Based on limited information on symptoms (lots of ballots are discarded, the lines seem long), we try to identify the underlying disease (is the source of the problem badly trained poll workers? malfunctioning machinery?). Like the doctors of yore, we may even try one fix, followed by another, hoping that our educated guesses turn out to be correct. The problem is that our educated guesses are still just that . . . guesses.

Even when someone comes up with a good guess as to a solution, we can’t tell how much improvement it will bring or how its effects would compare to other, less costly solutions. In today’s environment of tight budgets and limited resources, this lack of precision undermines the case for change. What we need is what modern medicine provides: large-scale, comparative data that tell us what works and what doesn’t.

*Identifying what drives performance.* The dearth of data doesn’t just make it hard to cure specific ailments in our election system. It also prevents us from inoculating the system against future disease. Put yourselves in the shoes of a reformer or an election administrator and you can see why comparative data are crucial. While you are certainly interested in specific fixes for discrete problems, you really want a robust system capable of self-correction so that problems can be avoided rather than corrected. You want to identify not just best practices, but the basic drivers of performance.

If you are interested in the drivers of performance, absolute numbers matter to you, but comparative numbers are far more useful. After all, if you can’t even identify who’s doing well, it is hard to figure out precisely what drives good performance. Without comparative data on performance, we cannot know whether, for instance, well-funded systems tend to succeed, or whether the key is centralization, better training, or nonpartisan administration.

#### **D. Good data helps move good policy**

Good data don’t just help us identify the problems we have and the solutions we want. Data also help us move from problem to solution. As I’ve written elsewhere, we have a “here to there” problem in election administration. We spend a great deal of time thinking about what’s wrong with our election system (the “here”) and how to fix it (the “there”). But we spend almost no time thinking about how to get from here to there -- how to create an environment in which reform can actually take root.

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<sup>10</sup> Steven Huefner et al., *From Registration To Recounts: The Election Ecosystems of Five Midwestern States* v (2007).

*Identifying policymaking priorities.* Good data are essential if we want reform to take root. To begin, good data are essential to policymakers. Data give policymakers a baseline for refereeing debates between the election administrators who work for them and the reformers who lobby them. Policymakers see plenty of untrustworthy arguments coming from administrators who aren't doing their job properly. But they also grow pretty tired of the insistent drumbeat for change emanating from the reform community. While policymakers may be reluctant to hold election officials accountable based on the necessarily atmospheric judgments of the reform community, they are likely to be convinced by hard numbers and comparative data.

Good data also help policymakers sort through policymaking priorities. Legislators and governors are often bombarded with information. They hear lots of complaints, listen to lots of requests for funding, and sift through lots of reports. What they need is something that helps them separate the genuine problems from run-of-the-mill complaints, a means of distinguishing the signal from the static.

*Helping election administrators make the case for change.* Good data are just as important for election administrators, the people who do the day-to-day work of running our election system. We usually assume that pressure for change comes only from the outside – from voters or reformers or top-level policymakers. But some of the most effective lobbyists for change are people working inside the system. Moreover, the long-term health of any bureaucracy depends heavily on bureaucrats' policing themselves through professional norms.

Good data arm those existing allies. Hard numbers help election administrators sympathetic to reform make the case for change. They help flag policymaking priorities and give election administrators confidence in their proposed solutions.

Good data also create more allies for change among election administrators. Too often, reformers bombard election administrators with complaints and offer "silver bullet" solutions that don't pan out. Good data tell election administrators when they actually have a problem and, better yet, can point the way to a solution.

Good data can also serve as a shield for election administrators, who often find themselves trapped in a political maelstrom through no fault of their own. The absence of data, combined with the episodic way in which we learn about election problems, poses a terrible risk for election administrators. In a world without data, voters learn about problems only when there is a crisis, and they lack a comparative baseline for assessing what's going on. When an election fiasco occurs, voters tend to leap to the conclusion that the problem was deliberately engineered. After all, voters are operating in a virtual black box – they know there's a crisis, they don't see other places experiencing the same problem, and they may even be aware of the partisan affiliation of the person in charge. It is all too easy to connect the dots.

Good data change the blame equation. Hard numbers enable voters and reporters to distinguish between partisan shenanigans and the ailments that afflict most

jurisdictions. Data thus help us reward the many election administrators doing a good job despite intense resource handicaps.

*Developing best practices.* Perhaps the most important role good data can play is to help create a consensus on best practices among election administrators. The long-term health of any system depends largely on administrators policing themselves based on shared professional norms. Indeed, professional norms may ultimately be more important to a well-run system than pressures from the outside. They are what my colleague Jerry Mashaw calls “soft law” because they rely on an informal source of power – peer pressure. Professional norms work because administrators are just like the rest of us. They care what other people think, and they are likely to care most about the opinions of people in their own professional tribe. Social scientists have done extensive work identifying the ways in which the pressure to conform affects individual behavior. Many professional groups – lawyers, accountants, doctors -- possess a set of shared norms about best practices. While these norms are often informal, they cabin the range of acceptable behavior. When professional identity becomes intertwined with particular practices, peoples’ own sense that they are doing a good job depends on conforming to these norms.

It’s not just peer pressure that causes people to conform to professional standards; it’s also time constraints. No one has the time to think through all the considerations involved in every decision they make. Like voters, administrators need shorthand to guide their behavior. A professional consensus on best practices can represent a pretty sensible heuristic for figuring out the right choice. Good data help us pinpoint and disseminate best practices.

Even when we cannot reach a consensus on model policy inputs, it is still possible to generate professional norms about performance *outputs*. Good data can create something akin to a *lingua franca* in the realm of election administration, a shared set of performance standards that would apply to localities regardless of their policy practices.

In sum, good data are essential for a great election system. They provide an essential management tool, enabling us to diagnose and treat the problems that plague our election system. Good data help us identify problems and find cost-effective solution. They show us where our policymaking policies should lie and provide realistic benchmarks for solutions. And they provide the allies of reform with the tools they need to push for change. Good data not only set the policy agenda, then, but push it forward.

## **II. Where We Are and Where We Go From Here**

Happily, things have improved since 2009, when I first wrote about election administration as a “world without data.” Thanks to public and private efforts, most notably the Election Assistance Commission and the Pew Trusts, we have more and better data on how well our election system is performing. Indeed, we now have sufficient information to create the first index of state election performance.

On the public side, the much-maligned Election Assistance Commission has had its share of controversy. But it has led the way in data-collection efforts, administering a survey of state election practices that has helped jumpstart the important process of baselining state performance. The survey wasn't perfect, nor was it administered perfectly, thus prompting some well-deserved criticism by election administrators. But it was a crucial first step toward identifying the basic information states ought to collect and pulling it together in one survey.

On the private side, Pew has led the way in promoting data-driven management among election administrators. The Pew Center on the States has devoted considerable financial, intellectual, and organizing resources to improving and encouraging state data-collection efforts. It's taken on the daunting task of "scrubbing" and evaluating the extant data sets available, and no organization has done more to promote awareness of the need for data among election administrators.

One of Pew's most important projects has been the Elections Performance Index, which pulls together 17 indicators and aggregates them so we can compare state performance against one another and across time. Pew has thus given us what we've never had before – the election administration equivalent of the GDP measure. We now have the ability to baseline state performance, track the effects of policy change, and evaluate the drivers of performance.

While I'll leave it to the Committee's other witnesses to describe the EPI in full, let me just note that we are already reaping the benefits of the index. For instance, we've begun to learn things we didn't know before. States with high obesity rates, for instance, seem to have trouble getting their voters to the polls. So too, we're shaking loose some of our assumptions about which systems are working and which aren't. For instance, a number of states with long lines in 2012 ranked pretty high on the EPI. Ohio and Florida, the perennial objects of late-night comedy during elections season, were somewhere in the middle of the pack. Moreover, we see rich states and poor states performing well and badly on the list, something that at least raises questions about the real drivers of election performance.

The EPI hasn't just given us a new diagnostic tool. It also seems to be pushing reform forward.<sup>11</sup> Indeed, now that we can assess state performance across two comparable elections (the 2008 and 2012 presidential elections), we see states paying close attention to the rankings. In the first few weeks after the release of the 2012 EPI, there were lots of stories about states touting their rise in the rankings or grumbling about their scores, with more discussions happening behind the scenes.

Secretary of State Jon Husted, for instance, noted that one of the reasons that Ohio didn't rank higher on the EPI was its failure to keep up with other states in creating an online registration system and urged his legislature to take up the bill. Iowa is paying

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<sup>11</sup> The next three paragraphs were drawn from a post on the Election Law Blog entitled "The EPI and Election Reform: The Early Returns are Promising," which is available at <http://electionlawblog.org/?p=60357>. That post contains links to the relevant stories.

special attention to military and overseas balloting, which pushed its rankings down. Florida was working with Pew in advance of the EPI's release and promises that it has *already* enacted transparency and access reforms that will improve its rankings next time. Indiana's Secretary of State tells us that, as we speak, the state is working on a post-election auditing process in order to up its ranking. The state also issued "a call to action" suggesting further improvements. Georgia insists that it's going to do a better job on data collection in the future in order to increase its score.

We see the same thing happening at the top of the rankings, also as I predicted. For example, the Secretary of State of Montana – which now ranks near the top – is not resting on her laurels. She called for additional reform so that Montana could maintain its position. So, too, the Secretary of State of top-ranked Michigan, which fell just shy of the top five, has called for online voter registration and changes to absentee voting in order to move the state higher up the list. Twelfth-ranked Washington is on the hunt for ways to improve its already strong ranking. And in North Dakota, which ranked first in the nation, policymakers who oppose voting rules recently enacted in North Dakota are using the EPI as a cudgel to beat the other side, arguing that those changes put the state at risk of losing its treasured number one spot.

If the EPI continues to develop into the touchstone for measuring election performance, it should matter more in these debates, and the pressure will continue to mount for low-performing states. States improved an average of 4.4 percentage points between 2008 and 2012. As Doug Chapin noted, "even states showing modest improvement run the risk of being left behind." A spokesperson for Washington State has plainly gotten the message: "[M]uch of what we've done is outstanding" but "others are catching up . . . We're still a high performing state [but] other states are making rapid improvements. Essentially, all boats are rising . . ." Moreover, as I noted above, even if the EPI doesn't prod a single state to do a single thing, it will still matter a great deal to election reform. That's because it provides an essential tool for data-driven policymaking: a baseline.

There are other sources of data as well, in large part due to the efforts of savvy local administrators. But these data aren't readily accessible, let alone provided in a form that would allow cross-jurisdiction comparisons.

In sum, while we've made important strides in collecting data on election performance, much work remains to be done. Let me describe three main areas where the data we have are decidedly sub par.

*Cost.* The information we have on the cost of administering elections -- one of the most important factors in the reform equation -- is woefully incomplete. At present, we have no reliable means of measuring the costs of running elections from state to state. During a period of tight budgets and financial restraint, it is essential to compare the relative costs and benefits of the systems we use and the reforms we seek. That's why even the granular information we have on cost is already driving reform forward. Many Secretaries of States, for instance, are turning to online registration systems because they

reduce both human error *and* financial costs. The price tag for online registration is substantially smaller for traditional registration processes. Sometimes dollar and cents align with good sense in the policy world. Without more and better data on cost, however, we cannot identify the cost-effective interventions that would make our system better.

*Local variation.* We can also do a better job collecting data on local performance. While we've begun to gather sufficient information to draw some cross-state comparisons, we have no comparable means of assessing the considerable variation that exists locally. Local comparisons, of course, would give us a far richer set of information on what works and why. It should also help us identify policymaking priorities going forward. Virtually every Secretary of State will tell you that he or she worries most about one or two local outliers whose performance falls considerably below the statewide average, and state policymakers often offer gloomy predictions about which city or county will convert their state into the next Florida or Ohio. Without local performance data, however, we cannot identify the localities that put our system most at risk.

Needless to say, we cannot expect every locality to provide fine-grained data on every issue. Happily, we don't need massive amounts of data from every single jurisdiction to get a good read on whether the system is working or not. In collecting data at the local level, we should think like the Census Bureau.<sup>12</sup> The Census Bureau knows that it needs certain data from everyone. It thus sends every household a "short form" once every ten years to ask about basic demographic questions -- age, sex, and race/ethnicity. The Bureau then uses random sampling to gather other information. It sends a long form to a subset of the population to pull together more detailed data issues like education, jobs, and housing. We should use a similar short form/long form approach for local jurisdictions. We should identify a basic set of information that every jurisdiction ought to collect and then use a random sampling strategy to glean the rest of the information we'd like to have. We could also do a "deep dive" into a small number of jurisdictions, sending out the elections equivalent of McKinsey consultants to get fine-grained data on every aspect of the elections process for a handful of localities.

*Customer-service data.* In keeping with the recommendations of the Presidential Commission on Election Administration,<sup>13</sup> we should also encourage states and localities to gather more data on the voter's experience. Most Fortune 500 companies pay a great deal of attention to this information; most election administrators, unfortunately, do not.

There are many sensible strategies for figuring out whether, say, the registration system is unduly cumbersome or whether polling places are well designed for the average voter. The first involves testers. In *The Mystery of Capital*, Hernando DeSoto describes his elegant strategy for evaluating the quality of corporate regulations. He simply sent testers to different counties and then asked them to try to register a business. Based on their feedback, he gathered extremely useful quantitative and qualitative data on how

<sup>12</sup> I am indebted to Eric Fischer for suggesting this strategy.

<sup>13</sup> The Commission's excellent report is available at <https://www.supportthevoter.gov/>.

each process worked.<sup>14</sup> Following DeSoto's example, we could send out a diverse group of eligible voters -- someone who lives in a rural area, someone who lives in the inner city, someone who is blind, someone who has a seventh grade education, someone who requires language assistance, an overseas voter -- to see whether they are able to register successfully and assess how long it takes them to do so. So, too, voter surveys can give us helpful information about the voter experience.

Alternatively, as I suggested in my book, we could create the voting equivalent of "Nielsen families,"<sup>15</sup> the randomly selected individuals who record their television watching habits for the Nielsen ratings service. We could ask randomly selected voters to record information about their experiences with the election process. For instance, a Nielsen voter might be asked how long it took her to register, whether she thought her polling place was conveniently located, and whether she found the ballot design confusing.

In sum, while we have come some distance in collecting elections data, there is a good deal more work to be done. As I argue in the next Part, the federal government is well suited to moving this process forward.

### **III. Why Congressional Data-Collection Efforts Vindicate the Values of Federalism**

One might, of course, worry about the federal government intervening in what is largely a state-run endeavor. But federalism values cut the other way in this context. Indeed, were Congress to fund, encourage, or even mandate data collection by the states, it would serve the values of federalism rather than undermine them.

As a federalism scholar, I find much to admire about our decentralized election system. But a well-functioning decentralized system is not the same thing as a system without any national involvement. To the contrary, federalism's fans and foes are united in the view that there is always a role for the national in a federal system. This principle plainly applies to election administration, where one of the most obvious and important roles that federal actors can play is in funding, facilitating, and promoting data collection.

At present, states and localities are performing their storied role as "laboratories of democracy" in our election system. Because of the wide variation in state and local election practices, a huge number of policy experiments are running across the country. There is only one problem: we aren't recording the results of those experiments. Without more and better data on state and local practices, we risk turning the great promise of decentralization -- that it can help us identify and implement better policy -- into an empty one.

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<sup>14</sup> Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* 28 (2000).

<sup>15</sup> For information on Nielsen families, see <http://www.nielsenmedia.com/nc/portal/site/Public/>. Many thanks to David Schleicher for the great analogy.

The federal government is uniquely well suited to help. Data collection requires shared definitions and common collection protocols -- just what a federal agency can provide. Data collection also involves economies of scale, which is another long-standing justification for federal intervention in state affairs. It would be pointless to have fifty states design their own data-collection systems. As we have seen, the states end up collecting different information, and the data cannot be easily aggregated or compared. Moreover, a great deal of money is wasted when fifty states create fifty different systems where one or two will do.

The federal government can do for states what Fortune 500 companies routinely do for their decentralized units: invest in an integrated, user-friendly data-collection system that makes it easy to collect and aggregate the information we need. Better yet, the federal government can create such a system at a fraction of the cost that the states would pay if they undertook such efforts individually.

The federal government can also encourage, even prod states and localities into 21<sup>st</sup> century data-collection practices. It can do so through regulatory mandates or through conditional funding. Both are well within Congress's power and both would help states and localities create and maintain a well-functioning election system that redounds to the benefit of us all. At the very least, Congress can continue to fund and support the EAC's survey efforts.

Finally, turning to from the general to the specific, if there were one area where federal support for data collection could play an especially useful role, it is in helping states and localities track voters as they move. Voter mobility causes election administrators huge headaches. It fills voter registration lists with deadwood, eats up precious resources, and results in too many frustrated voters on election day. The private sector has little trouble keeping track of its customers when they move, and the federal government has long dealt with the challenges associated with a mobile population. Solving the problem of voter mobility is just the kind of federal project that would help states do a better job of running state and federal elections.

### **Conclusion**

Data collection efforts in the United States are at an inflection point. Thanks to public and private efforts, we've made important strides in recent years. But there is much more work to do. Now is the time to build on our initial successes and support the type of 21<sup>st</sup> century data-collection efforts necessary to support a 21<sup>st</sup> century election system. Gathering information is the first and more important step in the policymaking process, and it should be a top priority for Congress as it strives to promote an election system worthy of our democratic traditions.

**EXECUTIVE SUMMARY**

**Testimony of Professor Heather K. Gerken  
J. Skelly Wright Professor of Law  
Yale Law School**

**Submitted to the United States Senate Committee on Rules and Administration  
May 9, 2014**

We measure what matters. The public and private sector routinely collect and analyze data on virtually every aspect of our lives. Data-driven management isn't the ideal any more; it's the norm for corporations and government alike. Good data help us spot, surface, and solve existing problems. Data don't just allow us to identify policymaking priorities, but help move the policymaking process forward.

Data collection is at an inflection point in election administration. Things have improved in recent years, with a number of dynamic election administrators and astute state policymakers deploying data to identify problems and find solutions. Thanks to efforts by the public and private sector, we now have the nation's first election performance index, an idea I proposed several years ago. For the first time, we have a baseline to compare state performance and evaluate the effects of reform over time. That index will provide a crucial policymaking tool going forward.

Nonetheless, election administration still lags behind many public and private institutions on the data-collection front. We still lack sufficient data on a wide variety of important issues, including the cost of elections, local performance, and the voter experience. In some instances, the data are being collected, but they aren't collected in a form that is accessible let alone one that enables comparisons across jurisdictions. The absence of good data handicaps our efforts to fix the problems we see in the elections process, anticipate the problems we don't yet see, and manage the reform process going forward. Unless we capitalize on the data-collection efforts of recent years, we will never have an election system that lives up to our storied democratic traditions.

The federal government is uniquely well suited to assist the states in their nascent data-collection efforts. The marked variation in state and local election schemes lives up to Justice Brandeis' aphorism about the "laboratories of democracy." But the laboratories of democracy can only work if someone is recording the results. The federal government can provide what the states cannot supply on their own: a cost-effective, easy-to-use strategy for collecting, aggregating, and comparing state and local data. Were the federal government to promote data-collection among states and localities, it would vindicate the most important of federalism values by making it easier for the states to do their job. The federal government can foster the competition and innovation that federalism is supposed to produce without intruding on state policymaking. We should not mourn the variation in our system. We should *harness* it, fueling the race to the top to which we all aspire. Good data, in sum, are essential for a great election system.

**Biographical Information**

Heather K. Gerken is the J. Skelly Wright Professor of Law at Yale Law School. Professor Gerken specializes in election law and constitutional law. She has published in the *Harvard Law Review*, the *Yale Law Journal*, the *Stanford Law Review*, *Political Theory*, and *Political Science Quarterly*. Her most recent scholarship explores questions of election reform, federalism, diversity, and dissent. Her work has been featured in *The Atlantic*' "Ideas of the Year" section and the Ideas Section of the *Boston Globe* and has been the subject of a festschrift and a symposium. Professor Gerken clerked for Judge Stephen Reinhardt of the 9th Circuit and Justice David Souter of the United States Supreme Court. After practicing for several years, she joined the Harvard faculty in September 2000 and was awarded tenure in 2005. In 2006, she joined the Yale faculty. She has won teaching awards at both Yale and Harvard, has been named one of the nation's "twenty-six best law teachers" by a book published by the Harvard University Press, and has won a Green Bag award for legal writing. Professor Gerken served as a senior legal adviser to the Obama for America campaign in 2008 and 2012. Her proposal for creating a "Democracy Index" was incorporated into separate bills by then-Senator Hillary Clinton, then-Senator Barack Obama, and Congressman Israel and turned into reality by the Pew Trusts, which created the nation's first Election Performance Index in February 2013.

**Written Testimony of Charles Stewart III**  
**Kenan Sahin Distinguished Professor of Political Science, MIT**  
**Co-Director of the Caltech/MIT Voting Technology Project**  
**Before the U.S. Senate Committee on Rules and Administration**

**May 14, 2014**

Chairman Schumer, Ranking Member Roberts, and distinguished members of the Committee: thank you for the opportunity to speak with you today about the collection, analysis, and use of election data to improve elections for all Americans.

I am a professor of political science at MIT, where I have taught and conducted research about American politics for twenty-nine years. For the past decade, I have also been the co-director of the Caltech/MIT Voting Technology Project (VTP).

In my association with the VTP, I have been especially interested in the challenge of creating metrics so that we can know whether the efforts we undertake and the dollars we spend to improve elections are actually doing the job. I have also had the privilege of working with the Pew Center on the States to help bring to fruition their Elections Performance Index (EPI, which David Becker will speak more about), and have co-edited (with Prof. Barry C. Burden of the University of Wisconsin) a forthcoming book about the use of metrics to assess the quality of elections in America. (The book's title is *The Measure of American Elections*, and will be published by Cambridge University Press at the end of the summer.)

The remarks I will make today are drawn heavily from these experiences. I also rely on a white paper I coauthored with Professor Daron Shaw of the University of Texas for use by the Presidential Commission on Election Administration (PCEA) about the use of election data in election administration. I would happily make available to the committee the draft of the book with Professor Burden and the PCEA white paper, if the committee would find them useful.

In today's testimony, I want to touch on three major points.

1. There is a need for a more data-centered approach to election administration in the United States.
2. The federal government is responsible for the two most important data-collecting efforts related to election administration; these efforts need to be supported and strengthened.
3. Local governments need help in converting the mountain of data that is generated in the conduct of elections into information they can use to better manage elections.

### 1. THERE IS A NEED FOR A MORE DATA-CENTERED APPROACH TO ELECTION ADMINISTRATION.

How well are American elections run? How would we know the answer to this question?

In my experience, whenever this question is posed, it is common to answer from the position of deeply held beliefs, but rarely from the position of a systematic analysis of facts. These beliefs might arise from partisanship, such as when we are happy to judge an election well-run when our candidate wins. Or, these beliefs might be based on tradition — a well-run election is one that is conducted the way we have always done things.

Rarely are answers to the question about how well elections are run rooted in hard facts, such as statistics about how easily people could find their polling place, or how many voters were confused by ballot design, or how long people had to wait to vote.

When facts intervene, they rarely are presented in a systematic fashion. Opinions about levels of voter fraud might be due to a viral YouTube video. Satisfaction with a new electronic voting machine may be illustrated by a picture of a smiling citizen coming out of the precinct with an “I Voted” sticker stuck to her lapel. Disdain about the ability of local governments to run elections might follow from a newspaper article detailing yet another season of long lines outside polling places in Florida (or South Carolina, or Maryland, or ...).

This approach is evaluation-by-anecdote.

In contrast, consider how we approach similar questions about other policy areas: “How good are America’s prisons?” or “How good are America’s schools?” or “How good is America’s health care system?”

Some people surely would respond based on fact-free beliefs, and others would respond with a random story about the experience that one’s cousin had with one of these institutions. However, it would not be difficult to discover basic facts about these other policy domains. It would take little effort to find out, for instance, what the re-incarceration rates were in each state, or the ranking of fourth graders on the reading portion of the National Assessment of Educational Progress, or the infant mortality rate in each state.

None of the statistics just referenced is the be-all-and-end-all of the questions about how well the prison systems, schools, and health systems work in the states. The point is that in each of these policy domains, significant effort is poured into defining measures of policy input and output consistently across states, multiple measures of system performance are regularly reported through a federal agency, and entire professions have grown up to analyze these data. Despite the fact that answers to policy questions about criminal justice, education, and health care are legitimately informed by political values and deeply held personal beliefs, even committed ideologues ground their appeals in statistics when they argue about policy; some

will even be convinced they are wrong if the facts are against them. The data provide a common starting point.

In other words, an obvious way to begin addressing questions about the state of public policy in these other important areas would be to draw upon a large body of data about the performance of these institutions and policy systems.

To return to elections, the correct strategy to overcome debilitating partisan conflict over election administration involves grounding debates over policy in hard facts. The success of the PCEA and the widespread embrace of its report, no doubt, are due to the Commission's attention to the facts — some of which challenged conventional orthodoxies. The task before us is perpetuating the model provided by the PCEA of bipartisan problem-solving guided by data.

#### The good news and the bad news

There is good news and bad news in the effort to make election administration and election policymaking more fact-based. The good news is that elections are awash in data, more attention is going into collecting and reporting data that can be used to help manage elections than a decade ago, and there is a growing network of election officials, academics, and other experts who are dedicated to the cause of a more metrics-based approach to diagnosing and fixing problems in the administration of elections.

The bad news is that there are challenges and barriers to the further development of a metrics-based approach to election administration. The big barrier is continued uncertainty about the future of the EAC, which threatens the future of the most important data collection effort in the area of election administration and has slowed down the development of data sharing standards that would facilitate innovation, in translating election data into useful management information.

There are smaller barriers, too. One of these is the role of localism in the conduct of elections. Elections are primarily a state responsibility, which most states have addressed by making election administration a local responsibility. There are benefits to such decentralization, including greater trust among voters in the fairness of the voting process. But there are costs, too, that must be accounted for.

From the perspective of developing a metrics-centered approach to election administration, localism makes it more difficult for similarly situated jurisdictions to learn from each other, because similarly situated jurisdictions often use different vocabularies to talk about the same things. (George Bernard Shaw's quip about Great Britain and the United States being nations separated by a common language seems apt here.) Election administrators in small jurisdictions are often poorly equipped to use modern management approaches to conduct elections. Finally, an under-appreciated consequence of localism is that it creates a fragmented

market for election equipment manufacturers, which hinders the development of information-technology solutions that might help local officials manage based on systematic measures of performance.

#### A map of election administration data

For data to be useful in improving any area of public administration — not just election administration — it must exhibit two critical characteristics. First, it must conform to the units of government where policy is made and implementation occurs. Second, it must be comparable across units.

In the United States, virtually every level of government is in a position to set policy and pass laws that influence how elections are conducted. These different levels of government are all involved in implementing laws that affect the convenience and integrity of elections. In addition, precincts are a unit of government where policy is generally not made, but in which the implementation of federal, state, and local laws can significantly influence the actual experience of voters. A comprehensive data portrait of election administration in the United States would have indicators of the outcomes of election administration at all these levels.

There are, in fact, data sources that address election administration at all these levels, some of which are noted in Table 1 below. Note that the sources at the finer levels of analysis can be aggregated up, the best example being voting machine totals that can be added up to provide election returns at the precinct, county, state, and national levels.

**Table 1. Levels of administration and available election administration data**

Level of govt.	Data source	Producing agency	Description
State	Current Population Survey, Voting and Registration Supplement	U.S. Census Bureau	Survey data about voter participation and registration patterns
Local (county/municipal)	Election Administration and Voting Survey	U.S. Election Assistance Commission	Counts of the number of voters participating in elections — registration, absentee, UOCAVA, provisional ballot statistics. Counts of precincts, election workers, and voting machines
Precinct	Election returns	State and local election departments	Number of votes cast for candidates and the number of voters who turned out at the polls
Voting machine	Various log files	Local election departments	Voting machines record “events” associated with using the equipment.

Table 1 contains a row for “voting machine,” even though it is not a unit of government. It is included to emphasize the fact that individual items of voting equipment may be the source of

data that provides information about the administration of elections, beyond just the vote totals. I say more about this below.

Table 1 excludes one very useful source of data that is generally maintained in cooperation between state and local governments — voter registration lists. Not only do the registration lists record how many people are registered statewide and in individual jurisdictions, they can also provide information about the number of people assigned to each precinct, how many people voted in each precinct, and (in some cases) the date and location of voting for early voting.

The second important desired feature of policy-relevant data is that it should be comparable across different units. A single data point — such as the number of registered voters in a precinct — is not very informative unless it can be compared to a data point that comes from a similar unit — such as the number of registered voters in another precinct. In addition, comparing two data points is uninformative if the data mean different things in the two places. If the first precinct is in a state that accounts for active and inactive voters in the count of registered voters, while the second precinct is in a state that only accounts for active registrants, the comparison is of limited use.

The issue of comparability is a major one in the field of election administration. For some administrative processes, there sometimes seems to be as many definitions for common terms as there are states or counties.

For instance, in the Election Administration and Voting Survey (EAVS), which is administered biennially by the U.S. Election Assistance Commission (EAC), counties are asked to report “the total number of people in your jurisdiction who participated” in the most recent federal election, a quantity we can use to define “turnout.” They are also asked to report the method used to reach this quantity. Of the localities responding in 2012, 1,448 based their turnout report on actual ballots counted, 1,071 based their report on the number of voters checked off the voter list plus the number of absentee ballots, 336 used the total number of votes cast for president, 563 ran a report of the number of voters according to the electronic voter history file, and 518 reported using “other” methods. Experience has shown that these methods all yield similar results, but they do not yield *identical* results.

As mentioned above, localism is a feature of American election administration that hampers the development of a common body of knowledge about how policies affect the convenience and security of voting. Localism also hampers the development of technologies to assist state and local election officials do their jobs better. The EAVS is an invaluable resource in this setting, to the degree it has gotten the election administration community to speak more of a common language — or at least to understand each other’s languages better — and has provided hard facts that help similarly situated jurisdictions learn from each other.

**2. THE FEDERAL GOVERNMENT IS CURRENTLY RESPONSIBLE FOR THE TWO MOST IMPORTANT DATA-COLLECTION EFFORTS RELATED TO ELECTION ADMINISTRATION; THESE EFFORTS NEED TO BE SUPPORTED AND STRENGTHENED.**

The federal government has played an indispensable role in the collection of critical data that informs our understanding of how well elections are conducted in the United States. The most visible of these efforts are two data products, the Voting and Registration Supplement (VRS) of the Current Population Survey and the Election Administration and Voting Survey (EAVS) conducted biennially by the EAC.

The VRS has long been familiar to the election administration and reform communities because it is the most important national survey that tracks voter turnout and registration patterns. As the name implies, it is a supplement to the monthly Current Population Survey (CPS), which is sponsored jointly by the U.S. Census Bureau and the U.S. Bureau of Labor Statistics, primarily to gauge labor market dynamics. Every two years in November, a large subset of the CPS sample is asked a small number of questions, about whether they voted in the most recent federal election, the mode they used to vote (in-person on Election Day, in-person at an early voting site, or absentee/by-mail), whether they are registered, and reasons for non-voting and non-registration (among those who report not voting and not registering, respectively).

The VRS's large sample of voters in each state and the District of Columbia allows the examination of voting and registration trends at a level of detail that is simply impossible through other means. Its long history, stretching back to the 1960s, provides an invaluable time series of turnout and registration patterns that allows policymakers and the public to see clearly the impact of federal election laws over time, such as the Voting Rights Act of 1965 and the NVRA. The VRS's laser-like focus on two questions, turnout and registration, makes it the best data source by which to understand these issues.

Because the VRS has a distinguished history and has been responsible for the core knowledge we have about turnout and registration dynamics, I will say no more about it than to urge its continued support.

The EAC's Election Administration and Voting Survey: An invaluable resource

Instead, I would like to focus attention on a newer data program, the EAC's Election Administration and Voting Survey (EAVS). Beyond the fact that it is a national survey, the value of the EAVS comes in its comprehensive coverage of *all* local election jurisdictions — that is, the units of government that are the most directly responsible for administering elections — and its attention to comparability. Therefore, it is more properly considered a national election administration and voting *census*.

Before the EAVS was begun in 2004, the only data available at the level of the local jurisdiction to help inform election policymaking nationwide was the number of votes cast for candidates

for federal office, but that was available only if scholars and policymakers contacted each state elections division separately. Other basic facts, such as the number of absentee ballots mailed out and returned, the number of voting machines, the number of new registrations that were rejected and the number of overseas military ballots mailed out were simply unknown. The EAVS survey instrument collects data for about 618 distinct metrics that are useful in painting a comprehensive portrait of the performance of American elections.

The EAVS experienced growing pains in its earliest years, both in terms of settling on the items to include in the survey and in the ability (or willingness) of local jurisdictions to respond. These challenges are well documented in the EAC's 2004 "Election Administrator Survey Report." However, the 2012 EAVS saw nearly universal participation by local governments.

One measure of local government participation in the EAVS is the "data completeness" measure that is contained in the Pew EPI. Rather than expect all local jurisdictions to respond to all the minute details of the survey, the Pew data completeness measure identifies seventeen high-level items on the EAVS that are necessary for monitoring the basic performance of elections at the local level. These are items such as the number of new registration forms processed and the number of absentee ballots requested and mailed out to voters. A particular state's "data completeness score" is simply the percentage of these seventeen items that the jurisdiction reported. The nationwide data completeness score is the average of all the local scores, weighted by the size of the jurisdiction.

The nationwide average data completeness scores were 86% in 2008 and 94% in 2010. For 2012, completeness was 95%.

Comparability is another feature of the EAVS that can be easily overlooked. One way that the EAVS helps to ensure the comparability of the data across jurisdictions is through its Statutory Overview. The Statutory Overview, which is published alongside the quantitative data gathered via the EAVS, first of all provides a summary of state laws that are relevant to the conduct of federal elections. But the survey also allows states to provide definitions to common terms used in election administration, so that the quantitative information in the EAVS can be better understood. For instance, Section A of the Statutory Overview instrument asks each state to define nine specific election administration terms, and to provide a legal citation to the definition. The terms include "over-vote," "under-vote," "absentee," and "early voting." Responses to this section provide guidance in moving between state-specific terminology and terminology that is used in national discussions of election administration. For instance, it is through the statutory overview that we learn that states use eight different terms to refer to mail-in voting (including "absentee," "mail-in voting," and "early voting") and eight different terms for early voting (including "early voting," "absentee in-person," and "in-person advance voting").

The EAC issues four written reports that summarize the data collected through the EAVS. These are the reports related to the administration of the National Voter Registration Act (NVRA) and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), plus a report that

summarizes findings about the remaining election administration items in the EAVS and the Statutory Overview report. The EAC also makes the raw data available for use by the general public, available for download in spreadsheet format, and in other formats that facilitate statistical analysis.

#### A sampling of findings from the 2008 and 2012 EAVS

It is because of the EAVS — and only because of the EAVS — that we know the following facts about the 2012 federal election, with some comparisons to the 2008 election:

- Over 60 million registration forms were processed by the fifty states and the District of Columbia in the two-year election cycle ending November 2012. One-third of these forms were new registrations. Over 40% were address changes.
- In 2012, 65% of voters cast ballots on Election Day, 25% cast ballots absentee or by mail, and 10% cast ballots at early voting sites.
- Over 861,000 UOCAVA ballots were mailed out and nearly 601,000 were returned for counting, for a 70% return rate. This was down from 960,000 mailed out in 2008, with over 702,000 returned for counting (73% return rate) in 2008.
- Fifty-three percent of UOCAVA ballots were sent to military voters in 2012. This is down somewhat compared to 2008.
- Rejection rates for submitted UOCAVA ballots (3.5%) in 2012 were slightly higher than the rejection rates for civilian absentee ballots (2.9%). (Rejection rates for both UOCAVA and civilian absentee ballots were lower in 2012 than in 2008.)
- UOCAVA ballots were most commonly rejected because they were not received on time (42% of rejections) or there was a problem with the voter's signature (14%). In contrast, civilian absentee ballots were most often rejected because of signature problems (36%), followed by being received late (33%).
- Local jurisdictions were divided into over 171,000 precincts. There were 99,000 physical polling places used on Election Day and approximately 2,500 early-voting sites. The number of precincts and Election Day voting sites was down roughly 10% compared to 2008; the number of early voting locations was approximately the same.
- The number of Election Day voters per Election Day polling place grew from 671 in 2008 to 689 in 2012.
- The number of early voters per early voting site in 2012 averaged 1,111 per day of early voting.
- The number of provisional ballots increased in 2012 to 2.6 million, compared to 2.1 million in 2008. The number of provisional ballots eventually counted also increased, from 1.4 million in 2008 to 1.9 million in 2012.

### Challenges facing the EAVS

The EAVS remains a work in progress. A handful of states have been persistent non-responders, which means that citizens of those states are in the dark about basic features of election administration. The need to maintain a questionnaire that allows for the diversity of election administration practices in the states and territories creates a large instrument that can be a challenge to administer, respond to, and use. The raw data from the EAVS is generally released between nine months and a year following each federal election. This gap between the general election and the release of the EAVS data makes it difficult to insert nationally comparable election administration data into state debates about changes to election laws in the winter legislative sessions that generally follow November elections.

These are normal, manageable challenges that would face any large federal data collection program. There is one major challenge to the EAVS that is unique to it and beyond the control of the EAC's able staff: the EAVS's existence is threatened by the ongoing uncertainty about the future of the EAC. Despite the uncertainty about the EAC's future, the research staff has soldiered on, continuing to administer the survey after the past two federal elections. Despite difficult working conditions, the EAC staff has to be commended for continuing on with this important scientific activity.

Still, these are not conditions under which any important federal data gathering program can grow, develop, and excel. Whatever the future of the EAC, and however the clearinghouse and research functions of the EAC might be divided up should the Commission ever be abolished — the EAVS needs to be protected. Without an EAVS, we would be flying blind, and would be much more likely to re-experience the types of election administration meltdowns that led to the EAC's creation in the first place.

### **3. LOCAL GOVERNMENTS NEED HELP IN CONVERTING THE MOUNTAIN OF DATA THAT IS GENERATED IN THE CONDUCT OF ELECTIONS INTO INFORMATION THEY CAN USE TO BETTER MANAGE ELECTIONS.**

Anyone who has encountered elections professionally — as a candidate, election administrator, academic, journalist, or citizen volunteer — knows how much data is generated in the course of conducting an election. Ballots cast by voters are quickly translated into election returns, which are often broken down by the precinct in which they are cast. Sometimes these election returns are further broken down by the mode of voting.

Other statistical reports are generated, too. Voter registration databases can be used to generate reports of how many voters live in each precinct — reports that are often further broken down by race, sex, age, and political party. Some states and localities generate other reports that are similarly detailed, such as the number of absentee ballots and number of provisional ballot.

What will come as a surprise to most is that these types of reports generated in the course of conducting an election are only the tip of the iceberg. So much more data is generated in the course of conducting an election than only election returns and turnout reports.

Focusing on Election Day itself, the computer equipment that helps an election official manage an election also records information about each transaction. To be very clear, this is not data about *whom* the voter has voted for. Rather, it is data that records things like the time the voter checked in at the registration table and the time when the voting machine was prepared for the voter to cast a ballot (if it is an electronic machine) or scanned a ballot (if it is an optical scanning machine).

This is the transaction data associated with elections. Retailers know that transaction data can tell managers about the behavior of their customers; the best managers know how to turn this data into changes in customer service that improve the shopping experience. It is not a big stretch to think about voters as customers when they come to the polls, and thus to ask, how can transaction data help improve the convenience and security of voting?

Example: The value of transaction data for addressing long lines at the polls

Why is transaction information important in elections? We can see the potential importance of using voter transaction data if we consider the problem of long lines on Election Day.

Quite simply, a long line occurs when there is not enough equipment or personnel to handle the volume of voters who arrive at a polling place. Defining what is enough equipment or personnel is tricky, however. The science of operations management tells us that to know "how much is enough," we need to know just a few basic things, such as arrival rates and service times (i.e., how long does it take to check in and to mark a ballot?). We need to know how these arrival rates and service times vary over the time of day, how they vary across precincts, and how they vary according to the populations who are served at each precinct.

Based on my talking to election officials and examining many types of data and numerous reports, I am convinced that local officials typically do not know basic facts, like arrival rates and service times, with the degree of precision necessary to plan the purchasing of equipment and deployment of resources so as to keep lines to a reasonable length.

Of course, all officials have a general sense of when voters show up to vote. They will often tell you that the turnout of voters in working class neighborhoods spikes after work hours, while turnout of voters in precincts with a lot of retirees spikes in the middle of the day. However, not many will know how many voters arrive between 7:00 and 7:30 a.m., compared to between 7:30 and 8:00 a.m. And yet, it is precisely this degree of precision that is necessary in order to know if you have enough voting machines to handle the anticipated surge of voters when polls open on Election Day.

This is where arrival rate and service time data from voting equipment could be so useful. Today, officials who oversee elections for half of the American electorate — i.e., the half who already utilize electronic poll books — probably possess all they need to know about the arrival rates of voters to make the calculations necessary to plan for the next election, and to ensure that lines don't overwhelm them.

Why don't election officials use this data more often? Two main reasons dominate.

First, the reporting-functions of election equipment are usually not set up to produce the types of reports that would be useful to election officials as they make their plans to manage future elections. At the risk of getting too geeky, the event logs produced by much of the current voting equipment is oriented around helping local officials diagnose problems with their voting equipment — a critical function, no doubt — and not to help with the forward-looking tasks of knowing how much voting equipment to buy and how to deploy it.

Second, most local election departments do not possess the type of industrial engineering expertise necessary to analyze service data from election machines. In fact, it would probably be impractical for all but the largest of election jurisdictions to maintain such expertise full time, given all their other pressing needs. However, the expertise I am talking about is often possessed by *some* department of most counties, whether in the planning department or the transportation department.

#### Spurring innovation via targeted federal activity to aid data interchange in election administration

Why should this be of interest to the Congress?

It should be of interest because a few targeted federal actions could help the private sector develop the technological tools that would take service time data and turn it into information that state and local officials could use to improve the experience of voting for all Americans — especially the Americans who experienced the longest lines to vote in 2012. Here, I mention two ways in which the federal government could encourage development in this area.

First, the federal government could fund a small grant program to spur the development of hardware and software tools that would take existing service data and turn it into information that local officials could use to manage elections more effectively. The model I have in mind is drawn from the EAC's Election Data Collection Grant Program, which was aimed at improving the quality of data collected for the EAVS in 2008. These grants, which amounted to \$2 million awarded to five states, significantly improved the quantity and quality of data reported by these states, and their ability to gather data related to election administration down to the precinct level.

Of particular note is the success of Wisconsin — the state with the most decentralized election administration system in the country — in developing systems to ensure uniform reporting of election data in the Badger State, despite its extreme decentralization and variability in technical capacity of the local jurisdictions that manage elections.

The model I have in mind would grant relatively modest amounts (around \$1 million) to five states which, in consultation with university partners, would develop software systems that could convert the service data produced by voting equipment in the normal course of conducting an election into information that would give officials deeper insights into how to manage the logistical side of elections more efficiently. If the grants were awarded to states with a diversity of voting equipment, the end result would be software systems that could eventually be utilized in a variety of jurisdictions beyond those that received the grants.

Second, the federal government could continue to support and encourage the efforts currently under way to establish standards that would allow the seamless sharing of data across different types of computers that are involved in administering elections. (The way to think about this is creating the same types of standards that allow a computer user who creates a spreadsheet using a database program on one brand of computer to share the spreadsheet with a colleague who uses a different brand of computer, without loss of information.)

The creation of data sharing standards is a necessary condition for more widespread interoperability of electronic equipment used in the management of elections, as well as the creation of software and hardware systems to help manage elections better.

One example of an effort to establish data sharing standards in the elections field is work being undertaken by a working group (P1622) under the Voting Systems Standards Committee of the IEEE Computer Society. The ultimate goal of this working group is to enable the effortless interchange of information across equipment in all areas of election administration, from designing ballots to reporting election results.

The value of this effort goes beyond the issue of using data to better manage elections. Currently, the election equipment used by local jurisdictions usually uses proprietary data formats that cannot be directly transmitted to any other electronic equipment. As a consequence, if jurisdictions want to use equipment from different manufacturers, they often have to translate data files from one format to the other, which risks the corruption of data as it moves between platforms. The time and effort necessary to move information between different brands of computer equipment leads to a lock-in of states and local jurisdictions into particular equipment and manufacturers. This ultimately discourages the use of commercial off-the-shelf equipment in election administration, thus increasing costs and reducing innovation.

This IEEE effort to create a common data standard for election administration is valuable to the effort to better utilize data in managing elections, because it would lead to faster innovation in

software and hardware systems that would take information generated by one manufacturer's equipment and turn it into useful management information for election officials.

What is the federal role in this effort? Because the IEEE is a private organization, this is not a project of the federal government, per se. However, scientists from the National Institute of Science and Technology (NIST) participate on this working group, providing valuable leadership in the process. Furthermore, the EAC's Voluntary Voting System Guidelines, should they be updated, will undoubtedly contain a requirement that election equipment manufacturers use a common data format, such as the one being developed by the IEEE working group.

Again, we find ourselves back to wrestling with the lack of a functioning EAC. Without a functioning EAC, it is impossible to approve a new set of voluntary voting system standards. Without these standards, the work of creating a common data format for elections-related data will be incomplete. Without a common data format, development of systems to help local officials manage elections better will be slowed significantly.

Therefore, as with the matter of encouraging the future survival of the EAVS, the ultimate success of a common data format for election data depends on a resolution to the current gridlock over the future of the EAC. Regardless of how this gridlock is resolved, the development of common data standards in the elections field will languish so long as the voluntary voting systems standards cannot be officially updated by any process.

#### A final note: Helping local election officials

I want to add one final observation about the collection and use of election data for the better management of elections. In order for the management of elections to become more data-driven, it is important that we find ways to inject relevant data into the decisionmaking process *without adding further burdens to local election officials.*

Local election officials already have a lot to do without adding significantly more requirements on them to gather and report data. It is therefore imperative to find ways to make the gathering and reporting of management-related election data an automatic byproduct of conducting elections. In other words, the challenge of creating systems to facilitate the gathering and reporting of data needs to be met by equipment manufacturers and vendors, who should be encouraged to create systems to make the jobs of election administrators easier. One of the ways of doing this is to create data standards so that innovation can proceed within the private sector and the academic community to develop the tools that local election administrators need.

\* \* \*

To conclude, I thank the committee for their time and for holding hearings on an important range of issues pertaining to the improvement of elections for all Americans. Election administration is too important not to work to elevate it into the ranks of policy areas that are guided by data-driven analysis. In this field more than most others, good data can be an antidote to partisan bickering.

The role the federal government can play in encouraging the development of a data-centered approach to election administration and election policy is subtle, but quite traditional. The federal government is in a unique position to gather and disseminate data in the field of election administration, in the same way it gathers and disseminates large amounts of data related to areas of public policy and commerce. It is also in a unique position to facilitate the coordination of private and public entities to set a framework for technological innovation, through the setting of standards. By playing both roles, the federal government can provide a rich environment in which private initiative and public purpose can productively meet.

**EXECUTIVE SUMMARY**

**Written Testimony of Charles Stewart III  
Kenan Sahin Distinguished Professor of Political Science, MIT  
Co-Director of the Caltech/MIT Voting Technology Project  
Before the U.S. Senate Committee on Rules and Administration**

**May 14, 2014**

**THERE IS A NEED FOR A MORE DATA-CENTERED APPROACH TO ELECTION ADMINISTRATION.**

Election policymaking would greatly benefit from metrics-based policymaking, and the development of measures similar to those in policy areas like education and health care.

Elections are awash in data, managing elections is increasingly metrics-driven, and a growing network of experts is dedicated to a metrics-based approach to improving elections.

A major barrier to the development of metrics-based election administration is uncertainty about the future of the EAC.

**THE TWO MOST IMPORTANT DATA-COLLECTION EFFORTS IN ELECTION ADMINISTRATION ARE FEDERAL PROGRAMS THAT NEED TO BE SUPPORTED AND STRENGTHENED.**

Two federal data programs, the Voting and Registration Supplement of the Current Population Survey and the Election Administration and Voting Survey (EAVS) conducted by the EAC, are indispensable data tools for the assessment of election policy in the United States.

The EAVS is the only federal statistical program that gathers data about election administration across all local units of government in the U.S.

The future of the EAVS is jeopardized because of gridlock surrounding the EAC's future.

**LOCAL GOVERNMENTS NEED HELP IN CONVERTING THE MOUNTAIN OF DATA GENERATED IN ELECTIONS INTO USEFUL INFORMATION TO BETTER MANAGE FUTURE ELECTIONS.**

Local governments need better access to transaction data generated by voting equipment on Election Day in order to manage administrative burdens in conducting elections.

There may be a federal role for the creation of a focused grant program aimed at creating computer applications to turn transaction data into useful planning information.

The federal government should continue to support and encourage efforts to establish data standards that would allow the seamless sharing of data across election equipment platforms.

Systems need to be developed so that the gathering and reporting of data for the purpose of running elections more effectively do not add even more burdens to local election officials.

**Biographical Information**

Charles Stewart III is the Kenan Sahin Distinguished Professor of Political Science at the Massachusetts Institute of Technology, where he has taught since 1985. His research and teaching areas include voting technology, election administration, congressional politics, and American political development.

Since 2001, Professor Stewart has been a member of the Caltech/MIT Voting Technology Project, a leading multidisciplinary research effort that applies scientific analysis to questions about election technology, election administration, and election reform. He is currently the MIT director of the project. He has provided assistance to the Pew Charitable Trusts in the development of the Election Performance Index. Professor Stewart is an established leader in the quantitative analysis of the performance of election systems and administration.

Professor Stewart has published numerous scholarly books and articles. Most recently he has co-edited *The Measure of American Elections* (with Barry C. Burden, Cambridge University Press, forthcoming) co-authored *Fighting for the Speakership* (with Jeffrey A. Jenkins, Princeton University Press, 2013), and authored *Analyzing Congress* (Norton, 2nd ed., 2012).

Professor Stewart has been recognized at MIT for his undergraduate teaching, being named to the second class of MacVicar Faculty Fellows in 1994, awarded the Baker Award for Excellence in Undergraduate Teaching, and received the Class of 1960 Fellowship. Since 1992, he has served as Housemaster of McCormick Hall, along with his spouse, Kathryn Hess.

Professor Stewart, a Fellow of the American Academy of Arts and Sciences, received his B.A. in political science from Emory University, and an S.M. and Ph.D. in political science from Stanford University.

Testimony of Kevin J. Kennedy  
Director and General Counsel  
Wisconsin Government Accountability Board

United States Senate Committee on Rules and Administration  
May 14, 2014

**Collection, Analysis and Use of Elections Data:  
A Measured Approach to Improving Election Administration.**

Chairman Schumer, Ranking Committee Member Roberts and Committee Members:

Thank you for the opportunity to provide information to the Senate Committee on Rules and Administration about the collection, analysis and use of elections data. It is an honor to be here. This is a subject state and local election officials in Wisconsin recognize as an essential element in conducting elections. Please allow me to provide a brief background on the organizational structure of elections in Wisconsin along with a description of our approach to collecting, analyzing and utilizing data to improve the administration of elections in Wisconsin

**Introduction**

I have served as Wisconsin's non-partisan chief election official for more than 30 years. I am also a member of the National Association of State Election Directors (NASSED). I served as NASSED President in 2006 and currently serve on the NASSED executive committee.

I am currently appointed by and report to a non-partisan, citizen board of six former circuit court and appellate judges who comprise Wisconsin's Government Accountability Board. The Board oversees the state's elections, campaign finance, ethics and lobbying laws.

The Board has general supervisory authority over the conduct of elections in the State of Wisconsin. The Board has delegated to me its compliance review authority over Wisconsin's 1,924 local election officials and their staffs. This means any complaint alleging an election official has acted contrary to law or abused the discretion vested in that official must be filed with the Government Accountability Board before it may proceed in court. I have the authority to order local election officials to conform their conduct to law.

The Board has developed comprehensive training programs for local election officials. The Board is also required to certify the chief election inspector, the individual in charge of each of the state's 2,822 polling places. The Board is required to emphasize the integrity and importance of the vote of each citizen in its training programs. Wis. Stat. §5.05 (7)

Wisconsin's elections are administered at the municipal level in our 1,852 towns, villages and cities. The municipal clerk, an elected or appointed non-partisan public official, is responsible for processing all absentee ballots, including those for Wisconsin's uniformed services and overseas voters.

The State of Wisconsin has arguably the most decentralized election system in the nation. The State administers elections with the support of 72 counties, and Wisconsin's 1,852 municipalities conduct each election. About 62 percent of municipal clerks serve part-time. Wisconsin has 6,752 wards (precincts) organized into more than 3,500 reporting units for each election, and a voting age population of more than 4.3 million people. Wisconsin implemented Election Day registration in 1976, and required voter registration for all electors statewide since 2006. Despite the challenges of such a diversified election system, Wisconsin experiences consistently high voter turnout – usually first or second nationally, and ranked in the top five among all states in the Election Performance Index published by the Pew Charitable Trusts for 2008, 2010, and 2012.

### **Background**

Since at least 1979, Wisconsin has statutorily required election data collection. Reporting has expanded from collecting voter turnout and voter registration statistics to include absentee voting information and further to meet the reporting requirements of the U.S. Election Assistance Commission (EAC) and the Federal Voting Assistance Program (FVAP), encompassing over 600 data points, as well as compliance with the Help America Vote Act of 2002 (HAVA).

Wisconsin's data collection and analysis efforts would not have been possible without a \$2 million grant from the EAC in 2008. Wisconsin used this grant to modernize data collection and analysis from a paper-based system to an electronic system. We developed the Wisconsin Election Data Collection System (WEDCS) for election statistics reporting, and the Canvass Reporting System (CRS) for election results certification. These systems now serve as models that other states can easily replicate. In 2012, Wisconsin became the first State in the country to collect election cost data from every county and municipality for statewide elections.

### **Wisconsin's Data Collection Process**

The primary method of elections data collection in Wisconsin comes from analyzing transactional information in our Statewide Voter Registration System (SVRS), where clerks manage voter records including registrations, polling places, contests and candidates. Some clerks use SVRS to manage absentee ballots. Wisconsin created its SVRS in 2006 to comply with HAVA. Much of our successful collection and use of elections data is because of two key factors: Wisconsin manages elections and election systems top-down, and our elections management systems are coordinated rather than segregated.

Since Wisconsin began collecting election related data, we identified some gaps in data collection and analysis, both for general business purposes and for compliance with federal reporting requirements. WEDCS helps to bridge that gap by collecting data from municipal and county clerks that is not readily available through SVRS, as well as providing the opportunity to audit some SVRS data quality.

Wisconsin's statutory requirement for election data collection is instrumental in achieving 100 percent reporting compliance from all counties and municipalities. The statutes also

standardize the required information, when the reports are required (whenever there is a federal or state contest or statewide referendum on the ballot), and the deadline for reporting the required information (within 30 days of the election). Wisconsin also established an administrative policy of standardizing the required election cost data and reporting deadlines. Also critical to Wisconsin's successful data collection efforts is using standardized reporting formats, continuously asking the same questions in a logical order, while providing clear and detailed instructions and training materials to county and municipal clerks.

Wisconsin's election data collection leverages modern technology, replacing the previous paper-based reporting with an online data collection system. The process is simplified and improved by reducing data entry errors, eliminating the need for staff to attempt to decipher difficult-to-read handwriting, and shifting resources from data entry to auditing compliance and data quality. WEDCS and CRS utilize XML coding for data transmission and SQL Server Management Studio for auditing and analysis. By using readily available and widely used technology, we can develop cost-effective systems, easily find qualified IT personnel, and train program staff.

#### **Election Cost Data**

In 2011, the Wisconsin State Legislature wanted estimations of the fiscal impact of a statewide recall election. We surveyed county and municipal clerks in order to provide a cost estimate. In 2012, Wisconsin's Government Accountability Board used its statutory authority to require counties and municipalities to provide information for the purpose of election administration to require election cost reporting for every state and federal election. While the total amounts between the estimates in 2011 and the cost reports in 2012 were reasonably similar, we found that the categorical totals in some cases varied substantially. Wisconsin counties and municipalities now report election-specific costs after each Spring Election and General Election within 60 days, as well as general costs annually by January 31 for the preceding year.

While these cost reports do not represent an exact financial audit of election costs, they do provide an invaluable tool for policy analysis. The value of the data is greatly enhanced by providing clear and detailed instructions and training materials to county and municipal clerks, just as we do for statistical reporting. Like any undertaking, it is essential to articulate the purpose of collecting this data in order to achieve buy-in from clerks so they have a stake in accurate reporting and can benefit from their efforts. Data provide a common format for allowing each municipality or county to tell their story in a way that is relatable to other jurisdictions. We were able to eliminate the need to collect cost data after every election because we were able to identify from our 2012 cost data how costs fluctuated based on voter turnout and the complexity of the ballot. Separating out annual costs also provides a fiscal estimate of general election administration costs and long-term costs (e.g., personnel costs, voting equipment purchases, and maintenance).

#### **Wisconsin's Data Analysis Process**

Eliminating the need for staff to review hand-written reports by requiring municipal and county clerks to enter their own data, staff can focus on reporting compliance and auditing data quality. Even with the large number of municipalities, reporting units, and data points,

leveraging technology facilitates detailed auditing and analysis. Wisconsin law allows municipalities with a population less than 35,000 to create reporting units, combinations of wards with the same contests, for simplified reporting of election results and statistics. From these reporting units, we can compile statistics for any ward-based district from aldermanic to congressional districts.

We conduct both internal and external data validation in order to improve data quality. Internal data validations consists of using logical comparisons within each WEDCS report (e.g., making sure that the total number of absentee ballots counted is not more than the total number of absentee ballots issued). External data validation involves comparing information in each WEDCS report to information in SVRS and CRS. We compare the number of voters reported in WEDCS to the number of voters with participation reported in SVRS, and the total number of votes cast for the office with the highest turnout. The analysis of these comparisons includes thresholds for identifying reporting units that require follow-up in any or all three systems. We currently identify reporting units where there is a difference of at least 1 percent and 10 voters.

Perhaps one of the best ways to improve data quality and analysis is to make sure the information is readily accessible to the public. This creates an incentive for those who provide the data to ensure its accuracy. This also allows the media, academics, and the public to review and help audit the information.

As we modernize our elections management systems, we plan to automate the internal validations (clerks would not be able to submit a report that does not validate without acknowledging a warning message), and building reports that clerks can run themselves to verify the external validations. This would also allow staff to focus on more detailed auditing, as well as facilitate more detailed analysis into correlations between challenges and potential causes, for example, we could look into jurisdictions with high absentee ballot rejection or unreturned rates.

#### **Uses for Improving Election Administration**

Wisconsin is able to use a combination of SVRS transactional data (e.g., voter registration applications) and about 50 data points from the WEDCS reports to provide responses to more than 600 data points in the U.S. Election Assistance Commission's (EAC) biennial reporting requirement, the Election Administration and Voting Survey (EAVS). This process is substantially more efficient and results in much more accurately reported data than having each of Wisconsin's 72 county clerks and 1,852 municipal clerks individually report these statistics. Pew's Election Performance Index notes that Wisconsin's data completion increased from about 88 percent in 2008 and 89 percent in 2010 to virtually 100 percent in 2012.

There is considerable potential to use elections data to identify performance challenges and successes. We can analyze voter turnout by ward, municipality, county, or any other district level. We also look at voter registration rates, as well as absentee ballot return and rejection rates for regular, military, or permanently overseas voters. From this analysis, we can identify areas facing challenges, but also look to areas having considerable success for

possible improvements, and develop best practices to share across Wisconsin and the entire country.

Having elections data that is complete, of high quality, and meaningful allows us to provide quantifiable and informative data to policymakers. Being able to quantify and present information provides important perspective for decision-makers. Local governments are primarily responsible for paying the costs of administering elections in Wisconsin. However, saying that elections require considerable time and resources from local governments is far less informative than stating the county and municipal governments reported spending more than \$37 million for five statewide elections in 2012, of which nearly \$14 million was for a recall primary and election for which many jurisdictions did not budget.

Here is another example. Intuitively, elections are very dependent on interpersonal interactions, even as the use of technology increases. One position could be that a potential way to reduce the cost of election or identify savings that could support other improvements is to seek ways to reduce required staffing. Another perspective might argue for focusing on improving voting equipment programming. The personnel-focused perspective is much more compelling when showing that in 2012, personnel represented more than 65 percent of all reported election-related costs, compared to voting equipment at about 10 percent and ballots at about 13 percent.

Quality elections data can also provide valuable insight to inform debate. Looking at voter registration, we can show that more than 80 percent of Wisconsin voters' most recent registration was on Election Day. We can expand that to look at the number of registrations that occur within 30 days of an election. In debates about absentee voting by mail or in-person, we can illustrate trends over time about the percentage of voters who vote absentee or at the polling place on Election Day. We can expand on this even further by adding demographic dimensions (e.g., age group, location, etc.).

Another potential use of elections data is to combine statistical and cost data. By combining available data, we can estimate the average cost associated with each absentee ballot issued or cast. We can also estimate the average amount of money spent on training election inspectors or their average wages. Arguably, the best use of elections data is using the data to conduct a cost-benefit analysis (CBA) of a potential policy change. In 2013, Wisconsin worked with two teams of graduate students at the LaFollette School of Public Affairs at the University of Wisconsin-Madison to conduct two CBA studies. The first study compared methods of conducting voter-list maintenance by either sending out mass mailings to voters who had not voted in the previous four years, or by utilizing the U.S. Postal Service's National Change of Address (NCOA) system. The second study compared online versus paper-based voter registration. The complete reports and each team's presentation of their findings to staff are available on our website:

[http://gab.wi.gov/publications/other/CBA\\_projects](http://gab.wi.gov/publications/other/CBA_projects).

#### **Importance of Data in Shaping Legislative Proposals**

In the recently concluded 2013-14 legislative session 18 separate election proposals were acted on in the waning days of the session. With several of the bills, G.A.B staff was able to provide illuminating information about the impact of the proposals. We were able to show

how many voters cast absentee ballots in-person during what time periods to facilitate a discussion on changing early voting hours. G.A.B staff was able to supply detailed information about the costs and timing of conducting voter list maintenance. We were also able to marshal facts to address proposals that were not introduced such as the costs associated with eliminating Election Day Registration.

### **Conclusion**

From our experiences collecting and analyzing election data, we can identify several valuable lessons learned. Data collection should be purpose-driven. With data, more is not necessarily better. Data collection, audit, and analysis requires extensive resources, and that time and effort should be spent wisely. Mission statements, vision statements, performance goals, and objectives should drive the data we collect. Public policy textbooks have often referred to this as focusing on SMART data – data that is simple, measurable, actionable, relevant, and timely. It is also important that those reporting the data clearly understand what you are asking of them and what they are reporting. This requires providing training that is clear, detailed, and easily understood.

Data entry can be susceptible to human error more so than transactional data. Therefore, we seek to minimize data entry and incorporate data collection into our everyday business practices and technology systems. Leveraging technology can also improve data auditing and overall data quality, which is essential for informing the decision-making process and for driving performance management.

**Executive Summary**  
Testimony of Kevin J. Kennedy  
**Collection, Analysis and Use of Elections Data:**  
**A Measured Approach to Improving Election Administration.**

**Wisconsin's Data Collection Process**

- Wisconsin has the most decentralized election administration system in the nation, with 1,852 municipal and 72 county clerks.
- Wisconsin has statutorily required election data collection since at least 1979 – before NVRA and HAVA requirements – which is instrumental in achieving 100 percent compliance.
- The State's current data collection and analysis efforts were made possible by a \$2 million grant from the EAC in 2008, which replaced paper forms with online Wisconsin Election Data Collection System (WEDCS).
- The primary elections data source is our Statewide Voter Registration System (SVRS), where clerks manage voter records including registrations, polling places, contests and candidates.
- Pew's Election Performance Index notes that Wisconsin's data completion increased from about 88 percent in 2008 and 89 percent in 2010 to virtually 100 percent in 2012.

**Election Cost Data**

- In 2011, the State Legislature requested cost estimates for a statewide recall election.
- In 2012, G.A.B. used its statutory authority to require election cost reporting for every state and federal election.
- Counties and municipalities report election-specific costs after each Spring Election and General Election, as well as general costs annually.

**Wisconsin's Data Analysis Process**

- Requiring online data reporting by clerks allows G.A.B. staff to focus on reporting compliance and auditing data quality.
- G.A.B. staff conducts both internal and external data validation to improve data quality.

**Uses for Improving Election Administration**

- SVRS transactional data and WEDCS reports provide responses to more than 600 data points in the U.S. EAC's Election Administration and Voting Survey (EAVS).
- This process is substantially more efficient and accurate than having each of Wisconsin's 72 county clerks and 1,852 municipal clerks individually report these statistics.

**Importance of Data in Shaping Legislative Proposals**

- The Wisconsin Legislature passed 18 separate election bills.
- G.A.B staff was able to provide impartial data on the impact of the legislative proposals.

## **Summary Biography of Kevin J. Kennedy**

Kevin J. Kennedy is Director and General Counsel for the Wisconsin Government Accountability Board, a position he has held since November 2007. Before assuming the top staff position for the Board, he was Executive Director – and before that Legal Counsel – for the Wisconsin State Elections Board.

Kennedy was in private practice before joining the Elections Board in 1979, and prior to that served as an assistant district attorney in Washington County, Wisconsin. He graduated from the University of Wisconsin-Madison Law School in 1976, and received his Bachelor of Arts degree in Mathematics and Communication Arts from the UW-Madison in 1974.

Kennedy is a member of the National Association of State Election Directors (NASED) and served as NASED President in 2006. He also served as co-chair of the National Task Force on Election Reform established by the Election Center, a non-profit organization dedicated to training and educational opportunities for state and local election officials. Kennedy is also a member of the Council on Governmental Ethics Laws (COGEL) and has served on the organization's Steering Committee.

**Testimony of David J. Becker  
Director, Election Initiatives  
The Pew Charitable Trusts  
U.S. Senate Rules Committee  
May 14, 2014**

Thank you for the opportunity to be here today to discuss this important topic.

We at The Pew Charitable Trusts began to look at the issue of using data to measure performance in the field of election administration several years ago, partially in response to what we heard from election officials who felt bombarded by news stories driven by anecdotes, not data. These stories, about long waiting times to vote, or polling places opening late, or registration problems, are important but it is never clear whether they truly represent systemic problems or if they are simply one-time challenges. We knew that as in other policy areas, such as health and education, there must be a way to use data and empirical evidence to get a clearer picture of what is happening across the states.

Following important research by Professor Heather Gerken and many others in the elections field, Pew partnered with Professor Charles Stewart III and MIT in 2010 to pull together an advisory group of state and local election officials from around the country, as well as leading academics in the field of elections and public administration, to determine what data was available to accurately and objectively measure performance in this field.

In 2013, Pew unveiled the results of this collaboration and our research – the Elections Performance Index, or EPI, the first comprehensive assessment of election administration in all 50 states and the District of Columbia. The release introduced the index's 17 indicators of performance, including such data relating to wait times at polling locations, voter registration rates and problems, military and overseas voting, and mail ballots. This data, collected from five different and credible data sources, including the Census and the EAC, provided a baseline of performance using 2008 and 2010 data, giving users a way to evaluate states' elections side by side.

Pew's latest edition of the index, released just over a month ago, adds analysis using data from the 2012 election. This provides the first opportunity to compare a state's performance across similar elections—the 2008 and 2012 presidential contests—and presents a rich picture of the U.S. democratic process that will be enhanced as new data are added each election cycle.

The results from the 2012 EPI were generally good news for the states and for voters, as elections performance improved overall. Nationally, the overall average improved 4.4 percentage points in 2012 compared with 2008, and the scores of 21 states and the district improved at a rate greater than the national average.

In addition, we found that:

1. *High-performing states tended to remain high-performing and vice versa.* Most of the highest-performing states in 2012—those in the top 25 percent—were also among the highest performers in 2008 and 2010. The same was true for the lowest-performing states in all three years.

2. *Gains were seen in most indicators.* Of the 17 indicators, overall national performance improved on 12, including a decrease in the average wait times to vote and an increase in the number of states allowing online voter registration.
3. Wait times decreased, on average, about 3 minutes since 2008.
4. Although voters turned out at a lower rate in 2012, fewer of those who did not vote said they were deterred from the polls by illness, disability, or problems with registration or absentee ballots.
5. 13 states offered convenient and cost-effective online voter registration in 2012, compared with just two in 2008, which may have contributed to the reduction in voter registration problems.
6. More states offered online voter information tools in 2012.
7. States are reporting more complete and accurate data. 18 states and the district reported 100 percent complete data in 2012, compared with only seven in 2008.

We present all these data in an interactive report – which can be found at [pewstates.org/epi](http://pewstates.org/epi) – that allows policymakers, election officials, and citizens to dig through each piece of information. This tool even allows users the opportunity to isolate any indicator, or compare states and regions, or look at elections in a particular state over time.

We make a series of recommendations in this report, but two are particularly relevant to this hearing. First, states should work to upgrade their voter registration systems. By adopting innovative reforms, such as online voter registration, better sharing data intrastate, and using a tool like the Electronic Registration Information Center (or ERIC) to better share interstate voter registration data – all recommendations of the bipartisan Presidential Commission on Election Administration – states can see a marked improvement in their performance. For instance, of the bipartisan group of seven states who founded ERIC in 2012, five of those states were among the highest performers that year.

Second, we encourage that states report and collect even more elections data. Several states, such as Wisconsin, have pioneered efforts to better collect source data from local election jurisdictions, but many do not. As the Presidential Commission notes, “If the experience of individual voters is to improve, the availability and use of data by local jurisdictions must increase substantially.”

And we continue our work towards this end. Just last week, we released a report entitled “Measuring Motor Voter,” where we attempted to rate how well the states were providing voters with the opportunity to register or update their registrations at motor vehicles offices. What we found was that states’ performance in this area could not be fully measured, because states were not collecting or reporting adequate data to document the provision of these important services. We therefore made several recommendations, including that states prioritize, automate, and centralize Motor Voter data collection and increase coordination among licensing agencies and election administrators. We went on to highlight several states, such as Delaware, Michigan, and North Carolina, that have already made great strides in this area.

Pew continues to see this data-driven approach lead to higher performance in the states. The EPI is being cited by policymakers and others in official testimony, and is being used in a geographically and politically diverse group of states to help inform policy and technology in election administration. We will continue this work as we look forward publishing the 2014 edition of the index and ensuring that data-driven performance measurement is enshrined in this field for years to come.

Thank you and I look forward to your questions.

**David J. Becker**

***Director, Election Initiatives***

**The Pew Charitable Trusts**

[www.pewstates.org/elections](http://www.pewstates.org/elections)

David Becker is director of Election Initiatives for The Pew Charitable Trusts. He supervises all of Pew's work in election administration, including using technology to provide voters with information they need to cast a ballot; assessing election performance through better data; and upgrading voter registration systems.

As the lead for Pew's analysis and advocacy on elections issues, Becker oversees research and directs Pew's partnerships in the states, and with private sector partners like Google, IBM, and others. He also testifies before Congress and state legislatures and other government entities, presents at relevant conferences across the country, and serves as a media resource.

Before joining Pew, Becker served as a senior trial attorney in the Voting Section of the Department of Justice's Civil Rights Division, where he led numerous investigations into violations of federal voting laws regarding redistricting and minority voting rights. He served as lead counsel for the United States on litigation over statewide redistricting in Georgia in 2001, which was ultimately decided by the Supreme Court in *Georgia v. Ashcroft*. In addition, he supervised federal monitoring of elections and helped direct Department of Justice policy on enforcing the Help America Vote Act.

Becker received both his undergraduate and law degrees from the University of California, Berkeley.

**Testimony of J. Justin Riemer**  
**Before the U.S. Senate Committee on Rules and Administration**  
**Re: Collection, Analysis and Use of Data:**  
**A Measured Approach to Improving Election Administration**  
**May 14, 2014**

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear before this distinguished committee to discuss the report of the Presidential Commission on Election Administration (PCEA), specifically regarding its call for the improved collection and reporting of election-related data from state and local election officials.

I speak to you today as a former state election official in the Commonwealth of Virginia, an attorney with experience in election law, and as the Editor and co-author of a recent report from the Republican National Lawyers Association (RNLA) that reviewed the PCEA's report and offered additional recommendations to improve our elections. With a few exceptions, the RNLA agreed with most of the PCEA's recommendations and we thank the commission for its work. While RNLA's report did not address all of these specific issues, the availability and quality of election data is an important issue and one that I have experience in from serving at the Virginia State Board of Elections.

I would like to discuss three issues. First, is to provide a summary from a former election official's perspective of why obtaining accurate data from the states is such a challenge. Second and related, is to provide an overview of the significant and ever increasing data obligations imposed on state and local election officials and how it impacts their ability to perform their core job functions and make necessary improvements. Third, is to express concern and make recommendations regarding the criteria used in election performance indexes to assess state election performance.

**Data Collection Challenges at the State and Local Level:**

There are a number of obstacles that have prevented state and local officials from collecting and providing accurate and comprehensive election data and two are particularly worthy of highlighting. The first stems from limitations in state election databases. Challenges in the design and implementation of states' voter registration systems (VR systems) mandated by the Help America Vote Act (HAVA) of 2002 are at the root of many of the election data problems seen today. HAVA required that all states develop "a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the state level." 42 U.S.C. § 15483. HAVA's specific requirements for VR systems are as follows:

The list must be centrally managed at the State level in a uniform and non-discriminatory manner. The list must be computerized and technically capable of providing immediate electronic access to appropriate State and local election officials; assigning unique identifiers; affording local officials expedited entry of voter registration information; allowing voter registration information to be verified with other State, local and Federal agencies; providing a means for list

maintenance; tracking appropriate voting history; and ensuring appropriate system security.<sup>1</sup>

In many states, the VR system is much more than just a database used to administer voter registration activities. With the exception of campaign finance functions, Virginia's system, the Virginia Election and Registration Information System (VERIS), essentially runs the Commonwealth's entire elections process. VERIS is used to implement redistricting and precinct changes, administer absentee voting, produce poll books, and collect and report election results. Consequently, VERIS also serves as the warehouse for most election-related data in Virginia.

As is common for extensive state Information Technology (IT) projects, Virginia and other states faced delays and other significant hurdles in launching their VR databases. In the race to launch the database by the statutory deadline, considerations related to building in analytics and data-reporting capabilities took a back seat to more immediate concerns. These priorities included complying with the basic HAVA statutory requirements for the databases, meeting minimum IT security standards, and ensuring the system was functional and user-friendly enough for local election officials to use. Many states, including Virginia, missed the deadline for implementation and one state, California, still has not launched a HAVA-compliant VR database.

After VERIS was launched it was simply impossible to reverse-engineer the system to efficiently and accurately collect and report much of the data sought by the EAC and other stakeholders. While Virginia officials have made significant improvements to the system's data-reporting capabilities since its launch, those concerns are still secondary to more pressing concerns including changes to the system to comply with state legislative changes and to comply with IT security standards.

A second obstacle in the way of obtaining good data is that much of the data used to analyze our elections is collected on Election Day by poll workers who receive limited amounts of training, work only a few days out of the year, and essentially serve as volunteers. Poll workers in Virginia work a 14 to 16 hour day, sometimes longer, and then at the end of the long day must complete a significant amount of complex paperwork that becomes the source of polling place election data. Already exhausted, these officials' first priority is to ensure they report election returns quickly and accurately to the local registrar or clerk. There must then complete a variety of additional wrap-up steps before moving on to some of the supplemental data-reporting, including ensuring security and the chain of custody for ballots, electronic pollbooks, voting equipment memory cards, and other election materials.

These poll workers are asked to perform many functions and they will inevitably make mistakes, particularly when recording data beyond that necessary to finalize the actual vote totals. Since much of the data sought by stakeholders need to be accurately collected at the polling place on Election Day, there is often no way to go back fix mistakes or retrieve missing information. Much of the data is gone forever and we are forced to rely on anecdotal evidence to measure important metrics such as wait times. Finally, many poll workers and local election

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<sup>1</sup> U.S. Election Assistance Commission, Voluntary Guidance on Implementation of Statewide Voter Registration Lists, July 2005 available at: [http://www.eac.gov/assets/1/workflow\\_staging/Page/330.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/330.PDF)

officials will bluntly explain that they are asked to provide what they view as an impractical and unnecessary amount of data and that the essential functions described earlier will take precedence.

A final challenge stems from keying errors and inaccurate data input that plague the voter registration system. Paper-based voter registration results in keying errors that infect the system with inaccurate and incomplete voter registration records. Moreover, inadequate list maintenance efforts in many jurisdictions distort registration figures. This is best exemplified in jurisdictions with more registered voters than residents of voting age.

Fortunately, state and local officials are gradually overcoming some of these hurdles. The adoption of electronic pollbooks will result in better data from the polling place and the nationwide trend towards online voter registration and the electronic transmission of registration applications completed at the DMV to registration officials will also help improve the quality of voter registration records. Multi-state data sharing programs like the Interstate Voter Registration Crosscheck Program (Crosscheck) and the Electronic Registration Information Center (ERIC) are further helping improve the quality of state voter registration data. The PCEA and RNLA both endorse these various reforms. RNLA additionally recommends pairing electronic pollbooks with identification card bar code scanners to speed the voter check-in process and improve voter history data.

In addition, in Virginia, officials have made upgrades to VERIS since its launch to improve its data reporting and analytics capabilities and has improved in its federal survey responses with each subsequent federal election. Plans in Virginia for poll workers to complete some of the additional required paperwork on the electronic pollbooks should also help improve the data collected on election night.

Voting equipment manufacturers incorporating better data-reporting capabilities into their machines as recommended by the PCEA would also help although I am not aware of their specific plans to do so.

#### **Increasing Demands for Data and Records and its Impact on Election Officials:**

The ever increasing demands for data and records is a significant burden on state and local election officials and there is concern that these obligations have begun to detract from officials performing some of their core functions. First, are the federal data-reporting requirements established with the 1993 National Voter Registration Act and expanded with HAVA which established what is known today as the Election Administration and Voting Survey (EAVS), a comprehensive multi-section survey administered by the Election Association Commission (EAC) and completed by state and local election officials following each federal general election.

Fully complying with the EAC's data-reporting requirements is a difficult task for many states. In Virginia, the EAC survey takes an estimated one month's worth of work each from two high-level IT staff members. The survey imposes additional obligations on local election officials to provide data that state officials cannot retrieve from VERIS either due to the system's limitations or because VERIS does not house the data asked for in the survey. Completing the survey is largely a labor-intensive process where staff must manually pull data from the system

and format it to match the requirements of the survey instrument. Tedious online surveys to the local election officials are also typically needed to gather the remaining data not contained in VERIS.

In addition to the EAC report, there are required surveys from the Department of Defense's Federal Voting Assistance Program (FVAP) seeking data from state and local officials on overseas and military voting. While there are efforts for FVAP and the EAC to combine their surveys, up to now it has been an additional report states must complete. More recently, the Department of Justice has opened up another stream of data requests to the states related to compliance with the Military and Overseas Voter Empowerment (MOVE) Act.

Many state laws impose additional data-reporting obligations on its election officials. In Virginia, the State Board of Elections is required to provide two annual comprehensive reports with voter registration and other data to the state General Assembly. Many state and local governments have also implemented performance measure reporting requirements for agencies that include quarterly or monthly data reporting obligations. Virginia's performance measures require the agency to report election data on a quarterly and annual basis. State officials also impose additional data-reporting obligations on localities beyond the federal requirements discussed earlier.

Moreover, with increasing public scrutiny and policy battles over election administration, data requests through states' applicable Freedom of Information Act (FOIA) laws, NVRA public records disclosure provisions expanded by recent court decisions, and discovery demands from ongoing litigation have further heightened demands on election officials. In addition, more organized and tech-savvy political parties have increased demands for public election data. Finally, private organizations and academics also regularly submit detailed survey and data requests following elections.

Discussions with a cross-section of election officials reinforce my belief that these various data-reporting obligations have increased significantly in recent years. Unfortunately, this has coincided with budget cuts and an increasingly shorter off-season from elections. If election administration was ever meant to be a part-time job, it certainly is not now as elections have grown in their length and complexity. Election officials often joke about the common perception that they only work a few days out of the year with many being asked some variation of: "What do you do the other 364 days?" Those familiar with the business are well aware of the demands on officials to run multiple elections a year, administer voter registration processes, and manage their office business affairs usually with fewer resources than the year before.

Many states have expanded early voting and federal law now requires the preparation and mailing of overseas absentee ballots at least 45-days prior to an election meaning the election quite literally starts earlier. Consequently, political parties and candidates also start their campaigns sooner putting officials on an election-footing months prior to the first Tuesday in November. Accounting for primaries and special elections, it is not uncommon for many Virginia election jurisdictions to be administering an election more days out of the year than not. In addition, Virginia's status as a battleground state has resulted in closer elections, more frequent recounts, and additional public scrutiny that has further expanded the calendar when officials are on an election footing. Finally, Virginia has yearly statewide elections so there truly is no break.

What results when you combine a shorter election off-season, increased burdens to provide data and records, and fewer resources? Election officials have less time to implement improvements, including those outlined in the PCEA report and from their own internal audits. Implementing good policy recommendations remains aspirational as the short window of relative inactivity needed to make these important changes quickly closes with election officials lamenting, “maybe next year”.

Certainly, every profession has its peaks and valleys of activity and its share of unpleasant “bureaucratic-make work” as one local election official described it to me. As public servants and because the law requires it, officials should respond to these requests with complete and accurate data. It is part of the job. However, policymakers need to be aware that to many election officials these obligations have shifted from a minor inconvenience to a significant roadblock that combined with a shorter off-season prevents them from performing their core functions and making important improvements to their local election practices.

**Concerns Regarding Indexing Elections Performance:**

Indexing election performance can serve a valuable function to identify both best practices and deficiencies in election administration. However, there is some concern from election officials and other stakeholders in the elections process regarding the criteria used to judge a state’s performance.

In its response to the PCEA report, the RNLA outlined its opposition to some policies that may be used as measuring stick for how well a state runs its elections. For example, including criteria such as the availability of Election Day or automatic voter registration or expanded early voting would be met with opposition and would seriously diminish the credibility of any performance index. Similar is the fear that graders will penalize states for implementing voter integrity measures such as reasonable identification requirements and enhanced voter registration list maintenance programs.

Finally, including some indicators about states’ efforts to guard against fraud in the electoral process will increase the credibility of performance indexes. Election officials and other organizations concerned with the integrity of our voting process will be more likely to embrace these efforts with at least some minimal acknowledgment that preventing fraud should be an important policy goal. While some dismiss both the electoral system’s vulnerability to and the existence of voter fraud, it is undeniable that fraud does take place and that our system remains susceptible to those who wish to exploit it. We can and should measure those vulnerabilities as well as state efforts to protect against threats to the integrity of our elections. For example, those states that fail to take steps to remove ineligible and deceased voters from the rolls or choose to not participate in programs like Crosscheck or ERIC, both endorsed by RNLA and the PCEA, should be judged accordingly.

Once again I thank this honorable committee for the opportunity to appear before you and am more than happy to answer any questions you have on these important issues.

**Executive Summary for Testimony of Justin Riemer**

Distinguished committee members, thank you for the opportunity to address you regarding data in elections. I am a former Virginia election official and co-author and Editor of a recent report from the Republican National Lawyers Association (RNLA) reviewing the Presidential Commission on Election Administration's (PCEA) report and providing additional suggestions to improve election administration in the United States.

To begin, it is important to highlight two issues why the collection and reporting of accurate and comprehensive data is a significant challenge for election officials. First, statewide election databases created as a result of Help America Vote Act (HAVA) requirements suffered from many problems commonly associated with large government IT projects. In the scramble to meet implementation deadlines, building in adequate data-reporting capabilities became a secondary concern to complying with the specific HAVA requirements. In Virginia, it was impossible to reverse-engineer the system after its launch to add better data collection and reporting capabilities. While HAVA's database requirements mostly addressed voter registration functions, many states designed their databases to run various other election processes. Consequently, these systems house not only voter registration records but also information related to absentee voting, data collected at the polling place, and other functions of the electoral process. While Virginia has made many improvements, significant challenges in extracting data from the system remain.

A second challenge is that much of the data used to analyze elections is collected on Election Day by poll workers who receive inadequate training, work only a few days out of the year, and are paid very little. Poll workers must complete a significant amount of complex paperwork after a long day and frequently make mistakes or leave out important information that is often impossible to collect later if not captured on election night.

Another issue for policymakers to consider is how increasing demands for data and records impose significant administrative burdens on election officials. Survey obligations from the Election Assistance Commission, Federal Voting Assistance Program, and other stakeholders are tedious but manageable. However, adding increased FOIA requests, state and local data reporting obligations, litigation, and requests through other record disclosure provisions such as in the National Voter Registration Act (NVRA) have turned basic data and records reporting obligations into a significant administrative burden. Combined with an increasingly shorter election off-season because of 45-day absentee ballot mailing deadlines and expanded early voting, these obligations make it more difficult for officials to perform their core job functions and make improvements to their election practices.

Finally, using data to rank states' election performance has value to identify both best practices and deficiencies, but there are also concerns. First, is the worry that graders will penalize states for not adopting policies such as expanded early voting, vote-by-mail, and Election Day Registration. The RNLA, many non-partisan election officials, and other stakeholders have significant policy reservations regarding these issues and they should not be included as indicators of performance. Similarly, graders should not penalize states for implementing voter integrity measures such as reasonable voter identification requirements and enhanced voter registration list maintenance programs.

Thank you again for the honor and opportunity to appear before this committee.

### **J. Justin Riemer Biography**

Justin Riemer previously served as the Deputy Secretary and Governor's Confidential Policy Advisor at the Virginia State Board of Elections from 2010 to 2014. Mr. Riemer was the Editor and Co-Author of the Republican National Lawyers Association's (RNLA) recent report: "RNLA Response to the Report and Recommendations of the Presidential Commission on Election Administration: The Republican Legal Community on the PCEA Report with Additional Prescriptions for Reform" available at [www.RNLA.org](http://www.RNLA.org).

Mr. Riemer has an extensive background working in election law, election administration, and political campaigns. Mr. Riemer also previously served as the Deputy Director for the RNLA and as Associate Counsel for John McCain's 2008 Presidential Campaign. Riemer currently works as a consultant for [Democracy.com](http://Democracy.com), the first social network for politics, connecting candidates, political organizations and voters from the national to local level.

Mr. Riemer received his Bachelor of Arts Degree in History and Religion from Gettysburg College in 2003 and his law degree from the University of Baltimore School of Law in 2007. Mr. Riemer is admitted to practice law in the Commonwealth of Virginia, State of Maryland, and District of Columbia (inactive status). Mr. Riemer resides in Richmond, Virginia with his wife Rebecca and daughter Julia.



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May 20, 2014

Senator Charles E. Schumer  
Chair, Senate Committee on Rules and Administration

Dear Senator Schumer,

On behalf FairVote, I respectfully submit this testimony to the Senate Committee on Rules and Administration, to be included in the hearing record for the hearing held on May 14, 2014 titled *Collection, Analysis and Use of Data: A Measured Approach to Improving Election Administration*.

We recommend exploration and advancement of two reforms that will improve the effective participation of military and overseas voters while also promoting participation of resident voters: (1) the expanded use of voter guides, at least in online form; and (2) expansion of the increasingly common practice of sending ranked choice ballots to overseas voters in elections that may result in a runoff election and in presidential primaries.

We believe that federal research and recommendations regarding options for overseas and military voters have not devoted the warranted time and attention to these solutions. In order to better appreciate the value of this option, we ask that your Committee recommend federal research into these topics:

- Participation rates among military and overseas voters in runoff elections generally;
- The impact of the use of ranked choice voting ballots for participation by military and overseas voters in runoff elections;
- The impact of shorter runoff periods on turnout among in-person voters;
- The disproportionate percentage of votes cast by overseas voters for withdrawn presidential candidates in presidential primaries;
- The costs, if any, associated with the use of ranked choice voting for overseas and military voters and for the expanded use of voter guides.

It is our sincere hope that this testimony is helpful to the Committee in crafting its response to the continuing administrative hurdles faced by voters, especially those in the military and overseas.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rob Richie".

Rob Richie  
Executive Director

**Proven Innovations to Uphold Voting Rights for Overseas Voters**

The Value of Ranked Choice Ballots for Presidential Nomination Contests and Federal, State and Local Runoff Elections and of Voter Guides in All Contests

*Testimony Submitted by FairVote Executive Director Rob Riche to the Senate Committee on Rules and Administration, May 19, 2014, as part of its May 14, 2014 hearing on Collection, Analysis and Use of Data: A Measured Approach to Improving Election Administration*

**Overview:** Nearly five million American citizens of voting age do not live in the United States, including more than 150,000 active members of the armed services. Federal laws in recent years directly sought to address the difficulties such voters often face in casting ballots, but there remain major gaps that must be filled. Too few jurisdictions appropriate funds for printed or online voter guides that provide substantive information about voters' ballot choices. These guides would be particularly helpful to overseas voters, who are less likely to receive information from traditional media sources and campaigns. Moreover, many jurisdictions hold runoff elections and presidential nomination contests with rules that can make it either impossible for overseas voters to cast ballots or unnecessarily diminish their vote.

We propose expanded use of voter guides, at least in online form, and expansion of the proven practice of sending ranked choice ballots to overseas voters in elections that may result in a runoff election (one described by South Carolina election officials this year as an "unqualified success"), as well as in presidential nomination caucuses and presidential primaries. These ranked choice ballots make it far more likely that overseas voters will have a vote that counts in runoff elections and a vote that counts for an active candidate in presidential nomination contests.

Ranked choice ballots already has a proven record of success. This year they will be used as an effective way for runoff jurisdictions to comply with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act (MOVE) in all congressional primary elections with more than two candidates in Alabama, Arkansas, Mississippi and South Carolina and in all of Louisiana's congressional elections in November. Some localities in Illinois and Arkansas also use ranked choice ballots, but because local elections are not covered by UOCAVA, they will not be used in most local runoff elections, even in the many instances where such runoff elections occur less than three weeks after the first voting round.

This ranked choice ballot solution provides better inclusion of military and overseas voters than the more typical response of extending the time between the first election and the runoff election. In contrast to delaying the runoff, it drives up participation among both overseas voters – who may vote in both elections simultaneously – and in-person voters, who benefit by being more likely to participate in a runoff with a shorter period between elections.

In order to make clear that this is an option for states and to highlight its real practical benefits, we ask that the Committee recommend that the federal government look to those states using this option to gather additional data on overseas voter participation rates, cost to the jurisdiction, and participation of in-person voters under shorter runoff periods. We urge the Committee to consider legislation to expand this practice in more congressional elections, to encourage a form of it in presidential primaries, and create incentives for its use in local and state elections.

*Full Testimony*

I have been executive director of FairVote since 1992. FairVote is a non-partisan, non-profit think tank and advocacy organization that focuses on electoral reform and election analysis, with attention to voter turnout, voter choice and fair representation. We have played a central role in the introduction of a number of significant electoral reform and voting rights proposals that many American cities and states have debated and subsequently adopted.

The focus of my written testimony today is on the difficulties that so many military and other eligible voters living in other nations face in casting meaningful, effective votes, with particular attention to runoff elections and presidential nomination contests. I propose a major expansion of the practice used this year in congressional elections in Alabama, Arkansas, Louisiana, Mississippi and South Carolina in all of their congressional election runoffs that might go to a runoff. The practice is the result of state law in Arkansas, Louisiana and South Carolina, and the result of court orders in 2013 and 2014 in Alabama and Mississippi. When sending voters their ballots for the primary (or, in the case of Louisiana, the general election), these states also include a separate ranked choice ballot (see attachment for an example from South Carolina) that can be tallied in a runoff election without having to send voters a whole new mailing after the first round of voting. In explaining the value of this approach, I contrast it with the problematic change the federal government imposes on many states: forcing an extension of time between election rounds, which can unintentionally result in decreased voter participation in primaries and runoff elections. I also address the particular value of voter guides for overseas voters and, indeed, all absentee voters.

We currently have more than 150,000 active members of the armed forces serving in other nations, and, according to the United States Election project, a total of 4,737,600 eligible voters in the 2012 presidential election were living in other nations. The usual burdens faced by absentee voters are exacerbated by living outside the United States, particularly for members of the military who change addresses frequently. Despite protections provided by important federal laws such as Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act (MOVE), overseas voters are too often effectively disenfranchised from our elections, particularly in state and local elections not covered by UOCAVA and MOVE.

Under our current rules and procedures, the problems for overseas voters are particularly acute in two forms of elections: presidential nomination contests and state and local runoff elections held separately from federal elections. For both of these elections, the problem is largely one of timing.

- **Runoff elections:** Any runoff election that is held close to the first round of elections can make it extremely difficult to accommodate timely transmission and collection of ballots sent overseas. As suggested by the examples from the locations of your opening field hearings, many localities hold runoff elections less than a month after the first round. A prominent example the primary runoff in the 2013 New York City election for public advocate which took place three weeks after the primary election and in the past has been just two weeks after the first round. In reviewing runoff elections in Miami-Dade County (FL), we found that six municipalities holding elections in 2013 had runoff elections scheduled only 14 days after the first election, with two other municipalities holding runoffs less than a month after the first election.

- **Presidential nomination contests:** Presidential nomination contests unfold quickly after initial contests in the opening states of Iowa, New Hampshire, South Carolina and Nevada. Those early contests always lead major presidential candidates to withdraw from the race, but ballots with those candidates' names will have already been sent to overseas voters, who may cast them and mail them before those candidates drop out. In 2008, for example, 25 states and territories held nomination contests on February 5, only a few days after the withdrawal of Democrat John Edwards and Republican Rudy Giuliani. Furthermore, parties usually fail to provide overseas voters with an opportunity to participate in privately-administered caucuses that involve in-person voting.

Ranked Ballots for Overseas Voters in Runoff Elections and Primary-General Elections:

In 1986, Congress passed the Uniformed and Overseas Absentee Voting Act (UOCAVA) to protect the voting rights of citizens who submit ballots from abroad, including military service members. In 2009, Congress reinforced UOCAVA by passing the Military and Overseas Voters Empowerment Act (MOVE). The MOVE Act mandated that jurisdictions mail ballots to overseas voters at least 45 days before a federal election to allow sufficient time for these voters to receive and return their ballots. This requirement has the practical impact of requiring many states to move their primary elections to before Labor Day and to extend time between the first and final round of runoff elections. Four years later, these laws have not yet achieved full compliance, and they do not cover state and local elections held separately from the federal elections.

When forcing changes in election dates, these laws also have had negative consequences. For example, a large number of states were forced to change traditional primary dates in September to earlier dates. Voter turnout in primary elections has already declined precipitously in recent decades, yet holding primary elections in the summer months of July and August results in even lower turnout than September primaries. Moving primaries before July can interfere with state legislators' lawmaking duties in the spring. Any earlier primary date extends the election season and contributes to the need for candidates to raise and spend more money than would be the case in a more concentrated election season.

The impact on when federal primaries are held likely contributes to lower turnout in runoffs. Last July, FairVote issued a [report](#) that analyzed the last 171 regularly scheduled primary elections for U.S. House and U.S. Senate nominations in elections from 1994 to 2012. The report found that these primary runoff elections generally result in lower turnout. All but six of these runoffs resulted in a turnout decrease between the initial primary and the runoff, with a median turnout decline of 33.2 percent. The turnout decline was strongly correlated to the length of time between runoff rounds. The 56 primary runoffs occurring more than thirty days after the first round had a median decline in turnout of 48.1 percent, while the 11 runoffs with a gap of twenty days or less had a median decline of only 15.4 percent.

One response to such numbers would be to suggest that runoff elections themselves are problematic. But there is real value in requiring winners of nominations and general elections contests to earn more than half the vote. Allowing winners with well under 50 percent of the vote can allow for unrepresentative outcomes in which people end up being represented by someone whom a majority of voters saw as their last choice. It also results in charges that certain candidates

are “spoilers” and should withdraw to avoid splitting the vote.

Fortunately, policymakers have other options for upholding the voting rights of overseas voters and complying with the UOCAVA and MOVE laws. Jurisdictions can adopt the increasingly common practice of having military voters, overseas voters, and early or absentee voters use ranked choice ballots. As implemented for all runoffs for federal offices and for many state and local offices in Arkansas, Louisiana, South Carolina, and, this year, Alabama and Mississippi, overseas voters would receive two ballots at the same time: one standard ballot and one ranked choice ballot. The ranked choice ballot would include all candidates from the first election (whether for a primary or first-round before a runoff), and voters would be asked to rank them in order of preference. Voters return both ballots simultaneously to election officials. The standard ballot is counted in the first election according to normal procedures. In the second election, the ranked choice ballot is counted toward the highest ranked candidate who advances to the second round.

This practice has been used for more than six years in congressional and state primary elections in South Carolina, in general elections for Congress and state offices in Louisiana, and for congressional, state, and local primary elections in Arkansas. On July 26, 2013, a federal judge ordered Alabama to use a ranked choice ballot for overseas and military voters for the Fall 2013 congressional District One special election in order to comply with UOCAVA, an order that the judge extended to cover the Republican primary in the sixth congressional district in 2014 (the only Alabama primary with more than two candidates). In March 2014, Mississippi’s Board of Elections preempted a lawsuit by the Department of Justice by adopting ranked choice ballots for overseas voters. The one time the proposal appeared before voters as a ballot measure, in Springfield, Illinois, it passed with a whopping 91 percent in support. In 2011, FairVote addressed legal questions associated with the proposal in this report: <http://www.fairvote.org/legality-of-the-use-of-ranked-choice-absentee-ballots-for-military-and-overseas-voters>.

Speaking about South Carolina’s experience with the use of ranked choice ballots for overseas voters, Chris Whitmire, Director of Public Information of the South Carolina State Election Commission had this to say in a May 8, 2013, message, which we share with his permission:

We consider it an unqualified success. We’ve heard nothing but good things from voters about it. In the past, UOCAVA voters had a very difficult time participating in runoffs due to the two-week turnaround time. In the June 2012 primary, 92.5 percent of UOCAVA primary voters also participated in the runoff. That is exceptional, and that doesn’t even take into account those voters who may not have had a runoff to vote for. The real participation rate could be closer to 100 percent.

Compare this proposal to the recent order by a federal judge to resolve a UOCAVA challenge to Georgia’s runoff schedule. In what could be a nightmare for administrators and for voters being asked to vote so many times, the schedule for the 2014 election season for the moment has voters being asked to vote in separate state and federal primary runoffs and general election runoffs. Even if the state runoff dates are changed to accommodate the new federal primary dates ordered by the judge, the state will likely have lower turnout in its runoffs for Election Day voters, and it will have to hold its congressional runoffs after the start of the new Congress.

Ranked Ballots for Overseas Voters in Presidential Nomination Contests:

Using ranked choice ballots for overseas and military voters would also allow a more meaningful vote for the millions of Americans who vote absentee in presidential elections. On March 1, 2012, I [coauthored an op-ed](#) for *Roll Call* with Paul Gronke, a highly regarded professor of political science at Reed College and director of the Early Voting Information Center. We focused on the problem of how in presidential elections overseas and military voters are far more likely than Election Day voters to cast a ballot for candidates who withdrew from an election.

The straightforward solution is to have these voters send back a single ranked choice ballot and to establish a practice where withdrawing candidates formally submit their withdrawal to states with upcoming contests where the candidate remains on the overseas ballot. Rather than have a ballot count for a withdrawn candidate, it instead would count for the highest ranked candidate on the ballot who remains an active candidate. We also suggest that parties give overseas voters registered with their party the same opportunity to return a ranked choice ballot, with it counting for the highest-ranked active candidate on the ballot..

#### Voter Guides for Voters in All Elections:

In most elections, voters must rely on getting information about their ballot choices from private media sources or directly from campaigns. The media disproportionately covers some candidates and issues and not others, while campaigns attempt to push a particular agenda, and may even provide deceptive information to manipulate voters. These problems are exacerbated for overseas voters, who usually do not have the same opportunity to receive this private information nor interact directly with candidates and watch debates.

FairVote has long proposed that all jurisdictions invest in democracy by creating voter guides, as is currently done in California, Oregon, and Washington. State or local election officials would provide a comprehensive guide to all voters explaining which candidates are running, which initiatives are on the ballot, and the effect a “yes” vote or “no” vote will have on each ballot measure. Ideally, each candidate would be able to include a statement describing themselves and their platform, as would the official “yes” and “no” campaigns on ballot measures. The guide would also provide a comprehensive explanation of how to vote. While such guides ideally would be mailed (at least to currently registered voters, but potentially to all households with additional information on how to register to vote), they should be online at the very minimum, potentially with additional features like “talking head” videos where candidates and ballot measure proponents and opponents would have an opportunity to make a case for their position or candidacy.

#### Requested Actions

As demonstrated above, these actions may provide the best option for jurisdictions in fully including military and overseas voters in all elections. So far, however, federal research and recommendations regarding options for overseas and military voters has not devoted the warranted time and attention to these solutions. In order to better appreciate the value of this option, we ask that this Committee recommend federal research into at least the following topics:

- Participation rates among military and overseas voters in runoff elections generally;
- The impact of the use of ranked choice voting for participation by military and overseas

- voters in runoff elections;
- The impact of shorter runoff periods on turnout among in-person voters;
- The disproportionate percentage of votes cast by overseas voters for withdrawn presidential candidates in presidential primaries;
- The costs, if any, associated with the use of ranked choice voting for overseas and military voters and for the expanded use of voter guides.

Conclusion

I applaud this Committee for seeking to improve the voting experience for voters and to take steps to facilitate voting. I ask that you recommend that states and localities use ranked choice ballots for overseas voters in any election that might go to a runoff taking place less than two months after the first election and in presidential nomination contests. I also ask that you recommend that voter guides become a common practice, at least in creative online forms. Certainly we all agree that our men and women in uniform should have their votes count meaningfully in all elections, especially as they protect and defend our country from abroad.

I would be happy to provide additional information about these proposals and to address any other questions about the voting process.

*Attachment: Example of ranked choice voting ("instant runoff") ballot for overseas voters from South Carolina when first using the system in 2006.*

**INSTANT RUNOFF BALLOT**  
 Official Ballot Republican Party Primary  
 {insert county name here} County, South Carolina  
 June 27, 2006

**Absentee Precinct**

**INSTRUCTIONS TO THE VOTER:** The Instant Runoff Ballot will be used only in the event that no candidate seeking their party's nomination to run for a particular office receives a majority of the votes in the Primary thus forcing a runoff. Instant Runoff Ballots will not be opened if there is no need for a runoff.

For each office on the Instant Runoff Ballot, indicate your order of preference for each candidate whose name is printed on the ballot by filling in the circle in the corresponding column to the right of each candidate. You are not required to indicate a second choice, third choice, and so on. Remember, the more candidates you rank, the more likely your vote will affect the outcome of a potential runoff.

**Example**

<b>U.S. SENATOR</b>			
Rank the candidates in order of preference			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
JOHN ADAMS	①	②	●
THOMAS JEFFERSON	●	③	④
GEORGE WASHINGTON	①	●	③

In the Primary election, no candidate received a majority of the votes and the two candidates that received the most votes were John Adams and George Washington, thus eliminating Thomas Jefferson. Therefore, in this example, even though this voter liked Jefferson the best, Washington would receive the vote because the voter ranked Washington the highest of the runoff candidates.

**Official Ballot**

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<b>LIEUTENANT GOVERNOR</b>			
Rank the candidates in order of preference			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
ANDRE BAUER	①	②	③
MIKE CAMPBELL	①	②	③
HENRY JORDAN	①	②	③

<b>SECRETARY OF STATE</b>			
Rank the candidates in order of preference			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
L W FLYNN	①	②	③
MARK HAMMOND	①	②	③
BILL MCKOWN	①	②	③

<b>STATE TREASURER</b>				
Rank the candidates in order of preference				
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice	4 <sup>th</sup> Choice
RICK QUINN	①	②	③	④
THOMAS RAVENEL	①	②	③	④
GREG RYBERG	①	②	③	④
JEFF WILLIS	①	②	③	④

<b>SUPERINTENDENT OF EDUCATION</b>					
Rank the candidates in order of preference					
	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice	4 <sup>th</sup> Choice	5 <sup>th</sup> Choice

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INSTANT RUNOFF BALLOT  
Official Ballot Republican Party Primary  
{insert county name here} County, South Carolina  
June 27, 2006  
Absentee Precinct

No. \_\_\_\_\_

Initials of Issuing Officer \_\_\_\_\_

Candidate	①	②	③	④	⑤
KAREN FLOYD	①	②	③	④	⑤
ELIZABETH MOFFLY	①	②	③	④	⑤
MIKE RYAN	①	②	③	④	⑤
BOB STATON	①	②	③	④	⑤
KERRY WOOD	①	②	③	④	⑤

S.C. HOUSE OF REPRESENTATIVES, DISTRICT 8			
<i>Rank the candidates in order of preference</i>			
Candidate	1 <sup>st</sup> Choice	2 <sup>nd</sup> Choice	3 <sup>rd</sup> Choice
DON BOWEN	①	②	③
TED W LUCKADOO	①	②	③
BECKY R MARTIN	①	②	③

Continue voting on next page

“Supposing is Good, But Finding Out is Better”  
Data’s Vital Role in “Fixing” Election Administration  
*Doug Chapin\**

The 2012 election has brought renewed attention to the field of election administration, thanks in large part to President Barack Obama’s observation that “we need to fix” issues related to the long lines at the polls experienced in some jurisdictions on Election Day.<sup>1</sup> The general sense is that these long lines—and the lengthy waits for voters they entail—are symptomatic of underlying election problems that need to be fixed.

Accordingly, the President announced during his State of The Union Address,<sup>2</sup> and established by executive order, a bipartisan Commission on Election Administration tasked with “identify[ing] best practices and otherwise make recommendations to promote the efficient administration of elections in order to ensure that all eligible voters have the opportunity to cast their ballots without undue delay.”<sup>3</sup>

But what exactly should the Commission examine? And how specifically can we decide how to “fix” election administration?

I believe the answer comes from another well-known American: Mark Twain. Twain once observed that “[s]upposing is good, but finding out is better.”<sup>4</sup>

I’ve always liked Twain’s quote because it puts a witty face on a topic that is gaining adherents in the field: evidence-based election administration, which I define as an effort by which election administrators collect a wide range of data on the voting process and then use that data for assessment and improvement of the election system. Momentum for the concept is growing, sparked in large part by Yale Law School’s Heather Gerken and her idea of a Democracy Index<sup>5</sup> and brought to life most

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\* Director, Program for Excellence in Election Administration, University of Minnesota.

<sup>1</sup> Washington Post Staff, *President Obama’s Acceptance Speech (full transcript)*, WASH. POST, Nov. 7, 2012, [http://articles.washingtonpost.com/2012-11-07/politics/35506456\\_1\\_applause-obama-sign-romney-sign](http://articles.washingtonpost.com/2012-11-07/politics/35506456_1_applause-obama-sign-romney-sign).

<sup>2</sup> Richard Wolf, *Obama Proposes Commission to Address Long Lines at Polls*, USA TODAY, Feb. 12, 2013, <http://www.usatoday.com/story/news/2013/02/12/obama-voting-election-commission-lines/1914249/>.

<sup>3</sup> Exec. Order No. 13,639, 50 Fed. Reg. 19,979 (Mar. 28, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/03/28/executive-order-establishment-presidential-commission-election-administr>.

<sup>4</sup> MARK TWAIN, *MARK TWAIN IN ERUPTION* 324 (Bernard DeVoto ed., 3d ed. 1940).

<sup>5</sup> The Democracy Index, YALE L. SCH., <http://www.law.yale.edu/faculty/democracyindex.htm> (last accessed July 19, 2013).

recently by The Pew Charitable Trusts through their initial Election Performance Index based on data from the 2008 and 2010 elections.<sup>6</sup>

We are also seeing increasing interest in other methods of obtaining data about elections. MIT Professor (and fellow symposium participant) Charles Stewart has, for two consecutive presidential elections, conducted a Survey of the Performance of American Elections, which asks voters about their experiences at the polls.<sup>7</sup> He has also helped to develop a key metric, the “residual vote,” which measures the proportion of ballots cast that are actually counted in a given election.<sup>8</sup> Finally, the U.S. Election Assistance Commission, created in 2002 with passage of the Help America Vote Act, has since 2004 been collecting data from state and local election authorities as part of its clearinghouse responsibilities.<sup>9</sup>

All of these sources—and more at the state<sup>10</sup> and local<sup>11</sup> level nationwide—have begun to allow the field to harness election administration data to improve the voting process. Even better, it is happening in a wide variety of ways:

1. *Data raises awareness—and thus salience—of key aspects of election.*

Quite simply, it is human nature to mind what you measure; whether it is a dieter keeping a food diary or a new business tracking expenses, focusing on a topic raises its salience in our everyday activities. The result is akin to the phenomenon where you meet someone at a party and suddenly begin to see them all over town. So, too, with election administration—by focusing on a topic like lines or residual votes, election officials can begin to see the connections between that data and all the different aspects of the voting process.

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<sup>6</sup> Election Performance Index, THE PEW CHARITABLE TRUSTS, <http://www.pewstates.org/research/reports/elections-performance-index-85899445029> (last accessed July 19, 2013).

<sup>7</sup> Charles Stewart III, *A Voter's Eye View of Election Day 2012*, ELECTIONLINEWEEKLY, Dec. 20, 2012, <http://www.electionline.org/index.php/2012/994-electionlineweekly-dec-20-2012>.

<sup>8</sup> CALTECH/MIT VOTING TECHNOLOGY PROJECT, VOTING: WHAT IS/WHAT COULD BE 20 (2001), available at [http://www.vote.caltech.edu/sites/default/files/voting\\_what\\_is\\_what\\_could\\_be.pdf](http://www.vote.caltech.edu/sites/default/files/voting_what_is_what_could_be.pdf).

<sup>9</sup> Election Administration and Voting Survey, U.S. ELECTION ASSISTANCE COMM'N, [http://www.eac.gov/research/election\\_administration\\_and\\_voting\\_survey.aspx](http://www.eac.gov/research/election_administration_and_voting_survey.aspx) (last accessed April 5, 2013).

<sup>10</sup> See, e.g., *G.A.B. Releases 2012 Local Election Data and Costs*, STATE OF WIS. GOV'T ACCOUNTABILITY BD., Feb. 19, 2013, <http://gab.wi.gov/node/2760> (Wisconsin data from 2012 election).

<sup>11</sup> See, e.g., Stephen L. Weir, *Contra Costa Cnty. Clerk-Recorder Dept., November 6, 2012 Presidential Election Absentee and Provisional Ballot Voting Report*, available at <http://www.cocovote.us/getdocument.aspx?id=810> (Contra Costa County, Cal. data from 2012).

2. *Choosing and formulating a data metric requires a useful attention to process.* It is not enough simply to start measuring numbers; the trick is to choose data that capture one or more important attributes, desirable or undesirable, and be clear about how—and more importantly, why—the data are saying what they do. This attention to the relationship between the election process and the data it generates is useful in focusing attention on long-running or well-established practices. In turn, this allows everyone concerned to ask whether “the way we’ve always done it” is still the way to go.
3. *Data can allow comparisons between jurisdictions and over time.* One of the most powerful aspects of the new emphasis on evidence-based election administration is the ability to compare performance from place to place and election to election. The decentralized nature of American election administration is well-established—I often joke that the only uniformity exhibited is the stubborn insistence on each community going its own way—yet, as data becomes more and more prevalent, it is possible to compare a measure, such as line length, across jurisdictions and ask why the numbers are different from place to place. Similarly, jurisdictions committed to data collection can also monitor their own operations from election to election, identifying improvement or emerging problems over time. These comparisons, geographic or over time, are not in and of themselves dispositive; however, the opportunity for diagnosis and further inquiry are invaluable.
4. *Data provides a “way in” to resolving difficult questions for policymakers—and courts.* Steve Weir, who recently retired as Clerk-Recorder of Contra Costa County, California, once observed at a meeting I attended that “election data is the perfect antidote to an anecdote.”<sup>12</sup> What he meant was that most discussions about election policy we usually hear are driven by stories about individuals—like 102-year-old Desiline Victor, who was held up as an example of the need for reform during the State of Union for her lengthy wait to vote

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<sup>12</sup> See PEW CENTER ON THE STATES, DATA FOR DEMOCRACY: IMPROVING ELECTIONS THROUGH METRICS AND MEASUREMENT 2 (2008), available at [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election\\_reform/Final%20DfD.pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Election_reform/Final%20DfD.pdf).

on location in 2012.<sup>13</sup> The problem with such stories is that they often lack context—in Ms. Victor’s case, the fact that her wait was on the Sunday before Election Day at an early voting location—and hides the complexity of any question involving election administration.<sup>14</sup> This lack of a firm footing can make policymakers—and more importantly, courts—unsure of how to intervene when problems arise. While legislatures often respond with high-volume rhetorical disagreements (as I like to say, politics adores a factual vacuum), courts are usually far more reticent to get involved absent what the U.S. Supreme Court calls “judicially discoverable and manageable standards” for resolving conflicts.<sup>15</sup> Readily-available data not only gives policymakers something substantial to discuss, it allows judges to evaluate arguments and make decisions about election controversies based on evidence instead of rhetorical conjecture.

What, then, does this emerging emphasis on evidence-based administration mean for those brave souls in the legal community who wish to litigate or follow election administration cases?

First and foremost, it requires lawyers to get comfortable with a level of numeracy that is not always emphasized in the profession. Years ago, *Saturday Night Live*’s Chevy Chase lampooned then-President Gerald Ford in a debate sketch by responding to a complicated economic question, “it was my understanding that there would be no math.”<sup>16</sup> That approach simply will not work in the new era of evidence-based election administration; while it is not necessary for attorneys to perform multivariate regressions, it will be crucial for them to become comfortable with concepts like confidence levels and measures of central tendency. Those ideas will, increasingly, provide compelling storylines in election cases that rival that of Ms. Victor.

In addition, it will require attorneys to listen to—and ask—their election clients about different data elements in a given case and to use those

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<sup>13</sup> Nadege Green, *At Age 102, Her 15 Minutes of Fame Comes from Hours of Waiting to Vote*, MIAMI HERALD, Mar. 13, 2013, <http://www.miamiherald.com/2013/03/12/3282440/north-miami-dade-woman-102-becomes.html>.

<sup>14</sup> Doug Chapin, *102 Year-Old Desilene Victor Highlights Complexity Facing Election Reform*, HUMPHREY SCH. OF PUB. AFFAIRS ELECTON ACAD., Feb. 12, 2013, [http://blog.lib.umn.edu/cspg/electionacademy/2013/02/102-year\\_old\\_desilene\\_victor\\_h.php](http://blog.lib.umn.edu/cspg/electionacademy/2013/02/102-year_old_desilene_victor_h.php).

<sup>15</sup> *Baker v. Carr*, 369 U.S. 186, 217 (1962).

<sup>16</sup> See Video embedded in Ed Driscoll, *High School Kids, NYT Confused by Definition of 'Caveat Emptor'*, PJMEDIA (May 17, 2012, 7:28 PM), <http://pjmedia.com/eddriscoll/2012/05/17/high-school-kids-nyt-confused-by-definition-of-caveat-emptor/>.

discussions to drive decisions about what arguments to pursue. Sometimes, the attention to process (as described in point 2, above) can be useful in uncovering helpful evidence to support a client’s case or identifying a serious hole in the opponent’s argument. In other words, it is no longer enough to consult statutes and casebooks: Lawyers must also be willing to wade into the numbers.

William Edwards Deming, the godfather of the evidence-based management movement, is reported to have once observed that “in God we trust, all others bring data.”<sup>17</sup> That same spirit now drives the emergence of evidence in elections. As policymakers, including the new presidential commission, begin to grapple with the issues raised by the 2012 election, they will need to acknowledge and embrace the new role that data plays in the field of election administration.

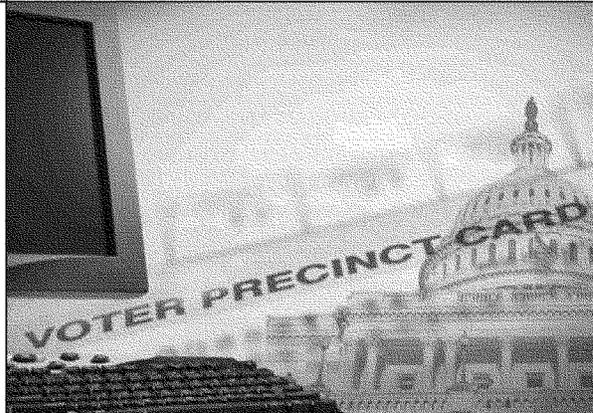
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<sup>17</sup> TREVOR HASTIE ET AL., *THE ELEMENTS OF STATISTICAL LEARNING* vii (2d ed. 2009), available at [http://www-stat.stanford.edu/~tibs/ElemStatLearn/printings/ESLII\\_print10.pdf](http://www-stat.stanford.edu/~tibs/ElemStatLearn/printings/ESLII_print10.pdf).

JULY 2005

**The Next Big Election Challenge:**  
Developing Electronic Data  
Transaction Standards for Election  
Administration

E-Government Series



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Professor of Political Science and  
Co-Director, Caltech/MIT Voting Technology Project  
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University of Utah

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## FOREWORD

July 2005

On behalf of the IBM Center for The Business of Government, we are pleased to present this report, "The Next Big Election Challenge: Developing Electronic Data Transaction Standards for Election Administration," by R. Michael Alvarez and Thad Hall.

This new report continues the Center's interest in meeting the challenge of bringing the nation's election administration systems into the 21st century and taking advantage of the rapid advances in technology over the past decade. In 2002, the Center published "Internet Voting: Bringing Elections to the Desktop" by Robert S. Done. In that report, Professor Done addressed the challenges facing the nation in moving toward electronic voting via the Internet.

In this report, Professors Alvarez and Hall discuss the challenge of moving toward the implementation of a set of electronic transaction standards (ETS) for election administration across the nation. According to the authors of the report, such a standard would allow election management systems to communicate seamlessly and share data to create "a more accurate, cost-effective, and accessible election process and voting experience." Such a standard would enable state and local governments to adopt a modular approach to better integrate election management and voting products, make possible the development of truly integrated voter registration systems, and enhance the ability to conduct consistent and effective post-election audits of elections.

The report highlights an expanded role for the new federal Election Assistance Commission, created by the Help America Vote Act (HAVA), to facilitate the implementation of new electronic transaction standards across the nation. The authors also call upon Congress to strongly encourage states and localities to adopt such new standards.

We trust that this report will be highly informative and useful to election officials across the United States as they face the challenge of improving our election administration systems to meet the needs of 21st century government.

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## EXECUTIVE SUMMARY

The world of electronic technology—from e-mail to the Internet—works because of the existence of basic standards of data exchange. In many areas of commerce and government there exist electronic transaction standards (ETS) that facilitate electronic data interchange (EDI). An EDI provides a defined format for the exchange of data for every specific transaction in question. These standards allow for a marketplace full of different products and services that give end users the ability to communicate with other users who also purchase software with the same EDI.

Having an ETS for public elections would improve all aspects of election management. An ETS would allow election management systems to communicate seamlessly and share data to create a more accurate, cost-effective, and accessible election process and voting experience. The lack of such standards has several ramifications. First, it is difficult for a local election official to integrate election management and voting products acquired from different vendors into a single unit, making any sort of “plug and play” or modular approach impossible for election systems. Second, the lack of standards affects the ability of states to develop truly integrated voter registration systems. A complete voter registration system needs to be able to pull data from agencies across state government and to share data across states. Third, the lack of an ETS limits the production of consistent and effective post-election audits of elections.

In three case studies, we examine the problems associated with the lack of an ETS in three policy areas: voter registration, innovation and election administration, and election data and election results. We also examine several ongoing efforts to create uniform standards for exchanging election data. The first is being conducted under the auspices of the Organization for the Advancement of Structured

Information Standards (OASIS) and uses an interoperable Election Markup Language that would facilitate data exchange. The second is being developed by the Institute of Electrical and Electronics Engineers (IEEE). Both of these standards-setting activities are open, collaborative efforts that bring together experts from around the world to develop new standards. Regardless of whether either of these two protocols is adopted (or a new protocol is developed and adopted), the move to an ETS will streamline election data transfer. An ETS can encourage innovation in election management by increasing competition and lowering barriers to entry and also can facilitate local and state election officials who want to add new services to expand the franchise to traditionally disenfranchised populations.

A federal approach to comprehensive standards for electronic data transmission can be facilitated by the Election Assistance Commission in the following ways: (1) working with IEEE, OASIS, the National Institute of Standards and Technology, and others to develop a standard ETS for election data; (2) including a requirement for voting systems to have a common electronic-data-exchange component in the revised voting system standards; (3) including a similar requirement in the guidance given to states regarding what makes a statewide voter registration system compliant with the Help America Vote Act (HAVA); and (4) developing a process to encourage states to share voter registration data to improve the maintenance of voter registration rolls. Additionally, the U.S. Congress should consider requiring all states and localities to adopt all federal voting system standards, and making future voting systems standards binding. Finally, the U.S. Congress should strongly encourage all states and localities to adopt these new standards and empower the Election Assistance Commission to issue regulations for voting system standards and standards for voter registration systems.

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## Introduction and Overview

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Today few of us think twice about sending an e-mail across the country or around the world. We routinely open a web browser to see the headlines of newspapers from far-flung locations, to shop across the nation, and to see the pictures of a newborn family member whose parents live thousands of miles from us. We use electronic technologies without thinking twice about them (except when they don't work). Nor do we think about how it is possible to use a Macintosh PowerBook or an IBM ThinkPad to access a Dell e-mail server (running Linux or Microsoft Windows), which itself communicates with e-mail and web servers throughout the world using a multiplicity of different computer hardware and software applications.

What makes all of these electronic transactions work are basic standards of data exchange. What allows all of these different computer hardware platforms, running different operating systems and sometimes proprietary software applications, to communicate together are fundamental protocols like TCP/IP (Transmission Control Protocol/Internet Protocol) and HTTP (Hypertext Transfer Protocol). These two protocols are fundamental building blocks for the development of the transfer of data over the Internet (TCP/IP) and the World Wide Web (HTTP). These basic standards and protocols—and many others like them—allow information to be passed from one computer system to another quickly, efficiently, and with very little error. They let people communicate electronically, allow for e-commerce, and provide the means for many governmental activities, allowing citizens to communicate with their elected officials quickly and effectively, enabling the electronic filing of tax returns, and even allowing the Armed Forces to communicate through highly secure channels.

This report is about the need for similar electronic transaction standards (ETS) in the realm of public elections. All aspects of election management—from managing voter registration to preparing ballots, managing precinct information, and counting and auditing election data—are moving toward complete automation. As this transition occurs, standards are necessary to ensure election data outputs are uniform, so that election management systems can communicate with each other seamlessly and various election management and voting technologies can interface automatically. This seamless communication also will allow election officials to share data—such as voter registration information—that will help produce a more accurate, cost-effective, and accessible election process and voting experience. In Appendix II, we explore the benefits that came to the healthcare industry when ETS protocols were required. This report shows how ETS protocols will improve voting and elections.

We wish to note at the outset that this report and the issue of ETS are distinct from the current controversy in electronic voting surrounding voter verification and voter-verified paper audit trails. ETS in election management is intended to allow election officials to exchange data, like voter registration files, and to allow different voting management systems developed by different vendors to communicate seamlessly. It also allows election data from different states or localities to be aggregated easily as well, which facilitates the reporting of and evaluation of election results. However, because ETS will facilitate the development of “plug and play” software—software solutions that can easily interface with any other software using the same data exchange standard—an ETS in elections could stimulate further the development of voter-verification

## Acronyms and Abbreviations

**ANSI:** As the American National Standards Institute describes itself, ANSI is a private, nonprofit organization 501(c)3—that administers and coordinates the U.S. voluntary standardization and conformity assessment system. It is the official U.S. representative to the International Accreditation Forum (IAF) and the International Organization for Standardization (ISO).

**DRE:** Direct Recording Electronic voting machine, which is sometimes referred to as a touch-screen voting machine, allows a voter to vote without using a paper ballot. The voter's choices are recorded directly into the memory of the voting machine's computer system.

**EAC:** The Election Assistance Commission was created by HAVA. It is the federal entity that is now in charge of promoting election reform, distributing federal funds to states, and developing new standards in elections.

**EDI:** Electronic data interchange is the exchange of data using ETS.

**EML:** OASIS defines Election Markup Language as a standard for the structured interchange of data among hardware, software, and service providers who engage in any aspect of providing election or voter services to public or private organizations.

**ETS:** Electronic transaction standards are a common protocol for exchanging data. The protocol includes common standards for how data will be formatted and for how it will be exchanged across electronic platforms.

**HAVA:** The Help America Vote Act is federal legislation enacted in 2002 in response to the problems that occurred in Florida in 2000. HAVA created the Election Assistance Commission, required the development of a state plan for election reform, and provided federal funding to states to support these reforms.

**HIPAA:** The Health Insurance Portability and Accountability Act is a broad healthcare reform package passed by Congress in 1996.

**HTTP:** Hypertext Transfer Protocol is the protocol used on the World Wide Web to define how messages are formatted and transmitted, and the actions web servers and browsers should take in response to various commands.

**IEEE:** The Institute of Electrical and Electronics Engineers is an international NGO that develops standards for electronic and electrical domains, including computer hardware and software.

**LEO:** Local Election Officials are the individuals or board who implement elections at the county or city level.

**NGO:** Non-governmental organization is a more general term for nonprofit and charitable organizations. Political parties and election-related interest groups are considered NGOs.

**NIST:** The National Institute of Standards and Technology is the federal agency charged with developing standards and measures for everything from what it exactly means for something to weigh "one pound" to the development of usability standards that define when a product is most easily used by specific populations.

**OASIS:** The Organization for the Advancement of Structured Information Standards, better known as OASIS, is a nonprofit, international consortium of suppliers and users of products and services that support open structured information standards (both de jure and de facto). It provides members with an open forum to discuss market needs and directions, and to recommend guidelines for product interoperability. This work complements that of standards bodies, focusing on making structured information standards easy to adopt and standards-based products practical to use, in real-world, open system applications.

**SEO:** State Election Officials are the individuals or board who implement elections at the state level.

**SERVE:** The Secure Electronic Registration and Voting Experiment was intended to allow eligible UOCAVA voters to register and cast votes using the Internet in the 2004 elections. The system was not deployed.

**TCP/IP:** Transmission Control Protocol/Internet Protocol is a communications protocol that was developed to connect dissimilar systems through a Unix standard. TCP/IP is a routable protocol, because the header prefixed to an IP packet contains not only source and destination addresses of the hosts, but also source and destination addresses of the networks they reside in. Data transmitted using TCP/IP can be sent to multiple networks within an organization or around the globe via the Internet, the world's largest TCP/IP network. (source: <http://computing-dictionary.thefreedictionary.com/TCP/IP>)

**UOCAVA:** The Uniformed and Overseas Civilian Absentee Voting Act encourages special voting assistance to military personnel, their dependents, and citizens living overseas.

**VSS:** Voting system standards are documented agreements containing technical specifications to be used consistently as guidelines to ensure that automated voting systems (both those that use a paper ballot and all electronic systems) are accurate, reliable, and secure.

**XML:** Extensible Markup Language is a flexible way to create standard information formats and share both the format and the data on the World Wide Web.

systems that offer solutions to the voter-verification problem, both procedural and technical.<sup>1</sup>

Historically, American elections have been a highly decentralized affair. For much of the nation's early history, government officials did not even provide voters with ballots. It was the parties, not the election officials, who printed ballots and did a wide range of the election activities we now attribute to elected or appointed local election officials.<sup>2</sup> As states moved to the Australian ballot—which listed candidates from both parties on a single ballot—election officials gained more control over the elections process. Today, with elections becoming more mechanized and computerized, this area of government has become more complex. The introduction of lever machines, which require maintenance and upkeep, and punch cards, which brought computer technology to elections management, greatly changed the landscape of elections and set the stage for the current world of electronic election management systems.

Over the past three decades, election management has been a part of the transition that governmental units have taken toward e-government. This transition began in the 1960s, when election officials started using electronic vote tabulation equipment. Given the massive media coverage that occurred in 2004 surrounding the use of direct recording electronic (DRE) voting equipment in the election and its possible pitfalls, it would not be unreasonable for someone to think that DREs were the primary component of computer technology in election management. As we will show, nothing could be further from reality.

Today, in most election jurisdictions, much if not all of the election process is being done using e-government solutions. This e-government solution typically begins with a system that contains all candidate and precinct information. The information provides a basis for using computers for ballot design, voter registration data management, precinct and early vote casting, vote tabulation, data reporting, and electronic auditing. The reason for using e-government in elections is simple: It allows local election officials to better manage the elections process and elections information. It also allows election results to be reported faster than before, something that candidates, the media, and the public demand in the current instant news environment.

But election administration is a niche market in the e-government arena. So as state and local election officials have moved into the electronic realm, they have been forced to select systems in a marketplace dominated by a relatively small number of vendors of proprietary systems; in some cases, they have developed their own applications for components of the election administration process. Many private vendors sell systems that require much, and sometimes all, election administration processes to be served exclusively with their proprietary system. One exception is in the case of voter registration applications, which are often today managed with one system while all other election management processes—from ballot design to reporting election outcomes—are managed solely through a second system.

The use of solely proprietary e-government solutions in elections has created a systematic problem in e-government: There is not a common standard or set of standards for sharing election data across these proprietary systems. The problems associated with this lack of electronic data exchange standards manifest themselves in several ways.

First, it makes it difficult for a local election official to integrate various election management and voting products acquired from different vendors into a single unit. For example, an election official would be hard-pressed today to get one vendor's ballot design product to work with a different vendor's electronic voting equipment, or to get one vendor's electronic voting equipment to work with a different vendor's tabulation product. The local official would literally have to get computer programmers from both companies to work together to build a new integration tool that would allow one company's product to "talk" to the other, a costly and difficult process. The lack of a data exchange standard makes virtually impossible any sort of plug and play or modular approach for the development of election administration electronic solutions.

Second, the lack of standards affects the ability of states to develop truly integrated voter registration systems. The Help America Vote Act (HAVA) requires states to develop electronic statewide voter registration databases. Therefore, states are now integrating voter registration data from local election officials (typically counties) into these new databases, a process that is raising the issue of inconsistent data formats for this particular component of election

administration. Also, the statewide voter registration files, once complete, must integrate with other databases, most importantly state department of motor vehicles files, federal Social Security Administration databases, as well as existing election administration databases in each state and county. Some election officials have even talked about setting up mechanisms so that states can share election administration data, for example, so that they can check the authenticity of newly registered voters and verify that they are not currently registered to vote in another state.

Third, the lack of election data transfer standards hinders the capabilities of election administrators and others to produce consistent and effective post-election audits of election practices and procedures. Currently, the quality and consistency of information reported by election administrators is highly variable; it can be exceedingly difficult for third parties interested in auditing election practices and procedures to obtain even rudimentary data from many state and local election officials.<sup>2</sup> By developing a standard format for data exchange, election administrators will be able to provide easily and efficiently a consistent reporting of election administration information that can be used to appropriately audit election practices and procedures.

The need for comprehensive standards for electronic data transmission calls for federal action. The solution to this problem is for the Election Assistance Commission (EAC) to:

- Work with the Institute of Electrical and Electronics Engineers (IEEE), the National Institute of Standards and Technology (NIST), the Organization for the Advancement of Structured Information Standards (OASIS), and others to develop a common ETS for election data.
- Include a requirement for voting systems to have a common electronic data exchange component in the revised voting system standards.
- Include a similar requirement in the guidance given to states regarding what makes a statewide voter registration system compliant with the Help America Vote Act (HAVA).
- Develop a process to encourage states to share voter registration data to improve the maintenance of voter registration rolls.

Additionally, we recommend that the U.S. Congress consider requiring all states and localities to adopt all federal voting system standards and make future voting systems standards binding (not voluntary). States and localities also need to be encouraged to exchange data to improve the quality of the voting experience. When ETS protocols are included in all e-voting systems, states can use the system to improve the quality of their voter registration lists, and local governments can use the technology to innovate and improve their overall service to voters. Finally, the U.S. Congress should strongly encourage all states and localities to adopt these new standards and empower the EAC to issue regulations for voting system standards and standards for voter registration systems.

Standardization creates the potential for a future election model where this interoperability allows election officials to offer a wide array of services to voters, as well as improve election management across jurisdictions. Consider the following examples:

- Local election officials could share or borrow voting equipment from others with confidence that the data exchange from their ballot definition software and vote tabulation software would be compatible with the data exchange in the voting equipment.
- It would allow for registration data to be more easily exchanged and compared between a state and its localities, and among states.
- It would let election officials consider the acquisition of more modular election administration technologies; they would not necessarily be required to purchase a single, end-to-end election administration solution.
- As states move to attempt to add other electronic voting experiences, such as Internet voting for Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA) voters, these new technologies would be able to use a common data exchange protocol to integrate with the existing system.

The creation of standard, interoperable data exchange protocols can also encourage innovation in election management by increasing competition and lowering barriers to entry for firms interested in providing component or modular services rather than complete end-to-end election management systems. It can also facilitate local and state election officials who want to add new services—such as experimentation with Internet voting for military personnel and overseas civilians—that can expand the franchise to traditionally disenfranchised populations.

Standardization often occurs because of political, economic, or social demands. In the case of elections, HAVA and changing socio-demographic trends in the United States are driving the need for standard protocols in election management systems. The move to standards for data exchange in e-government is very similar to shifts in other policy areas. For example, the creation of standard protocols in the area of health insurance and healthcare was driven by a legislative requirement contained in the Health Insurance Portability and Accountability Act (HIPAA); this case is closely analogous to what could occur in election administration. In HIPAA, federal legislation pushed the affected industries to get together and create a standard protocol that addressed federal requirements.

This report begins with an examination of standards in the e-government context, and then considers how the lack of standard integration protocols in the election arena impedes both innovation in this field and effective communications among the various entities involved in election administration. Using three cases—statewide voter registration systems, the Secure Electronic Registration and Voting Experiment (SERVE) Internet voting project, and election data results and reporting—we highlight the difficulties caused by the lack of effective data transfer protocols in this field. We conclude by examining how the future of elections could look with a standard data exchange protocol in place. The report also contains an appendix (see Appendix II), where we illustrate how ETS standards in healthcare are analogous to what is currently occurring in e-voting and the benefits that can accrue from such standards.

## Standards in the E-Government Context

Over the last decade, there has been a marked increase in research in the study of e-government.<sup>4</sup> This research has examined an array of issues, from examinations of citizens' usage and attitudes toward e-government to barriers in the adoption of e-government. In general, the focus of this research has been on the issues associated with moving to e-government in various jurisdictions or policy areas and citizen use and approval of this technological change. Interestingly, there have been few studies of e-government in the area of election administration, even though state and local governments have been using e-government technologies since the 1960s.<sup>5</sup>

Equally as important, little attention has been paid to the role played by governmental and non-governmental organizations (NGOs) such as the IEEE and OASIS in the establishment of standards and protocols needed to create uniformity across e-government. We generally take e-government standards for granted; we assume that the e-mail recipient can read it and that an Internet connection in Washington, D.C., and Salt Lake City, Utah, are the same as the Internet connection in Pasadena, California. Likewise, when we purchase a computer, we assume that—within certain well-understood limits—we can add software and hardware peripherals to the computer, and they will work. In fact, most computers today work on a plug and play model, where a vast range of items work simply by being plugged into the computer.

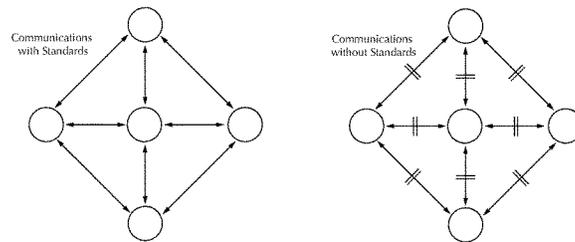
We can see the importance of standards when we consider the impact of incompatibility on efficiency and effectiveness. Computers have the capacity to allow organizations to collect and organize vast amounts of information. However, if two organizations have software systems that are not compat-

ible, then the data in one system cannot be easily transferred to or compared with the data in another (see Figure 1). Such problems can be common, especially in proprietary systems. There are many examples of how such incompatibility problems have affected the management of public programs.<sup>6</sup> Typically, one organization has data that a second organization needs, and without a standard data transfer protocol, the only way to share data is to have the data manually re-entered. Too often, the alternative is to not share data at all, resulting in lost productivity and reduced management capacity.

What is required to make this process work smoothly is to have a system that allows for the standard interchange of data between computers without any human intervention. Electronic transaction standards that facilitate electronic data interchange (EDI) are required to achieve this goal. An EDI provides a defined format for the exchange of data for every specific transaction in question. These standards allow for software developers to offer end users an array of different products and services, but with end users knowing that the system they purchase will be able to communicate with others who also purchase software with the same EDI.

In the area of election administration, voluntary standards do exist, with their most important application to date in the area of voting systems. The current voting systems standards (VSS) were adopted by the Federal Election Commission (FEC) in 2002, the first revision of these standards since their initial release in 1990. These standards ensure that voting systems—which include not only the voting technology used in polling places but also the tabulation software used to count ballots and the software used to generate ballots—meet a minimum stan-

Figure 1: Communications with and without Standards



ard. Importantly for our discussion, there are no standards related to electronic data exchange. The standards are open to being updated with improved technical support. Under HAVA, the development of future standards for voting technologies is to be conducted by the new Election Assistance Commission in conjunction with the National Institute of Standards and Technology (NIST).<sup>7</sup>

The role of government in the development of electronic transaction standards, or ETS, and the benefits of such a system can be seen in the healthcare arena, a complex field involving government-to-business interaction. The implementation of federal health policy requires the coordination of federal actors, corporate and not-for-profit healthcare organizations, and information technology solution providers. Without standards, the process of communicating insurance claims or patient health information between the federal government and health providers—or among health providers—was unnecessarily complex, requiring people to convert data from format to format as it went through the system. To bring order to this process, the federal government mandated the development of a standard protocol for all healthcare-related transactions. With a standard protocol, the communications problem that existed in data transmission was eliminated and greater efficiencies were created. In Appendix I, we present a fuller exposition of this case to illustrate how ETS can be developed through government-business partnership.

## The Election Context

Elections in the United States have traditionally been run by local governments under a governance system largely embodied by state law. There is not a single set of election procedures and processes in the United States; there are not even 50 sets, or one set per state. Instead, there are several thousands of different ways of running elections in the United States, since local election officials, including both county and city election administrators, maintained their own unique methods of election administration before the 2000 election debacle. The rationale behind this decentralization of election administration is partly constitutional. Article I of the U.S. Constitution allows for a federal role in congressional elections, but typically the federal government has sought to delegate election procedures for federal offices to the states. Therefore, election governance regimes vary broadly across states, and often within states. At the state level, the laws govern every aspect of voting:

- **Who can vote.** For example, in some states, citizens convicted of felony violations can never cast a vote again without going through a rights re-establishment process.
- **When people vote.** Some states allow voting only on Election Day, but others also allow “early voting.”
- **Where people vote.** For example, in Oregon, there is no voting at designated polling places; everyone votes through an absentee voting process.
- **How people vote.** Some states, like Georgia, have a single voting system for the entire state, while others, like California, defer such decisions to the county level.

There are similar variations across counties. Counties often have substantial leeway in the manner in which they implement election law, and they historically have been empowered to determine the election management systems that will be used in the county—from voter registration to voting equipment to ballot design and management software. With this control at the county level, in a given state, no two counties may use exactly the same voting equipment, even if two counties have purchased the same type of system from a vendor. Counties often customize these systems so that—even though the systems are produced by the same vendor—they produce output that is not compatible.

The federal government has periodically sought to provide some uniformity in election administration. For example, the Voting Rights Act created more uniform protection of voting rights, and the National Voter Registration Act sought to promote more consistent voter registration procedures across the states. However, until the 2000 presidential election and the passage of HAVA in that election’s aftermath, administration of election procedures was largely a matter of county or sub-county administration.

In the area of election administration, the development of standards has been a slow and somewhat controversial process. The first election standards—known as the voting system standards, or VSS—were promulgated in 1990, after NIST completed a feasibility study in this area. The standards were then updated in April 2002, but it is widely recognized that the standards have not remained up to date. As the FEC, which promulgated the 2002 standards, notes:

### Players in the Election Administration and Standards Process

As election reform has occurred over the past several decades, the players in election administration have evolved. This evolution has continued with the development of voting system standards and related electronic data transmission standards.

The frontline operators in elections are **local election officials** (LEOs). LEOs are responsible for running elections: They hire the poll workers, select poll sites, generate ballots, maintain and use voter registration rolls, and count and audit ballots. Historically, LEOs have been responsible for the selection of election administration and voting technologies, including voting systems, voter registration systems, and election management software systems.

At the state level, **state election officials** (SEOs) play a key role in election administration, especially since the passage of the Help America Vote Act. Typically, the state election powers are in the hands of the secretary of state, but in some states the lieutenant governor or a state election board holds these powers. Under HAVA, the SEO is responsible for the development of a state election plan, as well as for maintenance of the state's voter registration system. In many states, such as Georgia and Maryland, the state has exercised control over the selection of the voting technology that will be used in the state.

Before the passage of HAVA, the **Federal Election Commission** (FEC) was responsible for providing data, research, and information about election administration to various interested groups. It was also responsible for overseeing the development of the voting system standards (VSS). Under HAVA, these powers have been transferred to the **Election Assistance Commission** (EAC). The EAC is responsible for overseeing the implementation of HAVA, including evaluating state election reform plans, providing funds to states to support HAVA, conducting studies and issuing guidance to facilitate election reform, and overseeing the development of new VSS.

HAVA also formally brings the **National Institute of Standards and Technology** (NIST) into the elections process. NIST is to help in the development of the VSS and to work on supporting other studies on issues such as usability and voting system security. Other independent standards-setting bodies, such as the **IEEE** and **OASIS**, also support the development of standards that are used throughout specific industries, such as the elections management and voting technology industry.

Standards are not permanent. They must evolve alongside technological advancements. Indeed, it is common practice to review and update technical standards every five years or so. The voting system standards, issued in 1990, are no exception to this rule. Vendors are now using new technology and expanding system functions that are not sufficiently covered by the existing standards.<sup>8</sup>

For example, there are no standards governing Internet voting, even though there have been several trials of Internet voting in the United States. The standards in elections, moreover, have been exacerbated by the decentralized governance structure in the area of voting technology and election administration. Moreover, the voting system standards are voluntary, not mandatory. All states have not adopted the 1990 or 2002 voting system standards, and there is no requirement that states be mandated to adopt them.

What has been the impact of this lack of standards? It has exacerbated many of the recent trials our nation has weathered in election administration. The 2000 presidential election created pressure to overcome the problems that exist in the decentralized nature of American election administration. The Florida election process in 2000 illustrated that there were substantial differences across counties in how administrative procedures were handled; in part, this was the rationale used by the Supreme Court in the *Bush v. Gore* decision that stopped the Florida recount in December 2000. In response to these problems, the federal government acted in 2002 and passed HAVA. This legislation provided for a slightly stronger federal role in election administration, mainly by establishing a new federal entity—the Election Assistance Commission—and by mandating that states work to develop statewide voter registration databases and eliminate inferior voting technologies.

## Standardization of Election Management Protocols

One area where there are no election standards is the area of coding standards or electronic data transmission standards. This means that voting systems—even if they complete the same certification standards—do not have to meet specific standards for electronic data transmission or for file coding and formatting. Not surprisingly, the lack of standardization has led to a marketplace dominated by a few vendors who provide end-to-end product solutions. Because these systems are proprietary and typically do not produce a standard output, election officials are often forced to purchase entire election management solutions from a single vendor. It is typically not possible to use the ballot definition software from one vendor with the voting equipment of another vendor and the vote tally and audit software of a third vendor.

Fortunately, there are several efforts to create uniform standards for exchanging election data. Here, we profile two of the most promising. The first is being conducted under the auspices of OASIS and the second by IEEE. Both of these standards-setting activities are open, collaborative efforts that bring together experts from around the world to develop new standards.

The OASIS Election and Voter Services Technical Committee began its efforts in May 2001 to develop an interoperable Election Markup Language (EML) that would facilitate data exchange. Its charge is to:

develop a standard for the structured interchange of data among hardware, software, and service providers who engage in any aspect of providing election or voter services to public or private organizations. The services performed for such elections include

but are not limited to voter roll/membership maintenance (new voter registration, membership and dues collection, change of address tracking, etc.), citizen/membership credentialing, redistricting, requests for absentee/expatriate ballots, election calendaring, logistics management (polling place management), election notification, ballot delivery and tabulation, election results reporting and demographics.<sup>9</sup>

The EML standards have been through four iterations—Version 4.0 was released on January 24, 2005. EML is not updated on a regular schedule, but instead is modified as users and technical experts identify issues with the schema. The EML protocol has been tested in pilot projects in several nations, and edits have been made to EML based on the results of these pilot implementations.

The focus of the EML design is on developing an ETS that has five key characteristics:

1. It can serve as a multinational standard.
2. It can work across various voting regimes—including proportional representation and single-member districts—and across voting platforms—including Internet and traditional paper-ballot voting.
3. It can work in multilingual settings.
4. It is adaptable to both public and private election settings.
5. It can secure data and data interfaces from corruption and manipulation.

One benefit of the EML protocol is that it builds on the existing HTML language that is used extensively as a language on the World Wide Web. This broad usage base means that a wide array of entities can develop using interfaces that use this protocol. This open-source EML protocol also creates the potential for improved interfaces to be developed that may drive improvements to the election process outside of existing technologies.

In September 2002, the IEEE approved a new project in this area: P1622—A Standard for Voting Equipment Electronic Data Interchange. This project follows the same open standards development process outlined before and recognizes the need for broad input in this effort. The P1622 effort begins by recognizing that “the ‘Voting System’ is composed of a number of components, the voter registration system, the candidate filing process, the petition system, ballot definition, voting, tabulation, and reporting systems.” It then states:

This standard will develop standard data interchange formats to allow the exchange and interoperability of these various systems. The purpose of P1622 is to reach, as nearly as possible, the ideal state, wherein there exists a common definition of the data utilized within election systems and the election industry. This standard would promote interoperability among functional components, reduce complexity, spur innovation, and provide greater assurance within election systems.<sup>10</sup>

One model for meeting this new standard is the Election Data Exchange (EDX) protocol, which has been developed by Hart InterCivic. EDX is an electronic data transmission standard that uses Extensible Markup Language (XML), a common schema that is an integral part of many systems for communicating information over the Internet in real time. The EDX schema is designed to promote electronic data interchange, or EDI, allowing different election management systems to communicate seamlessly at the state level, expanding the reporting and presentation capabilities that were previously available. EDX is designed to define the majority of the data elements for an election, which includes the voter’s name and identification number and records of votes cast. A common data interface makes it simple for one county using one election

management system to integrate a voter’s registration application with a second vendor’s election management system. This type of system also can build auditability into the system through enhanced logging functionalities and makes EDI a standard feature of any election management system.

For an ETS to be successful in elections, it has to be broad and encompass the full complement of election activities and complexities, such as multiple ballot languages. The EDX schema provides a complete data format across both voter registration and election management systems. For example, EDX can support:

- Voter registration records (name, address, etc.)
- Poll book data
- Polling place information
- Closed, open, and mixed primaries
- General elections
- Local elections
- Multiple languages
- Fully customized rotation methods
- Graphical images (language based to allow a specific cast vote record for a language)
- Districts—full definitions with relationships to precincts, contests, and ballot styles
- Precinct—support for both reporting precincts and splits
- Summarized tabulation results
- Itemized cast vote records with related associations to handle over vote resolutions
- Ballot style definitions and associated district, precinct/split, and contest relationships
- Dependent, measure, candidate, and single-party contests
- Tabulated results—summary and detailed

Regardless of whether either of these two protocols are adopted (or a new protocol is developed and adopted), the move to an ETS will streamline data transfer of an array of data—from voter registration records to election results on Election Day. Election administration is a field where the ability to transfer and report data quickly, accurately, and efficiently is critical. Prior to Election Day, state and local election officials need to have data transmitted quickly because of the tight deadlines that often exist for closing out voter registration rolls prior to an election or for getting ballots defined and proofed. On Election Day, everyone from state officials and candidates to news organizations and the general public wants election results to be posted quickly and accurately. An ETS can ensure that these activities can be accomplished with minimal or no manual effort, increasing the transparency of the election process and potentially reducing errors as well.

A single ETS will allow various election management systems—including voter registration and broader election management systems—to communicate effortlessly and will avoid local election officials having to replace their legacy election management systems. Election data will have to be entered only once, into a single system, because the ETS will ensure that data can be read accurately in other election management software solutions. Currently, election officials often are forced to enter a single piece of voter information into multiple systems in order to manage their elections. A single data entry system can reduce data entry errors and free local election officials to use their existing resources more efficiently.

This standards effort fits well within the overall environment created by the Help America Vote Act. HAVA encourages technological innovation, especially in the areas of voting equipment and voter registration systems, and opens possibilities for the development of standard protocols for election technologies. For example, HAVA calls for the maintenance and continual updating of the voluntary voting system standards that currently exist. These standards will determine the attributes that are required for a voting system to be used in the states that adopt the standards. Here it is important to note that voting systems are not just the technologies that are used in the polling place but also include the entire system, from ballot definition to election

results auditing. And unlike what has been the case in the past, HAVA requires that the voting system standards be reviewed and updated quadrennially, which should help keep the standards relevant in the voting system adoption process.

The VSS provide a mechanism for the Election Assistance Commission, or EAC, to require that all election management systems have an interoperability component. This would ensure that the technology used at each point in the election management process can produce standard output that can then be read by any other election management software. Although the voting system standards are voluntary, the fact that so many states require voting systems to meet these standards before such equipment can be used in their state should lead to an ETS becoming the industry norm. One key issue would be how to get legacy systems covered under this new standard—something that was mandated under HIPAA in the healthcare example—but it might be possible for the EAC to provide local governments with funds to update their system software to meet the new standard.

## The Impact of Standardization: Three Case Studies

Electronic transaction standards in election administration would completely change the way in which election data is handled and create a streamlined, uniform process for its transmission. In the three case studies that follow, we show how the current lack of standardization affects a wide array of different election activities. It not only keeps new participants from easily entering to serve a specific niche in this market, but also hinders efforts to innovate, since novel solutions cannot easily be developed that are compatible with the wide range of data formats that exist in the current marketplace.

Just as in the case of the healthcare industry, an election ETS would allow all participants in elections—from the city and county election officials to the state and federal election entities—to communicate from any election management platform to any other platform, without the need for manual data conversion. This interfacing would allow for improved study of election administration, since data collected in a common file format, with common data elements from across jurisdictions, could be easily aggregated to the state and federal level. Such data would allow for the improvement of election administration and better auditing of election outcomes.

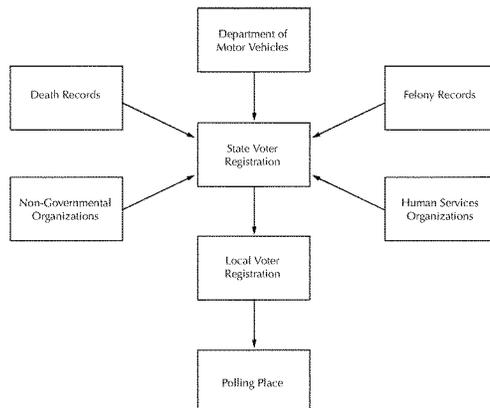
There have been many calls, in the wake of the last two presidential elections, for better reporting of information needed for the detailed auditing of election administration. Therefore, we see the development of standards for the transfer of election data as an important first step toward stronger data reporting, retention, and publication practices by election officials.<sup>11</sup>

### Case 1: Voter Registration

In addition to promoting the development of meaningful and modern voting system standards, HAVA requires intra-state uniformity in voter registration by requiring the creation of a statewide voter registration system. According to Section 303, all states with voter registration must have a computerized voter registration system that is centralized at the state level. Section 303 also outlines a set of procedures that requires file maintenance to ensure up-to-date lists. This protocol requires states to link their voter registration system with other state databases, including those governing an individual's felony status (if applicable) and death records. Although not explicitly required, the database also needs to be able to coordinate with the state's department of motor vehicles and the federal Social Security Administration's database; both of these linkages are needed so that information from new registrants can be compared to either of these external databases for verification.

As Figure 2 on page 20 shows, there is a wide array of entities with which a state voter registration system needs to be able to interface in order to keep the voter registration system up-to-date. Without a common protocol, the transmission of data can occur in a couple of ways. First, it can run through a data center, where individuals convert the data from one electronic format to another, which often requires reformatting the data or re-entering parts of the data. Second, the data may have to be completely hand-entered by the election officials in charge of voter registration. This process of reformatting or re-entry introduces opportunities for data entry errors, errors that can result in voters not being listed correctly on the voter rolls at their polling

Figure 2: The Voter Registration Network



place. When this occurs, a voter often has to cast a provisional ballot, which slows polling place operations on Election Day and results in the voter's ballot not being counted.

There are also many legal and social factors that affect the need for data uniformity with voter registration systems across states. For example, mobility impacts election administration, and uniform protocols for voter registration would improve the elections process. Every two years, approximately one-third of the U.S. population moves. Most moves are intra-state moves—often not much farther than three miles—and the concept behind the requirement for statewide voter registration systems is, in part, intended to address the voter re-registration problems associated with short moves. However, on average, 6.87 million people moved to a new state each year in the 1990s, with an additional 1.3 million people moving from abroad to the United States.<sup>13</sup> All of these individuals potentially created a two-part voter registration issue: (1) the need to register to vote in their new state, and (2) the need to un-register to vote in their previous state of residence.<sup>13</sup> This mobility rate means that every

presidential election year, up to 27.2 million Americans could be voting in a new state.

Without system interoperability among voter registration systems, it is not possible for the state in which a voter is registering to electronically notify the voter's previous state of residence to remove the voter from the rolls. This notification can be done manually—with a piece of paper sent from one state to another—but this process has relatively high administrative costs. Now consider how this system might look if there was a voter registration ETS and states could use an EDI to transmit this information. When the same voter came in to register in state A, all of the voter's information—sent in the standard file format and with the standard data elements—would be transmitted to state B, the previous place of registration. State A would add the voter to its rolls and state B would be able to remove that voter—and this could be done almost instantaneously.<sup>14</sup>

Because of the inability of states to transmit new voter registrations to the state of previous registration, tens of thousands of voters could be regis-

tered in multiple states and potentially could vote in multiple states. For example, studies by media organizations have found that in the 2000 election, 46,000 people were registered to vote in both Florida and New York. It is estimated that between 400 and 1,000 of these individuals voted in both states. Similarly, 68,000 individuals are registered to vote in both Florida and either Georgia or North Carolina, and it is estimated that 1,650 of them voted twice in 2000 or 2002. An ETS would enable states to overcome this problem and keep voters from being registered twice and voting twice.<sup>13</sup>

### Case 2: Innovation and Election Administration

The lack of a common interface is also hindering the development of innovation in elections. One of the problems highlighted by the 2000 election debacle was the plight of overseas and military voters. These voters have a difficult time voting because of an array of issues including ballot transit time: the amount of time it takes for a piece of mail to go from the election official to the voter and return to the election official.

Ballot transit has long been a problem for those who wish to vote from overseas locations, but in recent years efforts have been made to use technology to address this problem. In 2000, the Federal Voting Assistance Program—the component of the Department of Defense in charge of serving the voting needs of uniformed personnel, their dependents, and overseas civilians—initiated an Internet voting project called Voting Over the Internet. This proof-of-concept effort allowed 83 individuals to cast ballots in the 2000 election and showed that Internet voting could be done successfully in a presidential election. Congress subsequently requested that the Department of Defense conduct a second and larger Internet voting trial.

The Secure Electronic Registration and Voting Experiment, or SERVE, was not deployed for use in the 2004 general election. However, the implementation effort for SERVE prior to the project's termination illustrated the problems associated with attempting to add a new technology—an Internet voting system—to the existing election management systems used in counties. As the development team attempted to integrate the SERVE system into the existing technologies used in participating counties,

they determined that (1) different companies used different file formats and data transfer protocols, and (2) the same company often used various file transfer protocols across versions of their product or even within the same version of their product. Thus, future attempts to develop innovative, end-to-end voting solutions for particular citizen groups like military personnel and overseas voters will be much easier to develop and implement if election data standards are in place.

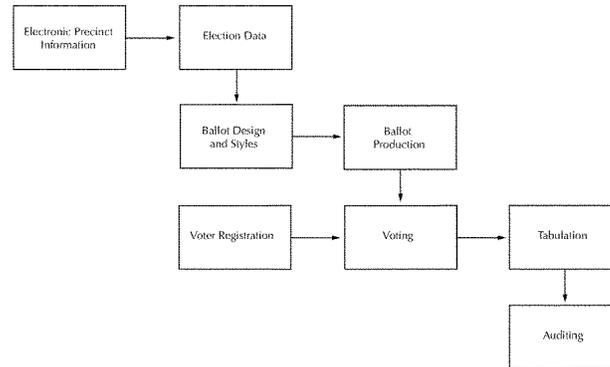
Others have also issued calls for the development of more modular voting systems. In particular, the Caltech/MIT Voting Technology Project in 2001 presented a visionary approach for future voting systems in which voters could use a variety of devices to obtain and manipulate their ballot.<sup>14</sup> This innovative architecture, which they termed “A Modular Voting Architecture” (AMVA), assumes that there are common formats for data exchange between components of election technologies. Thus, for innovative ideas like the AMVA to be viable in the near future, some standards for data interchange between election administration hardware/software platforms is necessary.

Because there is not an electronic transaction standard and common file format for election materials, it is almost impossible to plug and play new innovations onto existing election management platforms. This is a major hurdle that is blocking the development of new e-government solutions for election administration. Figure 3 on page 22 shows the election management processes that localities currently have to manage. This is a multi-stage process that requires the integration of data from multiple sources, with the final output being the ballots and voter data used in polling places on Election Day and the final audited election outcomes. Without a standard means by which to share data across these points in the election process, election officials are not able to use different products or integrate innovations into their current election system, thus significantly inhibiting their ability to produce innovative solutions for their main clients (voters, candidates, and the media).

### Case 3: Election Data and Election Results

Election night is a critical time for the Associated Press (AP). They are a primary source of preliminary election results for a large number of media outlets

Figure 3: The Election Management Process



across the country, providing the information you see in the morning paper or on the morning news. The success of this operation is predicated on AP being able to capture data from states and localities across the country and then putting those data into a standard format. This would seem to be an easy task: The state simply e-mails or otherwise transmits a file to the AP, and AP pulls this file into the other state files, creating a single database of election results.

The reality is far from simple. Because of the lack of standards in the capture and transmission of electronic data in elections, the AP cannot simply request a file from each state for the appropriate races and then expect to receive the information in a single file format or even a single data format. Almost every state has election results in a unique file format, and each often uses unique coding schemes even when variables in the results data set are the same. As a result, the AP has to hire programmers that can create unique "data wizards"—small programs that can take the election results from a given state and put those data into a common format. Given the lack of uniformity, almost every state needs its own data wizard program. The data wizards are used in conjunction with the hand-entering of data, because some states lack the ability to transmit election data effectively.

The election night data problems also extend to related work AP does on elections. For example, AP often wants to know whether the votes reported are from absentee voters, early voters, or precinct voters. However, different states use different terms or different coding for the same concept. For example, early voting is called "in-person absentee voting" in several states. In Utah, these early votes are incorporated with the absentee ballots in a precinct, so the state does not collect any information on "early voting."

This case illustrates a second issue associated with the standards-setting process, which is that an ETS also involves the creation of clear definitions of what each part of the data record looks like. Thus, all users of the standard would code the same concept the same way, in the same order, so when these data are aggregated, the result would be consistent and uniform across states. For AP, it would also mean that election data would be easily aggregated for transmission to its customers on election night, without the costly step of having to re-create data wizards and hand-enter data. For other subsequent users of election administration data, like policy makers and researchers, an ETS would allow for easier, more consistent, and highly accurate post-election studies of election practices and procedures.

## Conclusions and Recommendations

In many ways, elections have changed little over the past 150 years. Voters assemble at a designated location on a chosen day to select their candidates for office. However, there are growing pressures for this process to change. Voters are demanding that elections be as customer friendly as possible, which manifests itself in demands for more early voting and for no-excuse absentee voting. There is also growing interest in many circles to provide electronic (and possibly Internet) voting services to voters with special needs, such as military personnel and their dependents, and citizens who live overseas. At the same time, the recently passed HAVA legislation—as well as the demands created by partisan politics and the closeness of recent presidential elections—requires that voter registration rolls be as accurate as possible and the voting process as smooth as possible. Accomplishing these dual goals of customer service and the execution of a well-run election requires the smooth communication of data among a broad array of actors.

Over the last several decades, e-government has revolutionized the way in which elections are administered, both in the central election official's office and in polling places. Everything from voter registration to ballot design to vote counting is done using electronic systems. The three case studies illustrate how standards that allow for the easy exchange of election data across software and hardware platforms are an important component of the continual evolution of making the voting process easier and more convenient for citizens. Today, many voters often face long lines when they go to vote on Election Day, and some voters (as many as 4 million to 6 million in the 2000 presidential election) attempt to vote, only to have their votes "lost" due to snafus, mistakes, and errors in the process. Improving the technology of elections can reduce the number of votes lost in future elec-

### Recommendations

1. The Election Assistance Commission should request that the National Institute of Standards and Technology provide a recommended electronic transaction standard for election data.
2. The Election Assistance Commission, through the voting system standards-setting process, should ensure that all voting systems have a common electronic data exchange component.
3. The Election Assistance Commission should include a similar requirement for an ETS protocol in the guidance given to states regarding what makes a statewide voter registration system compliant with the Help America Vote Act.
4. The Election Assistance Commission should develop a process for encouraging states to share voter registration data to improve the maintenance of voter rolls.
5. The U.S. Congress should strongly encourage all states and localities to adopt all federal voting system standards and should empower a federal government agency like the Election Assistance Commission to develop and issue guidelines for standards for voting systems and voter registration systems.

tions—and one aspect of improving the technology will be developing standards for data exchange.

To achieve the broader goals of a more cost-effective, reliable, and accurate election administration process, standards for data communication are necessary. If standards can be implemented and enforced, this one simple reform should, in the short term, help improve the process of administering elections. Elections could be administered more accurately, because election officials could use the common data formats to better cross-reference elec-

tion data across jurisdictions (for example, election officials would be able to compare voter registration data across counties and states) and against other databases.

To achieve the goal of having ETS protocols that make election data more consistent, more accurate, and easier to transmit, the following recommendations should be implemented.

**Recommendation 1: The Election Assistance Commission should request that the National Institute of Standards and Technology provide a recommended electronic transaction standard for election data.**

This standard should be similar to the EDX or EML protocols described earlier in this report. These two ongoing standards-setting processes should be used as input to the NIST ETS, similar to the process used for NIST's efforts to update the voting system standards. This somewhat parallel effort would ensure that release of an ETS would be placed on a defined timeline in the event that consensus cannot be reached by the independent standards-setting bodies.

**Recommendation 2: The Election Assistance Commission, through the voting system standards-setting process, should ensure that all voting systems have a common electronic data exchange component.**

This can be done through revisions to the voting system standards, which are ongoing with the technical support of NIST. The inclusion of an ETS protocol in the system standards will provide vendors with more incentive to incorporate this into their products.

**Recommendation 3: The Election Assistance Commission should include a similar requirement for an ETS protocol in the guidance given to states regarding what makes a statewide voter registration system compliant with the Help America Vote Act.**

HAVA gives the EAC some control over determining what constitutes a statewide voter registration system, and the EAC should use this to promote an ETS that ensures these systems can communicate easily in a standard format.

**Recommendation 4: The Election Assistance Commission should develop a process for encouraging states to share voter registration data to improve the maintenance of voter rolls.**

With such a mobile population, state voter rolls can quickly become out of date. For example, voting precincts surrounding colleges and universities often have far more voters on the rolls than are active voters, because students who registered to vote did not change their registration status when they moved. If states could easily transmit data on new registrants to that person's state of previous registration, voter rolls could be much more accurate and the potential for voting fraud reduced. The EAC should publish guidance on best practices for the sharing of voter registration data and consider developing a clearinghouse to facilitate the sharing of new registration information by all 50 states and the District of Columbia to promote the effective maintenance of voter rolls.

**Recommendation 5: The U.S. Congress should strongly encourage all states and localities to adopt all federal voting system standards and should empower a federal government agency like the Election Assistance Commission to develop and issue guidelines for standards for voting systems and voter registration systems.**

Congress, through its appropriations, can provide states with a strong incentive to adopt these guidelines in exchange for additional resources to improve elections. By allowing a federal government agency like the EAC to issue meaningful guidelines in the area of voting system standards and providing funding to encourage the adoption of these rules, states will have every incentive to use election systems that provide the highest level of benefit to voters and allow for the best possible election administration practices to be implemented.

Data exchange standards may also facilitate other longer-term changes in the election administration process. One important change that might occur is greater competition in the business of voting technologies. If developers of voting technologies can rely on a standard data interface—if they know that election data will have a standard and common format—then they can work to develop specific components for election administration, and thus governments could purchase modular election administration systems. This could spur competition and technological development in this sector of e-government.

## Appendix I: Standards and Standards-Setting Processes

So what is a standard? One definition is that “a standard is a deliberate acceptance by a group of people having common interests or background of a quantifiable metric that influences their behavior and activities, permitting a common interchange.”<sup>17</sup> Language is a simple example of a standard. Although everyone does not speak the same language, each language has its own set of agreed upon metrics—what letters create what sounds, in what direction they are read—that governs its use. Without these metrics, it would not be possible for us to communicate effectively, because the meaning one person ascribed to a letter or word might not be the same as the meaning ascribed by another.

When we think about standards, it is also important to remember that standards are not the same as regulations. Although some regulations contain standards, not all standards are developed through a legalistic, regulatory framework. Instead, some are developed through non-governmental organizations (NGOs) or are developed by governmental agencies on a voluntary-compliance basis. Moreover, some standards that exist in legal regulations are in fact developed in exactly the same manner as are voluntary standards. The National Institute of Standards and Technology (NIST) has developed a typology of standards that defines the different types of standards and the different development models they employ.

Standards are critical for the promotion of economic development, and have been throughout history. For example, uniform coinage in the ancient world broke down barriers to trade across great distances. A silver Roman coin held the same value in Rome as it did in Greece or northern Africa or Persia, and meant that merchants or average citizens could purchase a certain amount of product for a silver coin,

no matter where they might be within the Roman Empire.<sup>18</sup> In more modern times, standardization has driven economic development. For example, the standardization of railroad-track width is credited with transforming the United States. When railroads first began in the United States, different companies had different width, or gauge, of track. A train would travel until it hit a different gauge of track, and the train would have to be unloaded onto another train that could run along the new gauge. Not only were the unloading and reloading of trains costly, so were having different trains and cars to run on the different gauges. Once the gauge became uniform, people and cargo could move across the country more quickly than ever thought possible. If the Transcontinental Railroad had used different gauges as the railroad was being built, the ride, though faster than the conventional mode of travel to the West, would still have been cumbersome and time-consuming.<sup>19</sup>

### The Rise of Standards-Setting Institutions

To overcome the problems associated with the lack of standards, several standards-setting bodies have been created to facilitate the creation and diffusion of uniform protocols. In the area of e-government, three of the more prominent standards-setting organizations are the federally established National Institute of Standards and Technology (NIST); the American National Standards Institute (ANSI), a U.S. NGO, and the Institute of Electrical and Electronics Engineers Standards Association (IEEE-SA), an international NGO. As the history of NIST notes (see “The Origins of NIST and National Standards”), the agency was established in 1901 for just the commercial reasons noted above—to promote

**Table A.1: Types of Standards**

The NIST has developed a typology of standards. First, it identifies two types of standards—performance and design standards—and then highlights an array of means by which these standards can be developed.

Standard	Description
<b>Performance</b>	Standard used to describe a product's intended function without specifically stating how it might achieve that function. These standards are less restrictive than design standards and encourage innovation.
<b>Design</b>	Standard used to define a product's characteristics or how it is to be built. These standards can be used to test for comparability.
<b>Voluntary consensus</b>	Standards produced by standards developing organizations (SDOs) through a consensus process. Participation in the standards development and compliance with the standards is voluntary, except where government regulatory agencies have adopted or referred to the standards.
<b>Defense</b>	Documents that establish uniform engineering and technical requirements for military-unique or substantially modified commercial processes, procedures, practices, and methods. These standards must be written in performance terms.
<b>Mandatory</b>	Standards that are made compulsory by virtue of a general law or exclusive reference in regulation. These standards are generally published as part of a code, rule, or regulation by a regulatory government body and impose an obligation on specified parties to conform to them.
<b>National Institute of Justice (NIJ)</b>	Standards that determine the technological needs of federal, state, and local criminal justice and public safety agencies. The NIJ sets minimum performance standards for specific devices, tests commercially available equipment against those standards, and disseminates the results to criminal justice and public safety agencies nationally and internationally. Compliance with these standards is voluntary.
<b>Federal</b>	Standards developed and issued by the General Services Administration (GSA) to meet procurement needs of federal government agencies.
<b>De facto</b>	Standards developed through means other than formal standards organizations. These standards are typically open to participation from any interested individuals or organizations.
<b>Consortia</b>	Standards created by groups of like-minded companies that collectively have significant market power to develop a standard outside the formal standards process. These standards provide a complementary vehicle to satisfy the need to create partial-consensus standards in rapidly moving high-technology fields.
<b>Industry</b>	Industry standards come in two forms: company standards and industry standards. Company standards are those developed for use by a single company or organization for its own products. Industry standards are developed by industry standards development groups for use within a particular industry.
<b>International</b>	Standards developed and promulgated by governmental and non-governmental international organizations. These standards may be voluntary or mandatory in nature.

Source: Christine R. DeVaux, National Institute of Standards and Technology, "A Guide to Documentary Standards," December 2001 (<http://ts.nist.gov/ts/htdocs/210/ncsc/ir6802.pdf>)

### The Origins of NIST and National Standards

As NIST notes in its centennial history,

Chartered by the U.S. Congress on March 3, 1901, [NIST] was the first physical science research laboratory of the federal government, established at about the same time as the nation's first commercial laboratory. At that time, the United States had few, if any, authoritative national standards for any quantities or products. What it had was a patchwork of locally and regionally applied standards, often arbitrary, that were a source of confusion in commerce....

The need for such an organization in the United States was discussed for many years by scientists and engineers. One complained, for example, that he had to contend with eight different "authoritative" values for the U.S. gallon. The growing electrical industry needed measuring instruments and was often involved in litigation because of the lack of standards....

To advance fundamental science, NIST developed increasingly precise instruments, measurement techniques offering greater ranges than ever before, and wholly new standards such as those for sound, frequency, and radiation.

The need for standards was dramatized in 1904, when more than 1,500 buildings burned down in Baltimore, Md., because of a lack of standard fire-hose couplings. When firefighters from Washington and as far away as New York arrived to help douse the fire, few of their hoses fit the hydrants. NIST had collected more than 600 sizes and variations in fire-hose couplings in a previous investigation and, after the Baltimore fire, participated in the selection of a national standard.

Source: <http://www.100.nist.gov/founding.htm>

uniformity in a rapidly industrializing America—but its work has had wide-ranging benefits, including improved public safety and quality of life.

Not only was the government moving in this period to develop standards through NIST, but the private sector was doing so as well through professional associations. The IEEE's standards work and the creation of ANSI also occurred in this time period. ANSI was created through the collaborative efforts of a variety of engineering societies, including the forerunner of the IEEE. The goal was to create an organization that could "serve as the national coordinator in the standards development process as well as an impartial organization to approve national consensus standards and halt user confusion on acceptability."<sup>26</sup>

The development of these standards processes has been critical to the advancement of modern society. The transparent, open process that was developed allowed all interests to have a say in the developed standards. Once standards are established in a given area, producers have a common knowledge of the

qualities their product should have and buyers have confidence that the product they buy meets a certain minimum set of standards for conformity and performance. In many ways, standards provide the language that is necessary for modern commerce to occur by providing a functional baseline for a given product or service.

### American National Standards Institute (ANSI) Process<sup>31</sup>

Throughout its history, ANSI has maintained as its primary goal the enhancement of the global competitiveness of U.S. business and the American quality of life by promoting and facilitating voluntary consensus standards and conformity assessment systems and promoting their integrity. The Institute represents the interests of its nearly 1,000 corporate, organization, government agency, institutional, and international members through its office in New York City and its headquarters in Washington, D.C.

In order to maintain ANSI accreditation, standards developers are required to consistently adhere to a set of requirements or procedures, known as the "ANSI Essential Requirements," that govern the consensus development process. Due process is the key to ensuring that ANSIs are developed in an environment that is equitable, accessible, and responsive to the requirements of various stakeholders. The open and fair ANSI process ensures that all interested and affected parties have an opportunity to participate in a standard's development. It also serves and protects the public interest since standards developers accredited by ANSI must meet the Institute's requirements for openness, balance, consensus, and other due process safeguards.

The hallmarks of the American National Standards process include:

- Consensus on a proposed standard by a group or "consensus body" that includes representatives from materially affected and interested parties
- Broad-based public review and comment on draft standards
- Consideration of and response to comments submitted by voting members of the relevant consensus body and by public review commentators
- Incorporation of approved changes into a draft standard
- Right to appeal by any participant that believes that due process principles were not sufficiently respected during the standards development in accordance with the ANSI-accredited procedures of the standards developer

The ANSI process serves all standardization efforts in the United States by providing and promoting a process that withstands scrutiny while protecting the rights and interests of every participant. In essence, ANSI standards quicken the market acceptance of products while making clear how to improve the safety of those products for the protection of consumers.

## Appendix II: Standards in E-Government Networks— The Case of HIPAA

A key example of the role that the federal government can play in developing ETS for software and e-government systems in a given policy area is the requirements under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA is generally considered to be one of the most sweeping changes to federal healthcare policy since the passage of Medicare in 1965. Although the initial media coverage of this legislation focused on the portability aspects—the ability of individuals to move their health coverage to a new job by requiring certificates of creditable coverage and by imposing restrictions on pre-existing condition exclusions—one of the most far-reaching provisions has to do with requirements for data exchange. Under HIPAA, all covered healthcare-related organizations, as well as entities that exchange data with a HIPAA-covered organization, are required to use a common data exchange format.

A review of the world before the existence of HIPAA explains why ETS requirements are so important. In the pre-HIPAA world, there were no standards regarding how healthcare organizations were to store, process, communicate, or secure data. This lack of standardization led to the development and deployment of more than 450 different electronic insurance claim formats, with many vendors offering multiple—and often incompatible—formats. Even if software came from the same vendor, management and clinical information software often differed across entities, and the lack of a standard data format was a costly and complex barrier. Without a standard protocol for formatting electronic data, data transactions were difficult and the transaction costs associated with making such transactions work were very high.<sup>22</sup>

The lack of a standard data format was seen as a critical factor in the high overhead costs associated with healthcare. As a report by the Midwest Center for HIPAA Education (MCHHE) notes:

A considerable portion of every healthcare dollar is spent on administrative overhead. In healthcare, this overhead includes many tasks, such as:

- Filing a claim for payment
- Enrolling an individual in a health plan
- Paying healthcare premiums
- Checking insurance eligibility for a particular treatment
- Requesting authorization for services
- Responding to requests for additional information to support a claim
- Coordinating the processing of a claim across different insurance companies
- Notifying the provider about the payment of a claim

Today, these processes involve numerous paper forms and telephone calls, non-standard electronic commerce, and many delays in communicating information among different locations. This situation creates difficulties and costs for healthcare providers, health plans, and consumers.<sup>23</sup>

Software solution providers have issued numerous white papers touting the benefits of the move in HIPAA to electronic data interchange, or EDI. As one of these papers noted, the healthcare industry requires several hundred thousand medical service providers—many of which are five-person or smaller physician practices—and medical suppliers, hospitals, insurance providers, and others to be able to communicate in a common language.<sup>24</sup>

An EDI overcomes these problems by allowing data transfers to be done with very low cost, because the data exchange occurs instantaneously and without human intervention. Without an EDI, humans must fill the communication gap that exists between incompatible computers. The benefits of the HIPAA ETS requirement are numerous. Some of the more obvious ones are:

- Reduced administrative costs
- Instantaneous transmission of claims and other data
- Improved accuracy in information transmission
- Integration of provider transactions into an entity's overall administrative framework
- Increased security, as fewer individuals have to handle the data when it is transferred

EDI in healthcare has the potential to move this industry toward the model used in retail, where Internet-based networks are being used to bring all aspects of the industry under a single communications protocol that allows data to flow freely across vendors and organizations.<sup>25</sup>

There are other, less obvious benefits as well. The MCHE notes that ETS can facilitate corporate synergies among software development and systems implementation firms, as well as among healthcare firms. Companies now have incentives to cooperate in the development of new products, since they have to use a common ETS. Likewise, EDI features provide companies with incentives to share appropriate data to improve healthcare outcomes, in addition to improving claims processing and benefits delivery. Because a standard set of codes will be used for the processing of health information, the

reliability of this data will be increased across providers. No longer will a given illness, procedure, or treatment be coded and labeled differently by different healthcare claims payers or providers.<sup>26</sup>

The actual ETS were issued in 2003, after an extensive rule-making process that began in 1998 and extended through the issuance of a proposed rule in 2002.<sup>27</sup> There were more than 17,000 comments received on the initial proposed rule, and 300 received for the final rule. The process for developing this rule was included in Sections 1171 through 1179 of HIPAA.<sup>28</sup> Specifically, the Act requires

that any standard adopted by the Secretary of Health and Human Services be a standard that has been developed, adopted, or modified by a standard setting organization (SSO). The Secretary may adopt a different standard if the standard will substantially reduce administrative costs to providers and health plans compared to the alternatives.... The Act also sets forth consultation requirements that must be met before the Secretary may adopt standards. In the case of a standard that is developed, adopted, or modified by an SSO, the SSO must consult with the following Data Content Committees (DCCs) in the course of the development, adoption, or modification of the standard: the National Uniform Billing Committee (NUBC), the National Uniform Claim Committee (NUCC), the Workgroup for Electronic Data Interchange (WEDI), and the American Dental Association (ADA). In the case of any other standard, the Secretary is required to consult with each of the above-named groups before adopting the standard ... [as well as] with the National Committee on Vital and Health Statistics (NCVHS).<sup>29</sup>

So while the ETS under HIPAA are being promulgated through a regulatory process, they are to be developed using a consultative process that is the hallmark of the standards-setting process in the United States.

The final rule has several components. First, it requires all health plans, healthcare clearinghouses, and healthcare providers that transmit transactions electronically to follow the developed ETS. Second,

it requires covered organizations to be able to pay providers, authorize services, certify referrals, and coordinate benefits using the ETS protocol. Third, the ETS creates a standard format for determining eligibility for insurance coverage and claim status, as well as requesting authorizations for services or specialist referrals. All covered entities will use common codes for all transactions, including reporting diagnoses and procedures. Fourth, employers will have a standard electronic format for enrolling or removing employees from insurance coverage, as well as for making premium payments. Finally, it creates a process for keeping the standards up-to-date, using the traditional standards-setting process.<sup>30</sup> This rule is designed to create a comprehensive set of electronic transaction standards and a process for keeping them current. The entire process is designed to be open and participatory, but at the same time using a regulatory framework to push the standards-setting process to a conclusion that is binding on all covered parties.

The development of ETS is just one aspect of the standardization of healthcare data under HIPAA. HIPAA also requires the study of issues associated with the adoption of uniform data standards for patient medical record information and the electronic transmission of these data. As an analysis by PricewaterhouseCoopers noted, the lack of standardization in this area can lead to an array of medical errors, including misdiagnoses, incorrect diagnoses, treatment choices that lead to drug interactions and allergic reactions, and high morbidity rates.<sup>31</sup> It is estimated that medical errors cause 98,000 deaths per year in the United States, making it the fourth leading cause of death. Incredibly, 7,000 of these deaths are associated with providing patients with drug-related medical errors.

Clearly, standardization of data and data transmission has the prospect of improving the lives of all Americans who receive medical care. It can also decrease administrative costs by allowing EDI systems to communicate easily—from the smallest practice group to the largest health insurance payer—and having these systems integrate with other aspects of the business of healthcare. Since healthcare is one of the largest and most complex components of the U.S. economy, the fact that it is possible to standardize electronic transactions across the several hundred thousand entities that are a part of this industry suggests that ETS can be adopted in any industry, including the elections industry.

## Appendix III: Summary of the Help America Vote Act of 2002 (HAVA)

The Help America Vote Act was passed in 2002 in response to the election debacle in Florida in 2000.<sup>32</sup> The Act has nine parts, as summarized below.

### Title I: Replacement of Punch Card and Lever Voting Machines

This section provides funding to states that used either punch cards or lever voting machines in November 2000 to replace these systems with new voting technologies that meet the requirements of HAVA.

### Title II: Establishment of the Election Assistance Commission (EAC)

Title II has two parts. The first part establishes several key institutions for promoting election assistance, and the second calls for the development of guidance and the commissioning of studies related to election reform.

#### Institutions

The EAC is established as an independent entity that will serve as a national clearinghouse and resource for the compilation of information and the review of procedures with respect to the administration of federal elections. This section also established three boards:

- The Election Assistance Commission Standards Board and the Election Assistance Commission Board of Advisors are to review the voluntary voting system guidelines, the voluntary election administration guidance, and the best practices guidance for facilitating military and overseas voting.

- The EAC is to establish the Technical Guidelines Development Committee to assist the executive director of the Commission in the development of the voluntary voting system guidelines.

#### Guidance and Studies

*The Commission is to provide for the testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.* HAVA gives states the option of providing for testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission. The National Institute of Standards and Technology is tasked with providing a list of independent, non-federal laboratories that can be accredited to carry out such testing, certification, decertification, and recertification. NIST is also asked to monitor and review accredited laboratory performance on an ongoing basis.

*The EAC is directed to conduct periodic studies regarding certain election administration issues, including (1) best practices for facilitating voting by absent uniformed services voters and overseas voters; (2) how human factor research can be applied to voting products and systems design to ensure usability and accuracy of voting products and systems; (3) the impact on voters of new requirements governing voter registration by mail; (4) the feasibility and advisability of using Social Security identification numbers or other information compiled by the Social Security Administration to establish voter registration or other election law eligibility or identification requirements; (5) the issues and challenges of incorporating communications and Internet technologies in the federal, state, and local electoral process; and (6) the feasibility and advis-*

ability of having the Postal Service waive or reduce the amount of postage applicable to absentee ballots used in federal general elections. The EAC can also make grants for research and development to improve the quality, reliability, accuracy, accessibility, affordability, and security of voting equipment, election systems, and voting technology.

States are required to file a plan for implementation of certain mandatory, uniform, nondiscriminatory administrative complaint procedures, and have such procedures in place. Once these plans are in place, states are eligible to receive payments that can be used to obtain new voting equipment or for other activities to improve the administration of elections for federal office. Separate funds from the Department of Health and Human Services (HHS) are for ensuring that polling places for individuals with disabilities are accessible. In a related matter, HHS also pays the protection and advocacy system of each state to ensure full participation in the electoral process for individuals with disabilities.

### **Title III: Uniform, Nondiscriminatory Election Technology and Administration Requirements**

Voting systems used in federal elections must maintain voter privacy and ballot confidentiality. They also must (1) permit voters to verify their votes before the ballot is cast and counted; (2) allow voters to correct any error before the ballot is cast and counted; and (3) notify voters if they select more than one candidate for an office if it has the effect of casting multiple votes for the office. States can create a voter education program if their voting technology does not allow for each of these provisions. Voting systems are also required to (1) produce a record with an audit capacity for such systems; (2) be accessible for individuals with disabilities; (3) provide alternative language accessibility pursuant to the Voting Rights Act; (4) comply with established error rate standards; and (5) operate according to a uniform definition of what constitutes a vote.

Provisional ballots must be provided to individuals who declare that they are registered to vote in a jurisdiction but are not on the official list of registered voters or are otherwise alleged to be ineligible. These individuals are permitted to cast a provisional ballot, which is to be promptly verified

and counted if it is determined to be valid under state law. A voter must also be able to learn if the vote was counted and, if the vote was not counted, why it was not counted. States that do not require voter registration for federal elections are exempt from this provision.

States must create a single, uniform, official, centralized, interactive computerized statewide voter registration list. State or local election officials must perform list maintenance on a regular basis and ensure that the database is well secured. The voter registration information must include either a driver's license number or the last four digits of a Social Security number. Voters who register by mail must present valid photo identification when voting in person or by mail.

### **Title IV: Enforcement**

The U.S. Attorney General can take action against any state or jurisdiction to compel implementation of the uniform and nondiscriminatory election technology and administration requirements of Title III. States receiving payment under HAVA must have a state-based administrative complaint procedure with respect to violations of title III. States not receiving payments under HAVA must either certify they meet complaint-procedure requirements or submit a plan to the Attorney General describing steps to be taken to meet Title III requirements.

### **Title V: Help America Vote College Program**

The EAC is to develop a *Help America Vote College Program* to encourage college students to serve as nonpartisan poll workers or assistants, and to encourage state and local governments to use the services of the students participating in the program.

### **Title VI: Help America Vote Foundation**

Establish the *Help America Vote Foundation* to (1) mobilize secondary school students to serve as poll workers or assistants; (2) place secondary school students as poll workers in polling places; and (3) establish cooperative efforts to further the purpose of the foundation.

**Title VII: Voting Rights of Military Members and Overseas Citizens**

The Secretary of Defense is to prescribe procedures to provide the time and resources for voting assistance officers to perform voting assistance duties during the period in advance of a general election. The Department of Defense (DoD) is also to implement measures to ensure that a postmark or other official proof-of-mailing date is provided on each absentee ballot collected at any overseas location or vessel at sea under DoD control. The DoD is also to engage in informational campaigns for the people covered by the Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA). Each state must designate a single office responsible for providing information on registration and absentee ballot procedures for all voters in the state and report to the EAC the combined number of absentee ballots transmitted to and returned by absent uniformed services voters and overseas voters.

**Titles VIII and IX: Miscellaneous**

The last two sections of HAVA cover miscellaneous information and transfer-of-duty provisions.

## Endnotes

1. We will discuss in more detail how an ETS could facilitate development of modular voting systems that would allow for possibly more accessible and secure voting architectures, like the modular voting system outlined by the Caltech/MIT Voting Technology Project in its 2001 report (<http://vote.caltech.edu/reports/2001report>), or systems of cryptographic verification like David Chaum's (<http://www.vreceipt.com>).
2. See Richard Franklin Bensel, *The American Ballot Box in the Mid-Nineteenth Century*, New York, Cambridge University Press, 2004.
3. See R. Michael Alvarez, Stephen Ansolabehere, and Charles Stewart III, "Studying Elections: Data Quality and Pitfalls in Measuring the Effects of Voting Technologies," *Policy Studies Journal*, 33(1), 15–24, 2005.
4. See, for example, Jane Fountain, *Building the Virtual State: Information Technology and Institutional Change*, Washington, D.C., Brookings Institution Press, 2001; and Mark A. Abramson and Therese I. Morin, eds., *E-Government 2003*, (Lanham, Md., Rowman & Littlefield Publishers, Inc., 2003).
5. There are few works in this area, with the exception of R. Michael Alvarez and Thad E. Hall, *Point, Click, and Vote: The Future of Internet Voting* (Washington, D.C., Brookings Institution Press, 2004); Donald Moynihan, "Building Secure Elections: E-voting, Security and Systems Theory," *Public Administration Review* 64(5): 515–528, 2004.
6. The Government Accountability Office has issued a large number of reports on the impact of data incompatibility on public management. For one example, see Bureau Of Indian Affairs Schools: New Facilities Management Information System Promising, but Improved Data Accuracy Needed, (July 2003) available at <http://www.gao.gov/new.items/d03692.pdf> (last accessed January 28, 2005).
7. The current standards can be found at [http://www.eac.gov/election\\_resources/vss.html](http://www.eac.gov/election_resources/vss.html). Information on the NIST role in the future development of voting system standards can be found at <http://vote.nist.gov>. As we finalize this report, our understanding is that a series of revisions to the current VSS have recently been provided to the EAC, and that they should be soon entering a period of public comment. However, there is no indication at this point that the EAC or NIST is considering data exchange standards of the sort we recommend in this report.
8. Federal Election Commission, "Frequently Asked Questions About Voting System Standards," available at <http://www.fec.gov/pages/faqvss.htm> (last accessed January 28, 2005).
9. Information on the EML process can be found at <http://xml.coverpages.org/eml.html> (last accessed April 22, 2005).
10. IEEE: Voting Systems Electronic Data Interchange, Project 1622, available at <http://grouper.ieee.org/groups/scc38/1622/index.htm> (last accessed January 28, 2005).
11. For example, the Caltech/MIT Voting Technology Project issued a series of detailed recommendations for election data reporting ([http://vote.caltech.edu/Reports/auditing\\_elections\\_final.pdf](http://vote.caltech.edu/Reports/auditing_elections_final.pdf)). The Election Assistance Commission has worked to implement many of these recommendations during and after the 2004 presidential election.
12. These data are the median figure for the years 1990–1991 to 1999–2000. See "Annual Geographical Mobility Rates, By Type of Movement: 1947–2003," United States Census, available at <http://www.census.gov/population/socdemo/migration/tab-a-1.pdf> (last accessed January 28, 2005).
13. U.S. citizens living overseas are allowed to maintain their previous residence for voting purposes.
14. State B might want to have a person verify the removal for quality control purposes.
15. Bill Gillford, "People Who Vote Twice," *Slate Magazine*, October 28, 2004, accessible at [www.slate.com](http://www.slate.com). It is of course possible that states might allow citizens to be

registered in their state—even if they are also registered in another state—for the purpose of voting only on state and local issues.

16. See “Voting: What Is, What Could Be,” available at <http://vote.caltech.edu/Reports/2001report.html> (last accessed January 28, 2005).

17. Carl Cargill, *Information Technology Standardization: Theory, Process, and Organization* (Bedford, Mass.: Digital Press, 1989, 13).

18. Cargill, 13–14.

19. Cargill, 15.

20. ANSI—an Historical Overview, available at [http://www.ansi.org/about\\_ansi/introduction/history.aspx?menuid=1](http://www.ansi.org/about_ansi/introduction/history.aspx?menuid=1) (last accessed January 28, 2005).

21. American National Standards Institute, available at [http://www.ansi.org/about\\_ansi/introduction/introduction.aspx?menuid=1](http://www.ansi.org/about_ansi/introduction/introduction.aspx?menuid=1) (last accessed January 28, 2005).

22. New Hampshire Hospital Association, “An Introduction to HIPAA,” available at <http://www.h2e-online.org/pubs/HipaaIntro.ppt> (last accessed January 28, 2005).

23. Midwest Center for HIPAA Education, “The Health Insurance Portability and Accountability Act (HIPAA): Electronic Transaction Standards,” available at [http://www.mche.us.com/hipaa\\_edc1.shtml](http://www.mche.us.com/hipaa_edc1.shtml) (last accessed January 28, 2005).

24. IPNet, “HIPAA: The Changing Face of Healthcare Transactions: An IPNet Solutions White Paper,” available at [http://www.ipnetsolutions.com/download/pdf/wp\\_healthcare.pdf](http://www.ipnetsolutions.com/download/pdf/wp_healthcare.pdf) (last accessed January 28, 2005).

25. IPNet HIPAA: The Changing Face of Healthcare Transactions.

26. GAO, “HIPAA Standards: Dual Code Sets Are Acceptable for Reporting Medical Procedures,” GAO-02-796, (August 2002), available at <http://www.gao.gov/new.items/d02796.pdf> (last accessed January 28, 2005).

27. “Health Insurance Reform: Modifications to Electronic Data Transaction Standards and Code Sets,” 68 Fed. Reg. 8381, 2003 (to be codified at 45 CFR Part 162), available at <http://www.cms.hhs.gov/providerupdate/regs/cms0003f/cms0005f.pdf> (last accessed January 28, 2005).

28. “Health Insurance Reform: Modifications to Electronic Data Transaction Standards and Code Sets.”

29. “Health Insurance Reform: Modifications to Electronic Data Transaction Standards and Code Sets,” 8381.

30. “HHS Announces Electronic Standards To Simplify Health Care Transactions,” U.S. Department of Health and Human Services, HCTA Press Office, available at

<http://www.hhs.gov/news/press/2000pres/20000811.html> (last accessed January 28, 2005).

31. Available at [http://www.ehcca.com/presentations/HIPAA/3\\_07.pdf](http://www.ehcca.com/presentations/HIPAA/3_07.pdf) (last accessed February 3, 2005).

32. The complete text of HAVA, as well as other relevant information about HAVA, is available from <http://www.fec.gov/hava/hava.htm>.

## ABOUT THE AUTHORS

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In his academic career, Dr. Alvarez has published three books: two on electoral politics and public opinion, and one on Internet voting. He is currently collaborating with Thad E. Hall on a book on the e-voting controversy, which will be published by Princeton University Press in 2006. The author of scores of research papers and monographs, Alvarez focuses on the electoral process, voting behavior, and public opinion.

Alvarez has received research grants for his work from a variety of sources, including the National Science Foundation and a number of private foundations. He has received numerous awards for his research and professional work, most recently being named as one of the "Scientific American 50" for his work on voting technology in 2004.

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Hall has received research grants for his work from several sources, including the Carnegie Corporation of New York. He has been involved with an array of election reform related activities, including testifying before the U.S. Senate Judiciary Committee, serving on the professional staff of the National Commission on Federal Election Reform, and collaborating with the Caltech/MIT Voting Technology Project.

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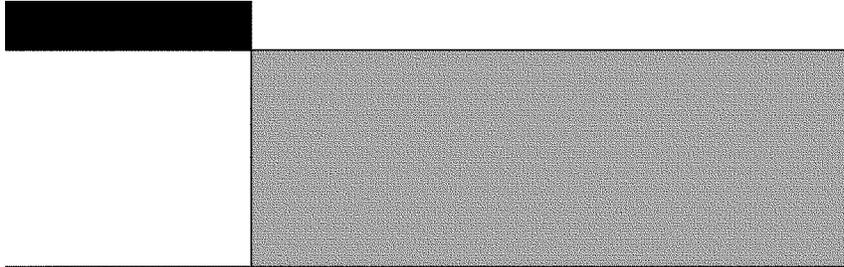
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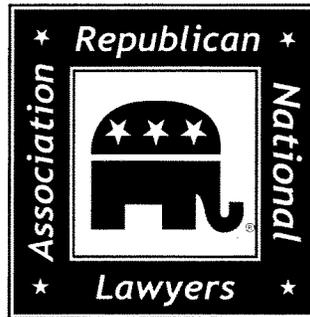
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**RNLA Response to the Report and Recommendations  
of the Presidential Commission on  
Election Administration**

*The Republican Legal Community on the PCEA Report with  
Additional Prescriptions for Reform*



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## I. Executive Summary

The Republican National Lawyers Association (RNLA) issues this report to offer its perspective on the recent report of the Presidential Commission on Election Administration (PCEA) outlining recommendations to improve election administration in the United States. RNLA agrees with many of the Commission's recommendations, particularly its identification of deficiencies in our voter registration system as a significant contributor to Election Day problems such as long lines at the polls. The PCEA's recommendations to reform voter registration are good ones and, if states adopted them, the reforms should greatly improve citizens' voting experience. RNLA offers other suggestions in addition to adopting many of the PCEA's recommendations. Taken in tandem, these recommendations will result in a secure and voter-friendly voter registration system that provides alternatives to same-day voter registration while avoiding the management issues which historically attend the combining of two functions on Election Day – voting and registration. RNLA also welcomes most of PCEA's recommendations to improve polling place management, including leveraging technology through the use of electronic poll books and ID card bar code/magnetic stripe scanners. RNLA also appreciates the PCEA pointing out the need for continued improvements to the voting experience for our military and overseas voters and generally agrees with PCEA's recommendations in this area. Finally, RNLA agrees that the current voting equipment testing and certification system is inadequate and needs reform. We recommend a move away from the Election Assistance Commission (EAC) certification process in favor of voluntary consensus standards.

While RNLA agrees with a majority of PCEA's recommendations, we caution against the Commission's recommendation that states embrace expanded early voting as a solution to the systemic election administration problems identified in its report. The experience from recent elections demonstrates that early voting does not solve the problem of long lines. It is also expensive, distracts from Election Day preparations, and diminishes the importance of Election Day. Most Americans continue to prefer to vote alongside their neighbors and fellow citizens at the polls on Election Day so reform needs to start there. Accordingly, states should instead invest their limited time and resources fixing the problems at the polling place and ensuring a smoother absentee voting process for those who use it out of necessity, not convenience.

Throughout this document, RNLA offers state and local election officials additional suggestions that will improve election administration. This report also outlines additional policy reasons why states should adopt certain PCEA recommendations. In some places RNLA urges states to use caution or establish minimum safeguards when implementing certain reforms, particularly for online voter registration. RNLA's additional recommendations from those included in the PCEA report include the following:

State and local election officials should do the following to improve the voter registration process:

- Amend their laws so there are fewer restrictions in sharing voter registration, voter history and Department of Motor Vehicles (DMV) data with other states to improve the accuracy of the voter rolls and prevent double-voting.

- States unable to participate in multi-state data-sharing agreements should negotiate one-on-one programs to share data with individual states, particularly neighboring states or voting jurisdictions adjacent to their border.
- Adopt *intrastate* data-sharing, including vital statistics information and work with their DMVs, public assistance agencies and other state agencies to obtain additional data to perform voter registration list maintenance.
- Upgrade statewide voter registration databases and explore public-private partnerships for list maintenance.
- Utilize the Department of Homeland Security's Systematic Alien Verification for Entitlements (SAVE) Database to ensure only citizens are able to register and remain on the voter rolls and to prevent the removal of citizens from the voter rolls who may have been mistakenly identified as non-citizens.
- Adopt RNLA's recommended best practices outlined in this report when implementing online voter registration.

States should do the following to improve Election Day and polling place management:

- Utilize ID card bar code/magnetic stripe scanners with electronic poll books to speed check-in process and improve accuracy of voter history data.
- Develop technology to display voter photographs on electronic poll books to improve the integrity of the check-in process.
- Engage in public-private partnerships to recruit additional poll workers.
- Utilize technology such as online training to better prepare poll workers for Election Day.
- Manage precinct sizes by timely re-precincting, ensuring a manageable number of voters are assigned to polling places and avoid co-locating polling places when possible.

Recommendations to improve the voting experience for our military and overseas voters:

- Simplify and streamline the registration and absentee voting application process for our overseas and military voters, including the use of the Federal Postcard Application (FPCA) and the Federal Write-In Absentee Ballot (FWAB).
- States need to improve their online offerings to our military and overseas voters by placing a higher priority on improving their websites to better explain the voting process to our overseas and military voters.
- Eliminate waiver provision for 45-day ballot mailing deadline to overseas and military voting and require express mail for any ballots mailed late.
- Vigorous enforcement of our federal and state overseas and military voting laws.

Improve the testing and certification procedures for voting equipment:

- Transition from the federal EAC voting equipment certification regimen towards adoption of voluntary consensus standards similar to those used in other manufacturing industries.

## II. Introduction

The Presidential Commission on Election Administration (PCEA), a bipartisan and nonpartisan commission set up by President Obama to study problems encountered in the 2012 General Election, released its report in January following months evaluating the state of election administration in the United States. The PCEA, organized pursuant to an Executive Order, was tasked with recommending improvements to elections “to ensure that all eligible voters have the opportunity to cast their ballots without undue delay.”<sup>1</sup> While the commission was also charged with identifying and making recommendations regarding a broad array of election administration issues, the commission’s main purpose, at least as many understood it, was to make recommendations to prevent long lines and delays at the polls.

The Republican National Lawyers Association (RNLA) shares the President’s concerns of long lines at the polls and other election administration problems and appreciates his efforts in organizing the Commission. We also would like to thank the members of the PCEA, particularly its Co-Chairs, Robert Bauer and Benjamin Ginsberg, for their hard work that is reflected in a comprehensive report with useful online tools. RNLA is pleased that it agrees with many of the Commission’s recommendations, particularly its straightforward approach to problem-solving and focus on the “nuts and bolts” of Election Day administration. Many of PCEA’s recommendations for basic best practices and management techniques should be non-controversial and agreeable to those from across the political spectrum. We also applaud the PCEA’s resistance to calls to nationalize our elections by endorsing best practices and state-based solutions instead of federal legislation. While RNLA generally agrees with PCEA’s recommendations, we are ambivalent or offer a more qualified endorsement on some others, and there are a few areas where we disagree for reasons explained in this report.

RNLA has issued this report with the goal of making a positive and proactive contribution to the discussion on the future of elections in our country. While the PCEA made many important recommendations, we find it important to include additional suggested best practices in some areas, and in most places our suggestions and discussion complement the PCEA report. In addition, in certain places, RNLA agreed with a recommendation but felt compelled to provide additional reasons why adopting a particular policy is best practice. When necessary, the report attempts to explain the rationale behind why many Republicans and conservatives disagree in good faith with some reform proposals, particularly the wholesale endorsement of expanded early voting. We also thought it important to reiterate our belief that an approach for reform based on principles of federalism is the best one. We believe PCEA’s many good recommendations reflect the fact that voters and election administrators do not favor a top-down approach of Congress decreeing elections policy, especially in areas where there is anything but a nationwide consensus. RNLA believes recent progress on issues such as interstate voter registration list sharing demonstrates that states working together voluntarily yield the best solutions.

This report does not attempt to comment on every aspect of the PCEA’s report, rather we offer a more targeted approach to highlight specific issues we thought particularly important. Additionally, this report purposefully does not address other areas of election administration that

the PCEA chose not to address, including photo identification laws (which RNLA is on the record strongly supporting) and Election Day voter registration (which we strongly oppose).

Finally, we urge Democrats and liberal groups to join us in support of some of these basic recommendations for reform, particularly PCEA's proposals that states engage in interstate data sharing to improve the quality of their voter rolls. While many on the left give lip-service support to these programs, if recent history is any indication, we do not detect sincere support from Democrats for list maintenance activities. The PCEA chose to highlight voter registration inaccuracies as a chief contributor to long lines and other Election Day problems. Accordingly, we hope for broad bipartisan support so states can enact these important recommended reforms. First, we begin by discussing an important backdrop to any discussion of electoral reform: the necessity to respect the federalism approach in how America conducts its elections.

### **III. General Principles: Affirmation of Federalism Approach**

Federalism – the fundamental architectural principle of the United States Constitution – remains the centerpiece of the PCEA's proposals concerning reforms of our nation's electoral process. Amid fundamental challenges to protecting the vote, liberal reformers' calls to nationalize our voting system threaten this fundamental architectural principle. As the PCEA's report demonstrates, the best path to reform is for interstate cooperation and for states to adopt PCEA and other recommended best practices for election administration, most of which can be agreed upon by those from across the political spectrum.

There were calls for nationalizing our election system after the 2000 Presidential Election. The Carter-Ford Commission rejected that notion in 2001, proposing instead a limited role for a new federal Election Assistance Commission (EAC). The Carter-Baker Commission in 2005 also rejected proposals to expand the powers of the EAC beyond those given to it by Congress in 2002. The 2001 and 2005 Commission reports were prescient about the likely difficulties that would face nationalizing our voting system, as the EAC has proven a complete failure at accomplishing even the limited federal responsibilities it was assigned by the 2002 Help America Vote Act (HAVA). The PCEA report accepts as a given the futility of attempting to nationalize control of elections. Instead, the PCEA rightly recognizes the true progress made when states cooperate with another to enact programs to improve election administration.

The PCEA approaches its charge and tasks in a manner consistent with those of its distinguished predecessors, the 2001 Report of The National Commission on Federal Election Reform (referred to as the "Carter-Ford Commission") and the 2005 Report of the Commission on Federal Election Reform (referred to as the "Carter-Baker Commission").<sup>2</sup> The three commissions fundamentally recognized that our American voting system reflects the federalism principles instituted by the framers of the Constitution, where the states have the primary role in conducting federal elections in conjunction with state and local elections, administered by thousands of local jurisdictions, with the federal government providing default supervision with respect to federal elections. As the Carter-Ford Commission summarized:

The conduct of federal elections is a federal function ..., states have no reserved

powers over federal elections because federal elections came into being when the United States Constitution was ratified. Nonetheless, the framers of the Constitution foresaw a federal-state partnership in the administration of federal elections and delegated to the states a substantial role in the conduct of those elections.<sup>3</sup>

The Carter-Ford Commission recognized:

Even though the federal government has broad constitutional authority to mandate how the states conduct federal elections...*state governments should have a primary role in the conduct of such elections for a simple reason: federal elections are, as a practical matter, conducted in conjunction with a vast array of state and local elections across widely varying conditions.*<sup>4</sup> (emphasis added)

Because of this conjunction, “states are vital partners to the federal government in any plan for nationwide reform. They are also a necessary bridge between federal policy and local administration.” The Carter-Ford Commission concluded: “[W]e recommend that state governments should do far more to accept their lead responsibility for improving the conduct of elections, especially federal elections.” In taking the lead, “[s]tate governments should ensure uniformity of procedures and standards within the state and provide the essential guidance for the consistent and constitutional conduct of these elections.” The Carter-Ford Commission’s principal recommendation was to adopt reforms that came to comprise HAVA.

The 2005 Carter-Baker Report had a similar perspective. The Commission described its task “to contribute to building confidence in our electoral process” and its objectives to “assess HAVA’s implementation, and to offer recommendations for further improvement.”<sup>5</sup> The principal recommendations were those designed to foster “an accurate list of registered voters, adequate voter identification, voting technology that precisely records and tabulates votes and is subject to verification, and capable, fair and non-partisan election administration.” The Report affirmed that “[w]hile each state will retain fundamental control over its electoral system, the federal government should seek to ensure that all qualified voters have an equal opportunity to exercise their right to vote. This will require greater uniformity of some voting requirements and registration lists that are accurate and comparable between states.” Carter-Baker noted, “Greater uniformity is also needed within states on some voting rules and procedures,” and recommended that “[t]he federal government should fund research and development of voting technology that will make the counting of votes more transparent, accurate and verifiable.”

The 2014 PCEA report focuses on best practices for election administration: “This Commission’s focus...remained resolutely on the voter. We discovered...that voters’ expectations are remarkably uniform and transcend differences of party and political perspective. The electorate seeks above all modern, efficient, and responsive administrative performance in the conduct of elections.”<sup>6</sup> The Commission focuses on recommendations, not federal mandates, to reduce waiting times at the polls, improvements in the voter registration process to ensure voter list accuracy and enhanced capacity, and reforms to voting equipment standards and certification processes. The PCEA Report also commends the efforts of multi-state cooperative ventures such as the Electronic Registration Information Center (ERIC) and the Interstate Voter

Registration Crosscheck Program (hereinafter referred to as “Crosscheck”). These programs are designed for states to share voter information to ensure that voters who have moved between states register to vote in their new states and are removed from the registration rolls of the departed state, to better prevent double voting. Voter registration improvements were also among the primary objectives of the 2001 Carter-Ford Commission’s recommendation to adopt HAVA voter registration improvements and the mandate for states to develop and maintain statewide voter databases and the 2005 Carter-Baker Commission’s recommendations for voter registration and identification requirements. PCEA focuses on interstate cooperation and state-based solutions rather than the federal mandates recommended in the Carter-Baker Commission.

This fundamental federalism approach was recently restated by the Supreme Court in its 2013 decision *Arizona v. Intertribal Council of Arizona*:

The Elections Clause imposes on States the duty to prescribe the time, place and manner of electing Representatives and Senators, but it confers on Congress the power to alter those regulations or supplant them altogether. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–805. This Court has said that the terms “Times, Places, and Manner” “embrace authority to provide a complete code for congressional elections,” including regulations relating to “registration.” *Smiley v. Holm*, 285 U.S. 355, 366.<sup>7</sup>

The Court also described the Elections Clause which embodies the federal power in *Foster v. Love*, as follows: “In practice, the Clause functions as a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.”<sup>8</sup> The power of Congress over the “Times, Places and Manner” of congressional elections “is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.”<sup>9</sup>

The specter of failure in nationalization schemes is reflected in the abject shortcomings of the EAC in performing even the limited functions that Congress assigned to it in HAVA: to distribute federal funds to states for voting system modernization and to supervise states’ implementation of statewide voter databases to improve the effectiveness and integrity of the vote across the nation. The EAC failed in its two primary functions, and even basic HAVA functions assigned to the federal Department of Justice (DOJ), to ensure the implementation of statewide voter databases and voter registration systems, have not been achieved effectively or impartially.<sup>10</sup>

Not only did most states fail to establish operational statewide voter databases for the 2006 elections as mandated by HAVA, nearly 37 states requested waivers of compliance by the 2006 deadline and one state, California is not expected to bring its statewide voter database up to date until 2016.<sup>11</sup> HAVA places most of the responsibility for HAVA compliance on the DOJ and DOJ failed to ensure implementation of the now-12 year old requirement. DOJ’s unwillingness and the lack of a private right of action in HAVA ensures that states are able to openly flout this and other federal HAVA requirements for election administration.<sup>12</sup> At present, EAC has no acting commissioners, and is unable to function lawfully and conduct its most limited functions.

Because of the EAC's breakdown, the agency was unable to respond to Arizona and Kansas' respective 2013 requests for permission to adopt separate citizen identification provisions, in the aftermath of the Supreme Court's *Arizona v. Intertribal Council of Arizona* decision. It is no wonder that there was little response from state and local election officials to lobby Congress to save the EAC when Congress has taken steps to eliminate the agency. In fact, the National Association of Secretaries of State (NASS) has adopted resolutions on multiple occasions calling for the dissolution of the agency.<sup>13</sup>

In sum, given our nation's historical reliance on federalism in our electoral process, the federal government's failure to adequately enact reform to our nation's electoral system through the feckless and dysfunctional EAC and DOJ inaction, we applaud the PCEA's emphasis on state-based solutions and its recommendations that states work directly to adopt the best practices and reforms called for in its report.

#### **IV. Reform of State Voter Registration Processes**

RNLA generally agrees with the analysis and recommendations to reform states' voter registration processes. Enhancing the integrity of the rolls through the use of technology and interstate and intrastate data sharing, and holding states accountable for compliance with federal law will result in significant improvements to our voter rolls that will ensure reliable rosters for Election Day, thereby ensuring a smoother voting process. RNLA also proposes additional recommendations for states to adopt to improve the quality of their voter rolls.

##### **A. Interstate Exchanges for Voter Registration List Maintenance**

###### **1. Overview**

RNLA strongly agrees with the PCEA's recommendation that "states join interstate programs to share data and synchronize voter lists so that states, on their own initiative, come as close as possible to creating an accurate database of all eligible voters." The PCEA rightly recognizes that one can directly trace problems at the polling place, including long lines, back to deficiencies somewhere in the voter registration process, often from inaccurate registration records caused by inadequate list maintenance. The PCEA endorses both of the two major interstate registration data sharing agreements: The Interstate Voter Registration Crosscheck Program (hereinafter referred to as "Crosscheck") and the Electronic Registration Information Center (ERIC). RNLA agrees both ERIC and Crosscheck are valuable tools for shoring up the integrity of states' voter rolls. States unable to participate in these programs because of state laws or other constraints need to negotiate one-on-one sharing agreements with other states, particularly neighboring states.

As the PCEA outlines in its report, there are many good reasons to participate in programs like ERIC and Crosscheck. These programs help identify records of individuals registered in a state where they no longer reside who have also registered in their new state of residence. ERIC and Crosscheck allow states to identify these double-registrations giving officials reliable information necessary to cancel the registration record in the previous state or states of residence.

Removing these records from the rolls prevents the possibility of double-voting or from someone using that old registration record to fraudulently vote in that previous resident's name. These programs also allow officials to identify voters with inaccurate registration records before Election Day allowing officials to contact voters and fix those issues before they appear at the polls, the last place where registration problems should be resolved. Related, accurate lists equip election officials to better plan for Election Day since they will have reliable statistics on which to make resource allocation decisions, particularly to better prepare in precincts with a high percentage of registration problems. The programs, particularly ERIC, also help identify unregistered but eligible citizens allowing states the ability to contact individuals directly to solicit their registration rather than reckless third-party groups.

Crosscheck and ERIC demonstrate the progress states can make when working together and in public-private partnerships to solve problems. Both programs were organized and launched without a federal mandate or legislation and are the product of a consensus of states with diverse political landscapes. Both programs give the states accurate data to make decisions in accordance with federal law and their particular state laws and circumstances. As these programs mature and expand there will be little public policy justification for any federal legislation in this area.

The results from the Crosscheck and ERIC programs are at the same time both encouraging and sobering and underscore the need for list sharing expansion to all 50 states. The 2013 Crosscheck consisted of 22 states, compared over 45 million voter records, and identified over five million potential matches of individuals registered in two or more participating states.<sup>14</sup> Highlighting one state's data, Virginia identified approximately 80,000 records in the 2013 Crosscheck with an "extremely high probability" that an individual was registered both in Virginia and another Crosscheck state, a number only accounting for matches from states that shared social security number data for matching. This additional matching criterion excluded almost one-quarter of potential matches so the true number of duplicate registrations was likely much higher.<sup>15</sup> The numbers of voters registered in more than two states was also eye-opening. The Virginia State Board of Elections identified two voters registered in seven different states, ten registered in six different states, 113 registered in five states, 1,123 registered in four states and 16,361 registered in three states.<sup>16</sup> The thousands registered in more than two states demonstrate how long some voters remain on the rolls after moving to a new state and often times multiple states after that. This is only the tip of the iceberg. A 2012 study by the Pew Center on the States estimated that over 2.758 million people are registered in multiple states.<sup>17</sup> These numbers should not be surprising given our nation's transient population, as summarized in the PCEA report and the relatively new phenomenon of organized interstate efforts to combat the problem. Crosscheck was launched in 2005 and ERIC more recently in 2012 and still today almost half of the states are not involved in either program. There is much work to be done and states need to move quickly to join these programs.

While RNLA agrees with PCEA's suggestions for registration reform, we also recommend states take additional steps to improve the accuracy of their voter rolls, many of which relate to states cooperating on an intra-state basis with other state agencies.

## **2. Interstate Cooperation Prevents and Identifies Illegal Double-Voting**

The interstate sharing of voter data equips registration officials with tools to remove voters who remain on a state's rolls after they have moved to and registered in a second state thus preventing the possibility of double-voting. In addition, it prevents fraud by cancelling records that could be exploited by another individual who is aware that someone remains on the rolls yet no longer resides in the state. Finally, these programs compare voting activity for individuals, thus providing evidence of potential double-voting for prosecution after it occurs.

As we have seen with third-party registration groups like ACORN that intentionally or recklessly registered fictitious and ineligible individuals, there are those who will abuse the registration process without adequate safeguards in place. For example, without interstate data-sharing there is nothing to prevent a Florida resident registered in both Florida and Massachusetts from voting at the polls on Election Day in Florida and casting a mail absentee ballot in Massachusetts. Similarly, there is no impediment to Person A from voting as Person B when Person B has moved out of state yet remains registered. It is no more difficult voting as a non-resident who remains on the rolls than it is for a person to vote for a deceased relative who remains on the rolls for years after dying. While photo identification requirement laws may prevent such crimes by positively identifying voters at the polls, it is not far-fetched to consider the scenario where an individual who rents an apartment, receives a piece of official election mail with registration information of a prior occupant, and decides to vote as that person. If states do not have the proper data to identify individuals who should be removed due to non-residency, then double-voting is a very difficult crime to prevent. One cannot retrieve a fraudulently cast vote and at that point costly prosecution is the only remedy.

Nothing illustrates these vulnerabilities better than the situation in New York City uncovered by the city's Department of Investigations (DOI) in a recent audit of the city Board of Elections. After identifying a variety of individuals who should have no longer been on the voter rolls for various reasons (deceased, moved away from the city, ineligible felons), the DOI was able to "vote" for those ineligible yet registered individuals in 97% of their attempts.<sup>18</sup> While no real vote was actually cast in the investigation since the investigators cast write-in votes for a fictitious "John Test" or simply did not vote when inside the voting booth, the exercise underscores the fact that states are at a higher risk for fraud when they are not proactive in maintaining accurate registration records. The problem is exacerbated in New York's case, since the state has no voter ID requirement as a failsafe to prevent any potential impersonation fraud nor does the state participate in ERIC or Crosscheck.

This is not a theoretical discussion since we know illegal double-voting happens. In 2008, for example, Crosscheck data led to the prosecution of six people who voted for President in Arizona and another state.<sup>19</sup> Perhaps the most famous case in recent memory is the former Maryland congressional candidate Wendy Rosen who was charged with illegal voting in two separate elections in the 2006 and 2010 elections in both Maryland and Florida.<sup>20</sup> Rosen ultimately plead guilty as part of a plea deal. There are multiple additional convictions in other states for double-voting, both from individuals voting multiple times within the same state and from voting in two states in the same election. While states participating in Crosscheck have referred dozens of suspected instances of double-voting to law enforcement, we simply do not have comprehensive statistics on how many prosecutions have taken place nor do we know how many instances law enforcement declined to prosecute due to a lack of resources and difficulty in

cooperating with the other state to obtain the evidence needed to prove voting took place in two states. Law enforcement officials have too many competing priorities and many states do not have dedicated resources or investigators assigned to investigate and prosecute election law crimes.

We also know that these data-sharing efforts are relatively new so, historically, it has been difficult to detect the occurrence of double-voting on a national level. Relatively speaking, the ERIC and Crosscheck programs are in their infancy. Almost half of the states are still not involved in either Crosscheck or ERIC, including California, New York, and Texas, the three most populous states whose residents are also highly transient. To date, it is less likely the non-Crosscheck or ERIC states would uncover the existence of double-voting.

In sum, states can protect their citizens' right to vote by engaging in these programs to prevent and deter double-voting from taking place. Accordingly, RNLA strongly urges states to move quickly to join programs like Crosscheck and ERIC and when that is not possible, negotiate one-on-one sharing agreements with neighboring states.

### **3. Minimizes Lines and Allows for Better Election Day Planning**

Improving voter lists through interstate data sharing can help alleviate Election Day problems, particularly in eliminating bottlenecks at the polling place check-in table. Voters who appear at polling places with inaccurate registration records or where they are not registered causes problems and delays in the check-in process. When voters do not appear in the precinct's pollbook or there is a discrepancy between the information on the pollbook and what the voter provides, poll workers are forced to spend extra time resolving those issues before permitting that person to vote. Oftentimes poll workers have to contact the local election office for instructions, request additional information from the voter to resolve the discrepancies, require the voter to complete paperwork such as an affidavit or registration application form, or require the voter to vote a provisional ballot. During a low-turnout election or in small numbers these scenarios do not seriously disrupt the traffic flow at a polling place. However, you have a recipe for disaster in a high-turnout presidential election where many voters in a particular precinct have these problems, each requiring several additional minutes of a poll worker's time. The result is a bottleneck at the check-in table that will slow the processing of voters and begin to cause back-ups and lines. This scenario was a large contributor to many of the long lines shown on television on Election Day 2012.

Using ERIC and Crosscheck data allows local election officials to contact a voter months before an election with information that they may reveal some error in their record that needs correction prior to voting, such as an outdated residence address or a name change. Each voter reached in advance is one less headache for a poll worker to triage on Election Day where many times it is too late to fix the problem. Poll workers are not trained to resolve complex registration problems at the polls on Election Day, nor should they be, and working through these problems leaves both them and the voter exasperated. Local registration officials need to identify those problems in advance in order to avoid delays on Election Day.

ERIC and Crosscheck also aid in preparing in advance for potential Election Day problems. In many respects an election is similar to planning a large party. Planning goes much smoother when the organizers have a good list of the names and number of guests who will be attending and any particular idiosyncrasies regarding the invitees. Without an accurate RSVP list, planning for the right amount of food, beverages, and space would all be very difficult. Similarly, without an accurate record of individuals registered to vote in their given jurisdiction, election officials do not have the tools to adequately prepare for Election Day, particularly if the poll book is riddled with inaccurate information and records of voters no longer living in the precinct.

Voter data sharing agreements give election officials the proper data to better allocate resources based on the needs of a particular polling place. If a given precinct is in a highly transient area and its rolls are either wildly inflated with registrations from individuals who no longer reside there, has many unregistered voters who plan on voting anyway, and/or has voters registered at the wrong address, officials would have to allocate additional staff and resources to head off problems. If local election officials have accurate data from which to determine that a particular precinct has a large amount of transient voters based on information received from ERIC or Crosscheck, then they will be prepared for problem voters who will need extra attention to resolve their problems and redirect them to the proper polling place if necessary. The local election officials can then allocate additional resources to those precincts. Finally, an accurate list will give local governing bodies better data to make informed decisions when redrawing and adjusting precinct boundaries, ensuring a more proportional allocation of voters per precinct across an election jurisdiction.

## **B. Additional Recommendations for Voter Registration List Maintenance**

RNLA proposes states take additional steps to increase the integrity and accuracy of their voter registration rolls:

### **1. Amend State Laws**

Restrictive laws in some states prevent their election officials from joining Crosscheck or ERIC or even from engaging in list exchanges with another individual state. States need to amend their laws to allow the sharing of voter registration and Department of Motor Vehicles (DMV) data with other states. State legislatures need to give their election officials the authority and discretion to share as much data as necessary to accurately identify duplicate voters, including social security information and DMV data since this allows for more accurate matching. Those who have routinely targeted list-sharing programs because they say they yield false matches between voters with similar names and birthdates should support measures to add DMV and other data fields to the matching process to eliminate any potential errors and silence critics' attacks on the standards and matching-criteria in the programs. Finally, when enacting these laws, states need to be particularly sensitive to privacy concerns related to the sharing of any confidential information.

### **2. Intrastate Cooperation**

Not only is interstate cooperation critical, states need to work internally through their various public agencies to maintain their voter rolls, particularly with DMVs, public assistance agencies, Departments of Health, tax authorities, public universities, and others. Various state agencies have accurate and reliable databases with records that can be shared to aid election officials in their list maintenance efforts. For example, by now, all states should be incorporating death records from their state vital statistics offices and felony convictions from state law enforcement agencies and courts into their list maintenance efforts. There are additional possibilities states should research including accessing State Treasury tax data and university records for records indicating former residents have moved to a new state. Similarly, registration officials and government agencies at the local level should cooperate in sharing data that may be helpful for list maintenance purposes.

DMVs in particular have an accurate database of state residents whose legal presence in the United States should be verified under federal Real ID requirements.<sup>21</sup> As is done in the ERIC program, state election officials and DMVs should cooperate to compare their lists to identify potential errors and remove non-citizens from the voter rolls. State DMVs should also share information with election officials such as lists of individuals who surrender their license when moving out of state. States need to amend their laws to mandate the exchange of information when DMVs or other state agencies refuse to cooperate voluntarily.

There is another practical advantage to cooperation between state agencies. Interagency data-sharing would help states identify individuals who were casualties of DMV and other state agencies' noncompliance with National Voter Registration Act (NVRA) requirements to offer registration services to agency customers. State agencies often fail to transmit applications from individuals attempting to register to vote when visiting a DMV or other state agency designated under NVRA. These individuals quite reasonably believe that the proper election official will receive and process their registration application. However, we know that often the application never gets delivered to the proper authority for processing either through bureaucratic incompetence or problems with the postal service. Comparing registration and DMV data is essential to maintaining an accurate voter list and ensuring all of those eligible who properly submitted applications through other state agencies are registered to vote.

### **3. Vital Records**

States should make efforts to access state vital records for list maintenance purposes, particularly death and birth records. Similar to ERIC and Crosscheck, states are now beginning to share vital records data under programs such as the Electronic Verification of Vital Events (EVVE) and the State and Territorial Exchange of Vital Events (STEVE), databases which give state officials electronic access to individuals' birth certificates, and other vital records, including death records. State election officials should closely evaluate these programs to determine their potential utility in voter registration list maintenance.<sup>22</sup>

### **4. SAVE Database**

States should utilize the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) Database to ensure only citizens are able to register and

remain on the voter rolls. In addition, even though many groups have complained about the use of the database for list maintenance, SAVE is actually a valuable tool to double-check records that may have been mistakenly marked with non-citizen status by another data source such as by DMV. DHS should also stop stonewalling states' efforts to obtain access to the database.

#### **5. Public-Private Partnerships**

States should consider utilizing data from private entities that have credible and accurate data identifying inaccurate and outdated addresses and other information. While states should use extra care when using these private data sources, experiences in places such as Orange County, California utilizing commercial data from Experian to update voters' addresses have yielded promising results.<sup>23</sup>

#### **6. Compliance With and Upgrades to HAVA-Mandated Registration Databases**

Some states' failure to meet deadlines to comply with HAVA's bare minimum requirements for a "single, uniform, official, centralized, interactive computerized statewide voter registration list" is inexcusable. Even now, one decade after HAVA was implemented, California's statewide registration database is not HAVA compliant. California needs to invest the necessary resources, including spending its remaining federal HAVA grant dollars to comply with this requirement to ensure it has a voter registration database that helps protect the integrity of the state's electoral process.

The other 49 states that have technically complied with the HAVA database requirements should work to make upgrades to their databases. Many of these systems were launched several years ago and it is likely that many are in need of upgrades or replacement to modernize their functions, including enhancements that can better identify and notify election officials of duplicate voter registrations and provide metrics on possible voter registration activity anomalies within the state. Many state's first generation systems developed following HAVA enactment were inadequate to the task even if they technically complied with the federal requirements. States should continue to invest in their database technology to improve functionality and integration of the various list maintenance programs and data-sources such as DMV records into the system. Related, states should take steps to protect their statewide databases from hackers and cyber-security threats.

#### **7. Use of Bar Code Scanners with Electronic Poll Books**

This issue is discussed more thoroughly below but one often overlooked problem is inaccurate voter history data and its impact on voter registration list maintenance activities. States should utilize bar code scanners with their electronic poll books to more accurately check in voters. This will ensure that voter history data, an important source of data for voter registration list maintenance, is more accurate.

### **C. Integration with Department of Motor Vehicles Registration Processes**

RNLA strongly agrees with the PCEA recommendation that “[s]tates should seamlessly integrate voter data acquired through DMV with their statewide voter registration lists.” Doing so, would allow a registration application completed at a DMV to be electronically transmitted to the appropriate registration official. The PCEA summarizes the various problems with lawful, eligible voters who properly submit registration applications at DMVs and who quite reasonably assume that their registration application will be processed by the appropriate registration official. However, as statistics and studies indicate, many of these applications never make it to the appropriate election official for processing. Various studies have been published analyzing the extent of the problem so an exhaustive recounting of many states’ continued failures to comply with basic National Voter Registration Act (NVRA) requirements is unnecessary. It is worth noting, however, one egregious example to illustrate the extent of the problem. In 2011, the *Baltimore Sun* found that almost 25% of those applying to register to vote at Maryland’s Motor Vehicle Administration staff offices were not registered.<sup>24</sup>

This disrupts the conduct of the election because these applicants then arrive at the polls on Election Day and are rightfully upset that their names do not appear as registered voters on the poll books. While some states have adopted safeguards to audit whether an individual did or did not submit a registration application at DMV, in many instances it is simply impossible to determine what went wrong. PCEA smartly holds out Delaware as an example for having voters complete an application electronically at DMV for wireless and near instant transmission to the appropriate election official for processing. Provided these processes follow Delaware’s model of obtaining an applicant’s digitized or electronic signature on a signature pad or tablet, RNLA strongly encourages states adopt this model. States should use technology and adopt business practices that ensures DMV obtains as high-quality and accurate digital signatures for voter registration as possible. While developing an electronic system to transmit this information requires an upfront investment in the IT infrastructure, these costs will be more than offset by the savings in mailing the paper applications and in potential litigation costs.

#### **D. Best Practices for Online Voter Registration**

Although the RNLA supports the concept of allowing an individual to complete and submit a voter registration application online, in light of the recent major examples of consumer fraud through hacked credit card information and rising number of cyber-attacks on state and federal government databases, there remains lingering concern regarding the susceptibility of an online registration system to fraud. Just as serious examples of consumer fraud lead to mistrust among the American public, electronic fraud in the voter registration process could similarly undermine confidence in the electoral system. While online voter registration can improve the quality of the voter rolls, save states money, make registration more convenient, and better prevent registration fraud, there are also risks.

Accordingly, while the RNLA Task Force supports online registration, the system used to undertake online registration must include certain safeguards to protect the integrity of the electoral system. It is imperative that states take steps to design a system that positively determines the identity of online applicants, ensures only eligible voters can utilize such a system, protects against cyber-attacks, leaves the registration determination in the hands of the proper registration official, and ensures the transmission of a valid signature.

### **1. No Automated or Automatic Online Registration**

Any online voter registration option should leave the registration determination in the hands of the local election authority instead of allowing for instantaneous or automated registration. States should design their online registration system so an individual can submit an application online and an appropriate registration official can later review the application and determine eligibility before acceptance. In most states, local voter registrars or clerks are responsible for registration determinations and online voter registration should be designed such that the registration determination is left in the hands of local officials who know their voters and any potential idiosyncrasies in their election jurisdiction. In sum, online voter registration should not be synonymous with instantaneous or automated registration.

### **2. System Tethered to DMV or Other Official State Database**

It is imperative that any online voter registration system be tied to an official state database such as the DMV to properly establish an applicant's identity prior to acceptance. States that have successfully implemented online registration have designed the system so that an individual applying online must provide information such as a Driver's License number, date of birth, social security number information, other unique personal identifying information that is matched and verified electronically against state's DMV records. The registration and DMV databases communicate with each other and ultimately inform the registration official that the applicant provided information on the application that matches information in the DMV database. Online applications should only be an option for those that can provide such matching information. It is possible other official state databases could provide such a credential, but DMV is most ideal due to its large and relatively accurate database that requires customers prove identity and provide evidence so DMV can determine lawful presence in the U.S. Voters without a DMV or other official state credential can utilize the traditional paper and mail process.

### **3. Necessity of a Signature**

Third, the system should be set up to ensure a digitized signature is transmitted to the local registration official with the online application. Most states have set up a system where the DMV can electronically transmit the applicant's digitized signature in its file to the local registration official allowing that signature to serve as the voter's official signature for voting. It is important for local election officials to have a voter's digitized signature on file, especially in states that utilize signature matching in absentee voting, petition verification, and for other purposes. It is also important that a signature be on file in the event of any potential fraud. Finally, states should adopt the procedures outlined in the Uniform Electronic Transactions Act (UETA) for the completion of a signature during electronic transactions.

### **4. Adequate Safeguards to Prevent Cyber Attacks**

Finally, states need to work to prevent piracy and hacking of the online voter registration portal. States need to consult with their appropriate information technology authority responsible for ensuring the integrity of state data and systems' processes and that monitors attacks on state

computer systems to develop these safeguards. Online registration systems must comply with industry standards for security. States need to maintain security measures for the transmission and storage of the information and actively monitor for cyber-attacks on the online registration system. States should leverage public-private partnerships when possible to obtain additional cyber-security expertise.

## **V. Improved Polling Place Management**

The RNLA Task force generally agrees with the PCEA's recommendations to improve management of polling places, better train election officials, and place a higher priority on recruitment efforts for local poll workers to ensure access to the vote for all registered and qualified voters. This section of the PCEA Report provides straightforward concepts that local election jurisdictions can implement relatively easily, cheaply, non-controversially and without legislation.

For example, the recommendation that jurisdictions adopt best practices for polling place location and design is a common sense step for adoption throughout the country. Improved training and professionalism for poll workers and better traffic management in polling places are relatively simple solutions that will have immediate and dramatic results in many jurisdictions. RNLA also welcomes PCEA's suggestion for states to implement the use of electronic poll books as it speeds up the check-in of voters at the polling place thereby decreasing lines and increasing the security of the check-in process. RNLA also strongly recommends states pair bar code scanners with the electronic poll books. Finally, RNLA urges that authorities responsible for drawing precinct boundaries take appropriate action to ensure precincts do not grow to have too many registered voters and to avoid co-locating multiple precincts in one physical location when possible.

### **A. Polling Place Design and Election Day Preparations**

Given the naturally transient existence of polling places that are set-up and torn down for use only a few days each year, there does not appear to be a uniform consistency of design to ensure logical line flow, signage, and poll worker locations. As the PCEA Report notes, many businesses—like theme parks—have mastered the art of moving large groups of people through lines in the most efficient manner. Election workers can mimic some of those techniques by evaluating space use and developing a floor plan that anticipates the flow of lines from check-in to ballot distribution to voting booth. Such an analysis naturally will also ensure proper ingress and egress for disabled voters and those voters requiring additional assistance.

Recognizing that different jurisdictions have varying facilities at their disposal for use as polling locations, it is not appropriate that policymakers mandate the use of any particular type of building. Rather, a consistent and uniform design formula should be provided that states and jurisdictions therein can adopt for polling places that may include township halls, schools, community centers, fire stations, etc.

## **B. Management of Voter Flow**

### **1. Line Walkers and Greeters**

The Commission's discussion regarding the efficacy of "line walkers" is a noteworthy commonsense improvement that would be relatively easy to implement in the short term. Particularly in larger voting locations that house multiple precincts, a continuous source of frustration and delay for voters is the failure to properly identify their correct precinct. A constant complaint from voters is that they waited an hour in line only to be told when they reach the check-in location that they are in line for the wrong precinct. Line walkers, coupled with adequate signage at the polling location, would alleviate such unnecessary delays by ensuring voters select the correct precinct upon arrival at the polls.

Line walkers or greeters can also expedite the process by determining in advance which voters may need to vote provisionally and, in certain jurisdictions, which voters may need to complete an affidavit due to some issue in the voter's record or in lieu of possessing a valid photo or other valid form of identification. To the extent line walkers can provide voters the affidavit to review before reaching the check-in table, valuable minutes can be saved by explaining the affidavit while the voter waits in line. The line walkers can also communicate the necessary information regarding what type of identification the voter is required to display when reaching the check-in table.

A technological component would be to provide line-walkers with electronic tablets with the roster of registered voters to help voters verify the correct polling location and precinct. Finally, greeters can also hand out official sample ballots and/or the text of ballot referendums, proposed constitutional amendments, and other more technical ballot items that may delay a voter in the voting booth and slow down the voting in the particular precinct. To make a line walker program work, individuals will need adequate training and oversight to ensure the integrity of the voting process. If line walkers (or any other election workers) appear partisan or biased, they could do more harm than good. That being said, line walkers also would serve as a first line of defense for those seeking to cause chaos, delay, or fraud on Election Day. They could help deter unlawful campaigning at polling locations and ensure voters receive accurate information.

### **2. Electronic Poll Books and Bar Code/Magnetic Stripe Scanners**

RNLA strongly agrees with the PCEA's recommendations that states transition from paper to electronic poll books. Electronic poll books speed up the check-in process because election workers can search a field by typing in the voter's name rather than flipping through hundreds of paper pages. They also result in a more accurate roster of those who have checked in and voted at the polling place. The ability to, in real time, accurately identify those voters checking-in, including those who have already voted, will help to combat fraud and abuse.

The PCEA report outlined the many benefits of electronic poll books comprehensively but we feel it is important to specifically also recommend states use identification card bar code scanners to pair with their electronic poll books. Most state DMVs and some other government agencies already utilize bar codes or magnetic stripes on government issued identification.

Electronic poll books can be paired with bar code/magnetic stripe scanners to further expedite the check-in process by allowing poll workers to simply scan an identification card when a voter appears at the check-in table. Utilizing this relatively cheap technology to help automate the check-in process will simplify and speed the processing of voters and prevent errors in official voter history records. In addition, scannable bar codes can be included on paper identification cards that officials can provide to voters easily and free of charge. This scanning process would be similar to that used by the Transportation Security Administration for air travel.

The use of bar code scanners ensures nearly a 100% chance that the right individual gets marked off as having voted on the poll book. When manually checking in voters, poll workers frequently mark off the wrong voter on the poll book. For example, a poll worker may mistakenly mark off John Doe, Sr., when John Doe, Jr. comes to vote. These errors can then later lead to several problems, including delays and confusion when the voter who was earlier mistakenly marked as having voted appears to vote and the poll book shows the individual as having voted. Oftentimes these impacted voters will need to complete additional paperwork or even vote a provisional vote.

Additionally, these check-in errors can also result in more systemic problems in the voter registration process, particularly impacting list maintenance efforts. The data from the poll books become an individual's official voter history that serves multiple purposes, including its use in voter registration list maintenance processes mandated by federal law. The National Voter Registration Act (NVRA) requires officials to remove a voter after they have reliable information that the voter has moved outside of a registration jurisdiction, failed to respond to a subsequent mailing, and then does not vote at least once over a period of two consecutive federal elections.<sup>25</sup> Consequently, errors in voter history data often result in voters mistakenly remaining on the rolls if a poll worker checked in another voter under their name. Conversely, election officials may erroneously remove a voter from the rolls if a voter was not marked as having voted because a poll worker failed to accurately mark the poll book. This is a relatively common problem, particularly for individuals who vote less frequently, and are more likely to be inaccurately identified as having moved residences. Similar problems result when voters who voted but are not given credit may remain on the rolls but with inactive status. Voters that may have been mistakenly moved to inactive status or removed will then create problems for poll workers if they show up to vote and are not on the pollbook or are listed with inactive status.

Inaccurate voter history data could make prosecution for potential voter fraud more difficult since the reliability of that record as evidence could be called into doubt, particularly when there is no other evidence that indicates the voter did actually vote. This is particularly applicable to instances of potential double-voting if a voter who has moved away from a state is mistakenly marked as having voted by a poll worker. In sum, pairing electronic poll books with bar code scanners can improve the speed and accuracy of the check-in process, prevent confusion, improve states' list maintenance processes, and aid in the prosecution of potential voter fraud.

Finally, one promising idea that some states have considered is enhancing electronic poll books by adding the display of photographs to the registered voter's record. This would be done through interfacing with state DMV databases so voters' state identification photos can be displayed along with their name and other identifying information.<sup>26</sup> This system would allow a

poll worker to display a voter's photograph on the poll book along with their other identifying information when checking in the voter, verifying that the voter is the same person in the image provided by DMV. This idea would be particularly helpful to states that do not have a Photo ID requirement. This technology should be piloted by states to gauge its effectiveness in accurately ensuring the identity of voters and providing for a more accurate check-in process.

### **3. Use of Online Tools**

Another technology-based solution recommended by PCEA is the use of online tools to assist voters before getting to the polling place. Existing social media and other online resources can be used by election officials to inform voters regarding location and directions to proper polling places, estimated wait times at each precinct, and suggested return times for shorter waits. States can also take advantage of public-private partnerships such as Google's Voting Information Project (VIP) to leverage inexpensive or free offerings to implement these solutions. Much of this information can be anticipated in advance of Election Day—for example when a jurisdiction has a particularly lengthy ballot—and election officials can advise voters in advance regarding optimal voting times with regard to crowd levels.

In developing programs to equip local election officials to determine crowd levels and better allocate resources on Election Day, there are significant opportunities to learn from corporate America. Theme parks, hospital, grocery store and restaurant industries have worked for years to master the art of wait line optimization and would be great partners in translating those efficiencies to the polling place.

Providing sample ballots to voters that can easily be reviewed and printed on computers, tablets, and smartphones will help voters familiarize themselves with ballots before Election Day in order to expedite the voting process upon arrival at the polling locations

### **4. Better Recruitment and Training of Poll Workers**

The RNLA Task Force agrees with the premise that effective polling place management requires well-trained personnel, with the recognition that such personnel will only undertake this job a few days each year. Election officials can also utilize technology to bolster training efforts. By their nature, election workers work a maximum of only a few days per year, so a refresher is helpful in reminding election workers regarding processes, procedures, and changes to the law. Online training sessions and video training can be used to compliment in-person training and mock voting demonstrations to ensure election workers are comfortable with their duties and the tools and technology in use on Election Day. Poll workers should be incentivized to receive extra training with additional compensation and official professional certifications for those who seek out and receive supplemental training.

Although recruiting from the private sector has significant advantages and should be pursued, recruiting high school and college students raises concerns regarding their reliability and less likelihood that they would work more than a few elections. College students are also less likely to be residents and registered to vote where they attend school. The Commission Report's concerns regarding the large number of retirees currently serving as poll workers is reasonable

and understandable; however, those individuals tend to be one of the most reliable groups in participating in long, stressful election days, most giving of their free time, and years of valuable experience administering elections. The RNLA Task Force urges prudence in evaluating whether to replace retiree volunteers with teenagers and recommends that targeted recruitment efforts be done so with the aim of complementing or supplementing those most experienced in running elections at the precinct level.

To reach potential new poll workers, states and local election jurisdictions should engage in public-private partnerships and contact local major employers' community outreach liaisons for potential volunteers. Many corporations are receptive to public-private partnerships and are increasingly sensitive to their responsibilities as corporate citizens. Corporations and local election officials teaming together for a day of volunteerism for employees to work as poll workers is a natural fit. In addition, outreach efforts should be made to faith-based organizations, community groups like Rotary, and state and local employees who may be willing to serve on Election Day.

Another potential tool to ensure rapid voter flow without allowing voting fraud is to continue to allow properly credentialed poll monitors full access to the election process. A system must exist for poll monitors to observe the voting process and to raise issues of concern where they exist. Furthermore, such monitors must have a clear line of appeal in the event poorly trained or unknowledgeable election workers do not properly understand or apply election law. The rules for such poll monitors must be clear and uniformly applied for all political parties and, although election officials generally are partisan, every effort must be made to ensure no bias or partisanship shapes their decisions.

### **C. Addressing the Needs of Particular Communities of Voters**

The RNLA Task Force agrees that establishing community advisory groups for voters with disabilities and those with limited English proficiency will help to ensure those voters are considered at all stages of the voting process. Advisory groups can serve as a conduit between those groups and election officials within the jurisdiction to help election officials better understand the needs of a particular group or issue.

As part of each jurisdiction's polling place identification and design, election officials must endeavor to provide physical access to each polling place, including not only the building, but parking lots and parking spaces and ensure compliance with state and federal accessibility laws. Additionally, as with training for other election-related functions, technology also should be utilized to train election officials and workers in assisting voters with disabilities. This is another area in which election officials may be able to partner with outside organizations—such as those representing voters with disabilities—to prepare online videos and other training mediums that help election workers understand how best to work with voters.

### **D. Additional Recommendations: Reduce Precinct Size and Avoid Co-Located Polling Places**

A large contributor to many of the reported long lines on Election Day 2012 was that many precincts simply had too many registered voters. Too many voters in a precinct can be both a direct cause of lines and an aggravating factor when a polling place has other deeper-seeded issues such as an insufficient amount of voting equipment, not enough poll workers, mismanagement, or has an inaccurate voter list. Election jurisdictions need to pay careful attention to the size of their precincts to prevent them from reaching an unmanageable size. In addition, local election jurisdictions should be careful when housing multiple precincts in one geographic location since it has the same effect of confusing voters and drawing several thousand voters to vote in one particular place, thus increasing the chances for congestion.

The local decision-makers who determine precinct size, typically a local governing body such as city council or county board of commissioners or supervisors, need to work with their local election officials to closely monitor increases in the number of registered voters in precincts and population shifts within a county. Local officials need to make changes when precincts become too large or unbalanced across a jurisdiction. It is clear from the 2012 election that many local governments either failed to recognize this problem or just ignored the warning signs and refused to act. Notwithstanding the relief that purportedly accompanies early voting, there will still be problems in oversized precincts. Even with a substantial amount of early or absentee voting taking place before Election Day, a good percentage of the population will still choose to vote on Election Day so officials need to plan carefully.

Florida's Miami-Dade County is perhaps the best example where jumbo-sized precincts significantly contributed to long lines. Amazingly, Miami-Dade has not engaged in any significant re-precincting since 2002.<sup>27</sup> The lack of action resulted in approximately 25 polling places swelling to at least 4,803 registered voters by Election Day 2012 with one topping out at 8,745 voters.<sup>28</sup> Of the six polling places that had voters voting after midnight on Election Day 2012, all but one had over 5,000 registered voters. These six polling places averaged 6,199 voters per precinct, an extraordinarily high number of voters. While other problems contributing to the lines in these precincts, including insufficient staffing and voting equipment, the correlation between the large number of voters per polling place and lines is unmistakable. Miami-Dade's Election Department noted voter distribution among precincts several times in its After-Action Report as a contributing factor to problems. Even after the 2012 election debacle, Miami-Dade still refuses to enact meaningful re-precincting out of fear of voter's being confused by polling place changes. Miami-Dade's continued refusal to re-precinct and its negative impact on the county's elections spurred Ken Detzner, Florida's Secretary of State, to recently travel to Miami and plead with its County Commissioners to re-precinct at the earliest possible time.<sup>29</sup>

The same problem played itself out in different parts of the county, including in Northern Virginia outside of Washington, DC, where many of the precincts with the longest lines had too many voters. In Prince William and Fairfax Counties, many precincts had long lines, and like Miami-Dade, those counties had experienced growth and population shifts over the previous decade. In a bipartisan report issued by Prince William County analyzing the long wait times in many of its precincts, the commission found "there was a high correlation between large precincts and number of citizens voting after 7:00 p.m.," the time polls close in Virginia.<sup>30</sup> The Prince William County commission recommended subdividing precincts with more than 4,000 registered voters into smaller precincts in order to avoid the long lines/waits suffered by citizens

in 2012” and to work “to anticipate the opening of new housing developments and apartment complexes with the precinct[s]” which may result in precincts growing too large.<sup>31</sup> In Fairfax County, two precincts that had extremely long lines were near the statutory maximum for number of voters assigned to precinct.<sup>32</sup> Finally, a recent audit report in Virginia Beach analyzing lines in city precincts in the 2012 election made similar conclusions that large precinct size contributed to long lines in many of its precincts. In Virginia Beach, “[o]ut of the 25 larger precincts, 21 had closing times between 2 hours to 5 hours after poll close.”<sup>33</sup>

A related contributor to polling place problems, particularly lines, is the co-location of multiple precincts at one polling place or facility. While this is a popular trend, RNLA cautions against stacking too many voters into one physical location which may have the practical effect of creating one giant, unmanageable precinct on Election Day. Many of the problem areas in Miami-Dade, Fairfax County, and other places that had the unfortunate distinction of showing up on national television with long-lines in 2012 were in co-located polling places. In response to problems at many of these co-located polling places, Fairfax County’s after-action report recommended that “co-located precincts should be avoided” but recognizing that it is sometimes impractical or impossible to avoid them, recommended best practices to mitigate the risk of problems.

RNLA does not formally oppose co-location of precincts in all instances; however, we believe that they should be avoided whenever possible in favor of unique physical polling places for each precinct. This approach does divert somewhat from PCEA’s recommendation that states establish vote centers to consolidate precincts into vote centers when possible. However, we believe that the lessons learned from those places with the very longest lines point to the need for smaller precincts, not larger, super-sized ones. When officials cannot avoid co-located or very large precincts, then RNLA adopts the Fairfax County recommendations that officials take the following steps to mitigate problems:

- Co-located precincts should be adequately staffed so that a person can be located outside voting rooms to direct voters to the correct room and/or correct line. Pages could be especially useful in co-located precincts, but if pages are not available, then a poll worker should be assigned to work outside if possible;
- Precinct maps must be posted outside each room so that voters can determine which room is their polling place;
- Signage should be improved to assist voters in finding the correct room; and
- Aggressive advertising for how voters can find or confirm their precinct and polling place after they are already inside the building, such as a “mobile app” that allows voters access to their voter information from their mobile devices.<sup>34</sup>

A common theme among precincts with long lines and other problems is their large number of registered voters and their co-location with other precincts. While not all precincts with lines are too large, nor do all precincts with a large number of voters have lines, there is a greater probability for problems and election officials have a smaller margin for error if other problems exist. States and local election districts need to closely monitor population shifts and growth within their counties, especially leading up to high-turnout elections and ensure that there is a proper balance of voters in their precincts. When precincts do grow too large and re-precincting

is not possible, then decision-makers need to devote extra resources, including experienced poll workers, more voting booths, and voting equipment to handle the larger volume of voters.

## **VI. Early Voting: An Expensive Non-Solution to Lines**

In its final report, the PCEA came out strongly in favor of expanding opportunities for pre-Election Day voting (no excuse absentee voting, early voting, etc.). The Commission believes that early voting, in all its forms, is “here to stay.” While that may be true, it is not a compelling policy reason why other states should adopt it. The RNLA Task Force disagrees that early voting will have a positive impact on our electoral system or make the voting experience better for voters, and we respectfully disagree with the PCEA’s conclusions on early voting. If early voting actually accomplished the goals that its proponents so stridently claim, then perhaps RNLA could be persuaded to agree with PCEA’s recommendations. However, we cannot recommend its further adoption when weighing its high costs against whatever convenience it may incur for voters. Instead, RNLA argues that states should focus on improving absentee voting for voters that require it for reasons other than convenience and devote resources that would go to early voting to adopt best practices for polling place and resource allocation management.

### **A. Not a Line Problem-Solver**

Early voting is not a solution to long lines. There are states with early voting that had precincts with exceptionally long lines (Florida for example) and there are those without no-excuse or early voting that did not have lines (Alabama, Mississippi, others, particularly in the Northeast). Similarly, some areas with a high percentage of absentee voters still had long lines and some areas with low numbers of absentee voters regardless of the law, had few problems on Election Day. Supporters of early voting would argue that the more people voting before Election Day means fewer voters showing up on Election Day and consequently less people on site to cause lines. Perhaps in theory but observations from the 2012 General Election do not back that up. In Virginia, many of the precincts with long lines, particularly in Northern Virginia, had above average absentee voting rates, with over 20% of voters casting their ballots before Election Day. One precinct in Arlington County had over 30% of their votes cast by absentee ballot in advance of election day, one of the highest rates in the state, and yet still had voters waiting up to two hours in line.<sup>35</sup> In Miami-Dade County there were extraordinarily long lines even after several days of early voting. If early voting was so successful at preventing long lines then why do we still have problems in so many places that have adopted it or where such a high percentage of voters vote before Election Day?

In reality, most of the problems with lines can be attributed to systematic registration problems, failure to properly plan for Election Day, a lack of resources, and in many cases, too many voters assigned to a particular precinct. In addition to adopting the other best practices recommended by the PCEA, the most efficient way to ensure less gridlock is to reduce precinct sizes, thereby guaranteeing less people voting at a precinct on Election Day. As discussed above in the recommendation to reduce precinct size to a manageable level, many of the precincts with some of the worst lines in the country had far too many voters, particularly in Miami-Dade County.

If nothing else, the post-mortem of the 2012 General Election revealed the need to focus on the basics of Election Day administration. As the PCEA pointed out repeatedly, the long-lines were typically a result of management problems which can be solved with proper planning and resource allocation and upgrades to our voter registration system. Anything that distracts from the main focus of absentee voting for those who need it, the close of registration books, and the monumental task of preparing for Election Day is simply that, a distraction. Local election officials have finite resources and are already stressed to the breaking point with juggling poll worker training, press inquiries, programming and testing voting equipment, and the other planning that needs to take place on the eve of an election. Being required to administer a robust early voting program is simply going to draw resources and attention away from those preparations.

The fact is that many voters still want to or find it more convenient to vote on Election Day so crowds are not going away. Accordingly, election officials need to be ready for whatever turnout Election Day may bring. Relying on early voting to disguise what are typically management and resource allocation problems is unwise. Policymakers who implement the recommended early voting as a cure-all should not be surprised when the same Election Day problems continue to occur, resulting in lines and gridlock at the polling place. Instead states should invest their resources on Election Day and should closely review the recommendations by the PCEA, this report, and other best practices publications for resources on how to avoid lines.

#### **B. Early Voting is Expensive**

In the section of its report on early voting, the PCEA spends little time discussing the increased costs certain forms of early voting have on state and local governments. According to the PCEA Report, the average early voting state allows for 19 days of early voting before Election Day. While early voting states differ on how many hours and on what days to offer early voting, early voting is requiring election administrators to incur the costs of running multiple Election Days with officials at the local level typically bearing the brunt of the expenses.

We need only take a quick look around the country to see what early voting is doing to the budgets of state and local governments. In the deep blue state of Maryland, voters approved a constitutional amendment in 2008 to establish early voting, with implementation for the 2010 elections. For that first round of early voting in 2010, Maryland taxpayers paid an additional \$2.6 million for their elections. The cost for 2012 was expected to be similar.<sup>36</sup> Miami-Dade County has estimated that each early voting site costs an estimated \$20,000 per day.<sup>37</sup>

Another deep blue state, New York, has been another battleground between supporters and opponents of early voting, and most of the bipartisan opposition to early voting is focused on the additional costs county governments would incur if early voting were implemented by the state legislature. In one county alone, early voting was estimated to cost taxpayers an additional \$1.5 million per election.<sup>38</sup> At a recent meeting of the Election Commissioners Association, a bipartisan group of county elections commissioners passed a resolution in opposition to Assembly Speaker Sheldon Silver's early voting bill.<sup>39</sup> This came after the state's nonpartisan Association of Counties came out against the same proposal because of the increased costs on

county governments.<sup>40</sup> Other states' nonpartisan Municipal Leagues and Associations of Counties have regularly opposed early voting legislation due to the high expenses incurred by local election jurisdictions.<sup>41</sup>

RNLA supports greater state and local funding for elections. Imagine the good these millions of dollars going to fund early voting could have on voter registration upgrades, purchases of new voting equipment, and other upgrades to the electoral system? Whatever policy decisions states make on early voting, RNLA agrees with the PCEA Report recommends that any expansion of early voting opportunities not take place at the expense of running the election on Election Day.

### **C. Does Not Increase Turnout**

While it's easy to see the downsides to early voting, it's awfully difficult to see the benefits. Early voting advocates frequently claim that early voting makes voting easier and because voting is easier, more voters will turn out to vote. In 2008, a University of Wisconsin-Madison study found that early voting does not increase voter turnout. In fact, the study concluded that early voting actually decreases voter turnout.<sup>42</sup> Additionally, a 2003 study conducted by three professors from Reed College found that voter turnout increased at an insignificant level because of early voting.<sup>43</sup> With these effects on voter turnout, is early voting really worth the additional costs imposed on state governments, local governments, and most importantly, taxpayers?

### **D. Primary Beneficiaries: Campaign Consultants**

There is another player in the political world that incurs additional expenses because of early voting – the campaigns. Without early voting, campaigns know exactly when the vast majority of voters will be casting their votes. This allows campaigns to spend their advertising and get out the vote resources in the most effective possible manner. If, however, voters can cast their ballots on any one of the, say, 19 days before Election Day, campaigns can only guess when a voter might vote. This leads to longer and costlier campaigns, more negative advertising, and more annoying phone calls to voters. Most Americans dread the onslaught of late-October political advertisements. Early voting will force Americans to see and hear more of these ads. While political consultants may savor the extra days of campaigning, American voters do not.

And early voting does not just increase campaigns' costs. It also makes it more difficult for smaller and underdog campaigns to obtain the volunteers necessary to do all the last minute campaign work that is traditionally done on or just before Election Day. When Election Day is every day for two weeks, it's not easy to find volunteers who will devote that much time to a campaign. The big, well-funded campaigns might not be adversely affected by early voting, but the ragtag, long-shot campaigns will suffer. Many Americans are cynical about the non-stop, expensive campaigns that make it exceptionally difficult for candidates that do not have the financial resources to compete in a month-long election. We should be wary about promoting a system of voting that gives better funded campaigns an additional leg up.

### **E. Convenience vs. Citizenship**

Voting should be about more than convenience; voting is about citizenship. By turning Election Day into Election Month through early voting, we are cheapening the voting experience and cheapening citizenship. As George Will wrote, “it is not admirable to scatter to private spaces, and over many weeks, the supreme act of collective public choice. The coming of the public into public places for the peaceful allocation of public power should be an exhilarating episode in our civic liturgy.”<sup>44</sup>

Part of the voting process requires a voter to educate himself or herself on the issues facing the community, state or country. When a voter in an early voting state casts his or her ballot weeks before Election Day, they’re putting convenience over thoughtful deliberation. While this also happens with voters who vote on Election Day, we should not be encouraging it in our country.

There are few shared civic experiences left in America. Election Day – the act of casting a ballot alongside your family, friends, and neighbors after having taken a good look at all the candidates running for office is really one of the few common civic experiences left. Early voting destroys that civic experience and turns voting into just one more chore we all must do.

#### **F. Focus on Those Who Need to Vote Absentee**

To be clear: there is a difference between necessity and convenience. For many Americans, it is simply impossible to cast a ballot at their polling place on Election Day. Members of the Armed Forces, overseas voters, the disabled, college students, and those who travel for work frequently find it difficult or impossible to cast a ballot on Election Day. We need to accommodate the needs of these individuals through absentee voting. Instead of creating a complex and costly early voting system for voters just looking for convenience, election administrators and other policymakers need to work to make sure that the Americans who *need* to vote on Election Day are able to exercise their right to vote. While the data on early voting points to few positives, we do know that significant systematic problems exist in our absentee voting by mail procedures for those who actually need it. We should invest our energies in improving the system for these voters.

The Task Force applauds efforts like the MOVE Act, the SENTRI Act, and other recent steps taken to enable the members of the US military to cast votes while away from their homes, abroad, or in combat, and we strongly urge public officials at all levels of government to do anything possible to enable these brave Americans to exercise their rights.

In short, this Task Force strongly disagrees with the PCEA’s determination that early voting is a positive change to the American electoral system. We strongly urge legislators and other policymakers to oppose any efforts to implement or expand early voting.

### **VII. Continued Need to Improve Military Voting Efforts**

The RNLA Task Force appreciates PCEA addressing the continued obstacles to our military and overseas citizens (also known as “UOCAVA voters” after the federal Uniformed and Overseas Citizens Absentee Voting Act) to voting and generally agrees with PCEA’s recommendations to better serve these voters. While the U.S. has made significant strides in recent years, helped in part by the enactment of the 2009 Move Act, more can be done. First, RNLA agrees with the PCEA’s recommendations that states and election jurisdictions should “provide a targeted website” for UOCAVA voters and generally do a better job explaining the registration and absentee voting process and providing materials online. Related, states need to leverage the internet to allow UOCAVA voters to change their registration address electronically to maintain accurate and up to date registration records for our UOCAVA voters. DOJ needs to ensure compliance with our federal overseas and military voting laws, including by suing non-compliant jurisdictions when needed.

The PCEA report outlined statistics regarding states’ shortfalls in providing quality online materials to UOCAVA voters. As the data shows many states are simply not providing adequate information and materials online. Accordingly, states and local election jurisdictions need to make this issue a higher priority. States need to display relevant overseas voting information prominently on their websites, explain the procedures in as simple terms as possible, and timely update information and dates when required.

The average overseas military voter may not know what a Federal Postcard Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) are nor are they likely to have memorized the applicable deadlines for voter registration and absentee voting in their state. States need to convey this information online clearly and simply so that voters do not give up because they perceive the process to be too complex. States also need to make very clear that UOCAVA voters can request the delivery of their ballots via email. Moreover, state and local websites should also prominently display contact information for a staff member to provide assistance who is trained and knowledgeable on overseas voting. Many of our military and overseas voters have complex and unique scenarios that may require one-on-one problem solving from a state or local official. If states need assistance communicating this content effectively then they should work with the Federal Voting Assistance Program (FVAP), Military Voter Protection Project, state National Guards, and other organizations with expertise in communicating these issues and who are committed to improving overseas voting.

Related, UOCAVA voters would greatly benefit from the ability to update their registration information electronically. Virginia State Board of Elections Secretary Don Palmer in testifying before Congress on the proposed Safeguarding Elections for our Nation’s Troops through Reforms and Improvements Act (SENTRI), noted, “[t]he members of the Department of Defense (DOD) are a highly mobile population of voters and because of this mobility, inaccurate addresses and information lead to significant delays in ballots reaching the military or result in undeliverable ballots where the ballots never reach the voter.”<sup>45</sup> There are fewer more transient voters than those in our military and mailing in paper change of address requests is simply not feasible or efficient for those who may need to change their registration and/or mailing address on a regular basis and without much warning. Making registration changes easier for our UOCAVA voters will also mitigate a potential security risk. Absentee ballots are sent automatically for subsequent elections to certain voters who apply to vote absentee through an

FPCA. Some states will send ballots for all following elections over a certain period of time, often for an entire federal election cycle. If voters are unable to update their registration information then these ballots are more likely to be mailed to places where the voter no longer resides, thus creating the potential for mischief in addition to the more obvious problem of the voter not receiving his or her ballot.

Some of the good recommendations from the PCEA report and others are included in the proposed SENTRI Act, currently before Congress. The RNLA Task Force endorses some concepts included in SENTRI Act.<sup>46</sup> SENTRI proposes improvements to overseas and military voting, particularly for voter registration, an overlooked issue for our military and overseas voters. Among SENTRI's highlights is a repeal of the hardship waiver provided for in the 2009 MOVE Act which allows states to request an exemption from the Department of Defense (DOD) from the 45-day pre-election absentee ballot mailing deadline for federal elections. Currently, states granted a waiver get de facto permission to disenfranchise their UOCAVA voters since ballots mailed overseas after the 45<sup>th</sup> day run a high risk of not being returned in time to be counted. While some states enacted laws to require their local jurisdictions to count ballots mailed to voters late and returned after the deadline, the MOVE Act did not require it. SENTRI also requires states to send any ballots not mailed by the 45-day deadline via express delivery, something the MOVE Act recommended but did not require. SENTRI addresses some of the same issues outlined in the PCEA report for the need to improve registration and voting opportunities through online systems making it easier for our military voters to update their voting information electronically.

SENTRI begins to tackle some of the confusing components of the absentee voting process, particularly the lack of uniformity for the use of certain absentee and registration application forms. The PCEA points out voters and election officials' confusion resulting from different state standards for the use of FPCAs and FWABs. The PCEA highlights these specific problems and they do not need to be explained again in depth in this report, but we agree that confusion regarding issues is an impediment to overseas voting. For example, uncertainty regarding the effective duration of an FPCA and whether registration through an FPCA results in permanent or temporary registration creates an unnecessarily complex voting regimen for our UOCAVA voters, those who would benefit most from a straightforward and simple process. SENTRI takes aim at one of the areas of confusion by providing a uniform one federal election cycle timeframe for the duration of an FPCA. While different and confusing state standards in other areas remain, the uniform FPCA duration is an excellent start and will ensure that ballots will be mailed to UOCAVA voter applying via an FPCA for an entire federal election cycle.

Additionally, the Department of Justice needs to remain vigilant in enforcing federal laws pertaining to military voting. Even in 2013, four years after passage of the MOVE Act, some state and local election officials have still not come into compliance, evidenced by three enforcement actions DOJ took in 2013. When states fail to get their ballots sent by the 45<sup>th</sup> day before an election, DOJ needs to move swiftly to enforce compliance.

In sum, states' adoption of PCEA's recommendations, embracing some of the concepts included in the SENTRI Act, and vigorous Department of Justice enforcement of existing federal

military and overseas voting laws should help to build on the improvements made in recent years for our overseas and military voters.

## **VIII. Voting Equipment and Technology**

### **A. Overview**

As a fundamental principle, RNLA believes that there is no technology need, application or implementation which requires a federal role in the development, purchase or use of voting systems. RNLA believes that the attempted development by EAC of the HAVA Voluntary Voting System Guidelines Standards (VVSG Standards) and certification and testing standards failed, proving that top-down federal management of voting technology through attempted issuance of technology standards is not only contrary to our system of federalism and decentralized form of voting in America, but also counterproductive. Rather, RNLA believes voting technologies and all relevant standards should be developed and implemented like any other technology product in the competitive American economy. Necessary performance standards should be developed by using the voluntary consensus standards approach used throughout manufacturing. Congress should continue to fund and make available services of the National Institute of Standards and Technology (NIST) to assist election administrators and manufacturers as a convening and research organization. However, development of performance standards and related testing and certification procedures can best be achieved by experienced consensus standards organizations, such as American National Standards Institute (ANSI) and the Institute of Electrical and Electronic Engineers (IEEE), or by professional organizations such as the National Association of State Election Directors (NASED), National Association of Secretaries of State (NASS) and the International Association of Clerks, Recorders Election Officials and Treasurers (IACREOT). RNLA believes state and local jurisdictions should adopt testing and certification requirements based on voluntary consensus standards they prefer, and be left to finance and purchase voting systems of their choice based on their state laws without any federal regulation or intervention. Finally, RNLA believes the EAC, if continued as a federal agency, should no longer have authority or funding to engage in voting system development.

### **B. The EAC Obstructed Innovation**

As a result of the 2000 *Bush v. Gore* recount, election authorities experienced a dramatic increase of interest on the part of voters and local oversight bodies in obtaining more usable and secure voting systems. If the federal government had simply left matters in the hands of local governments and election technology manufacturers, the market would have rationally responded to this demand with rapid development and availability of new, updated technologies. Unfortunately, certain requirements in HAVA in combination with the inability of EAC Commissioners to timely and competently perform their statutory duties severely deformed the marketplace – and obstructed the normal market incentives for private enterprise to innovate.

HAVA required the distribution of significant federal funding to local election authorities and required that it be used to purchase and deploy new voting systems by a date certain. The

product inventory of election technology manufacturers at that time was in most cases better than currently deployed systems. However, such immediately available products did not always include capabilities demanded in the post-recount environment. For instance, Direct Record Electronic (DRE) systems typically did not include the capability to print paper receipts to document individual votes. The intent of Congress in passing HAVA was to have the EAC develop new technical standards in time so that new voting systems purchased with the Federal funding would have cutting-edge security, auditability, and usability features.

### **C. HAVA Funds Were Spent on Obsolete Technology**

That did not happen. The appointment of EAC Commissioners and employment of their staff members were delayed. Once appointed, rather than asking Congress for an extension, the EAC Commissioners insisted on distributing the federal funding to local election authorities even though the new technical standards had not yet been developed. This caused state and local authorities to purchase the then-best available late-1990s technology, which was often nearly out-of-date at the time it was acquired. So a principal technology development failure was that HAVA funds were effectively required to be spent *prior* to the development of new standards – the voting systems purchased only partly addressed technical problems identified during the *Bush v. Gore* recount. Election authorities are often under-funded, and only occasionally are able to obtain funding to update their voting systems. As a result, many voting systems acquired with HAVA funding were nearly-obsolete, and many are still in use today.

### **D. The EAC is Incapable of Developing Standards**

Election technology manufacturers benefitted financially from the HAVA-funded explosion of equipment purchasing, and were consequently in a better financial position to develop their next generation of voting systems. But, the manufacturers were effectively prevented from doing so by a dysfunctional EAC – whose Commissioners were unable and unwilling to do the technical and policy work needed to issue technical standards.

The EAC's efforts to develop updated equipment standards went forward. NIST received funding from Congress, and its personnel convened principal manufacturing and user stakeholders. NIST also formed a Federal Advisory Committee known as the Technical Guidelines Development Committee (TGDC) comprised of private citizens of national-class expertise in the areas of security, usability, technical performance, and other relevant subjects. The TGDC members and professional technology and standards professionals from NIST developed a series of VVSG proposals (VVSG 2005, VVSG 2007) for consideration by the EAC Commissioners.<sup>47</sup> But instead of responding quickly to the proposed VVSG standards, EAC commissioners chose to over-emphasize other aspects of their duties, became mired in partisan and personal rivalries, and consequently slowed – and eventually halted – most aspects of research, standards development, and certification and testing. Attempted interference by individual EAC commissioners with the conduct and conclusions of NIST research, and their willingness to divert technology research funding to unrelated uses ultimately caused Congressional appropriators to provide the relevant research funding directly to NIST. The EAC

displayed bewilderment and incompetence in its attempted consideration and processing of NIST-developed and TGDC-recommended VVSG Standards. Despite some good showings by individual commissioners, the EAC was never able to establish what local election authorities and the manufacturing industry needed – a clear set of updated performance standards that could enable a manufacturer to confidently invest funds in the development of testable voting systems a local election authority would want to purchase.

#### **E. The EAC Should Be Removed from the Standards Process**

The attempt by the EAC to develop and mandate technology standards for voting systems is an example of when federal over-regulation and administrative agency dysfunction has nearly ruined an industry. Prior to enactment of HAVA, the election technology manufacturing industry in the United States was relatively healthy. Companies sold hardware and software products in a competitive marketplace. Major technology companies, such as financial industry technology titan Diebold, engaged in the business. Sales to election authorities were certainly challenging as a result of election authorities having either overly-conservative views toward new technologies, or lack of sufficient funding to purchase new systems. But, the industry was clearly positioned to provide necessary innovation and product in response to market demands.

The ability of manufacturers to raise capital funds to invest in research of new election technology innovations was consequently deformed, because there was no assurance that resulting innovations could be tested against updated standards. The EAC's standards were formally labeled "voluntary". This was a misnomer, because manufacturers and local election authorities regarded them as mandatory. No local authority was willing to purchase a system lacking certification to the updated standards mandated by HAVA and, as promised by the EAC. No manufacturer was willing to invest sufficient funds to develop entirely new product lines without the guidance of the promised standards. The PCEA gets this right: it truly was a regulatory "netherworld" created by a dysfunctional EAC.

Since this regulatory meltdown occurred, frustrated and disbelieving state and local authorities have had no choice other than to purchase what is available in this deformed market. Manufacturers have had to reverse-engineer their innovation activities by using some updated Federal Election Commission equipment standards (originally adopted in the 1980's), and the few VVSG Standards adopted by the EAC. An example of a typical enhancement is add-on paper receipt-printing devices. But generally, election equipment manufacturers have no choice other than to sell the outdated technology they have available, because the EAC failure has disrupted the normal innovation incentives.

RNLA agrees with PCEA observations that the standards development, testing and certification process is broken and needs to be fixed. However, we believe that there is no role for EAC, and Congress should terminate all of its related statutory responsibilities in this area. We recommend that the leaders of Congress take all necessary steps to prevent continued EAC activities in this area. Further, we believe that no federally-appointed political panel should again engage in a voting system standards setting process. The dysfunction of federal control of the process is likely to lead to continued partisanship and incompetence.

## **F. States Should Use Voluntary Consensus Standards**

In sum, RNLA believes voting technologies and all relevant standards should be developed and implemented like any other technology product in the competitive American economy. Necessary performance standards should be developed by using the voluntary consensus standards approach used throughout manufacturing coupled with states' adopting their own certification standards to fit their particular needs. Congress should continue to fund and make available services of NIST to assist election administrators and manufacturers as a convening and research organization, consensus standards development organizations, and testing laboratories. However, development of performance standards and related testing and certification procedures can best be achieved by experienced consensus standards organizations, such as ANSI and IEEE, or by professional organizations such as NASED, NASS, and IACREOT.

## **IX. Conclusion**

The RNLA is pleased that there appears to be in many areas a bipartisan consensus on how we can improve our nation's elections to ensure a pleasant voting experience for our voters while protecting the integrity of the ballot. The PCEA report and recommendations demonstrate the substantial amount of common ground on these issues. RNLA hopes that Democrats and their allies on the left can embrace some of the common-sense proposals, specifically enhanced voter registration list maintenance through interstate data sharing, as the bipartisan PCEA so heartily endorses. The goal by both political parties should be development of a system of voter registration and voting which assuages the competing concerns of access and integrity so each side of the political spectrum feels its respective concerns in that regard are met.

Moreover, we are wary about programs that essentially waive the white flag of surrender on efforts to improve the traditional approach of voter registration coupled with voting at the local polling place on Election Day. We believe that proposals like universal registration, election or same day voter registration, and the increased emphasis on early voting and vote by mail send the message that we should scrap rather than fix a system that has served our nation exceptionally well for most of our history. With a few exceptions, particularly regarding early voting, PCEA outlines the necessary steps that election officials and policymakers can take to reform and improve our electoral system. The additional recommendations in this report will further help election officials and decision-makers in this process.

## Endnotes

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- <sup>2</sup> The 2001 report by The National Commission on Federal Election Reform, "To Assure Pride and Confidence in the Electoral Process" is available here: [http://web1.millercenter.org/commissions/comm\\_2001.pdf](http://web1.millercenter.org/commissions/comm_2001.pdf); the 2005 report "Building Confidence in U.S. Elections" is available here: <http://www1.american.edu/ia/cfer/>
- <sup>3</sup> To Assure Pride and Confidence in the Electoral Process, pg. 22.
- <sup>4</sup> Ibid at pg. 23.
- <sup>5</sup> Building Confidence in U.S. Elections, pg. 1
- <sup>6</sup> "The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration", Introduction. The PCEA report, released in January 2014, is available here: <http://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.
- <sup>7</sup> *Arizona v. Intertribal Council of Arizona*; 133 S.Ct. 2247 (2013).
- <sup>8</sup> *Foster v. Love*, 522 U.S. 67, 69, 118 S.Ct. 464, 139 L.Ed.2d 369 (1997).
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- <sup>10</sup> DOJ's failure to properly enforce HAVA is documented by author and former DOJ whistleblower J. Christian Adams in his 2011 expose, *Injustice: Exposing the Racial Agenda of the Obama Justice Department* Adams, Christian. *Injustice: Exposing the Racial Agenda of the Obama Justice Department* Washington, D.C.: Regnery Publishing.
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- <sup>12</sup> HAVA section 303(a), as mandated by HAVA section 401 (42 USC § 15511).
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- <sup>21</sup> States are in varying degrees of compliance with federal Real ID requirements.
- <sup>22</sup> Additional information regarding EVVE is available at the National Association for Public Health Statistics and Information Systems (NAPHSIS) website here: <http://www.naphsis.org/Pages/EVVE.aspx>; additional information regarding STEVE is also available at NAPHSIS here: <http://www.naphsis.org/Pages/CooperativeAgreementforStateVitalStatisticsImprovement.aspx>
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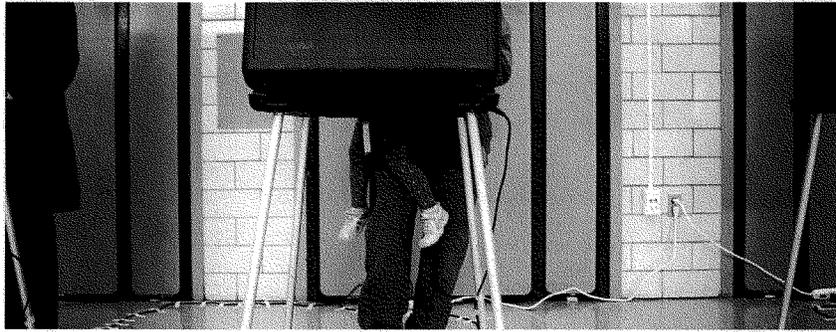
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## The Elections Performance Index 2012

The State of Election Administration and Prospects for the Future

### Overview

In 2013, The Pew Charitable Trusts unveiled the Elections Performance Index, or EPI, the first comprehensive assessment of election administration in all 50 states and the District of Columbia. The release introduced the index's 17 indicators of performance and summarized 2008 and 2010 data, giving users a way to evaluate states' elections performance side by side.

Pew's new edition of the index adds analysis of the 2012 election and provides the first opportunity to compare a state's performance across similar elections—the 2008 and 2012 presidential contests—as well as with other states, regions, and the nation as a whole. This expanded analysis reveals key features of state elections and presents a rich picture of the U.S. democratic process that will be enhanced as new data are added each year.

Overall, states did better in 2012 than they did in 2008. Although voters turned out at a lower rate in 2012, fewer of those who did not vote said they were deterred from the polls by illness, disability, or problems with registration or absentee ballots. And more states offered voters the option to register online, which may have contributed to some of this improvement.

The 2012 analysis begins to clarify what it takes to be a leading state, which will help others improve in the coming years. These and other results are discussed in-depth in the pages that follow, but the key findings, briefly, are:

- **Elections performance improved overall.** Nationally, the overall average improved 4.4 percentage points in 2012 compared with 2008; the scores of 21 states and the district improved at a rate greater than the national

average; 19 states' averages improved but by less than the national average increase; and 10 states' averages declined.

- **High-performing states tended to remain high-performing and vice versa.** Most of the highest-performing states in 2012—those in the top 25 percent—were also among the highest performers in 2008 and 2010. The same was true for the lowest-performing states in all three years. In looking at these two groups, a picture begins to emerge of the distinctions between high and low performers.
- **Gains were seen in most indicators.** Of the 17 indicators, overall national performance improved on 12, including a decrease in the average wait times to vote and an increase in the number of states allowing online voter registration. In addition, the index revealed some stark regional differences across indicators. For example, the South had the lowest voter turnout and highest rate of nonvoting due to disability, as well as states with the highest average voting wait time.

These findings also reveal the steps that states can take to improve their scores and make elections more cost effective and efficient, including:

- Ensuring the collection of more and better elections data.
- Implementing online voter registration.
- Upgrading voter registration systems.
- Offering a complete set of online voting information lookup tools.
- Requiring postelection audits.

Nearly all of these steps were also recently recommended by the bipartisan Presidential Commission on Election Administration.<sup>1</sup>

#### What Is the Elections Performance Index?

The Elections Performance Index is intended to help policymakers, election administrators, and other citizens:

- Evaluate elections based on data, not anecdote.
- Compare the performance of elections across states and time.
- Identify potential problem areas that need to be addressed.
- Measure the impact of changes in policy or practice.
- Highlight trends that otherwise might not be identified.
- Use data to demonstrate to state and local policymakers the need for resources.
- Educate voters about election administration by providing context about how the process works.

Pew partnered with the Massachusetts Institute of Technology to bring together an advisory group of state and local election officials and academics from the country's top institutions to guide development of the index. The advisory group held a series of meetings beginning in July 2010 to select the best ideas from indices in other public policy areas, identify and validate existing data sources, and determine the most useful ways to group available data.

The EPI tracks 17 distinct indicators of elections performance, selected from more than 40 prospective measures, based on their completeness, consistency, reliability, and validity.<sup>2</sup> For more information on how the indicators were selected and computed, or additional analysis of their meaning, please see the online interactive report at [www.pewstates.org/epi-interactive](http://www.pewstates.org/epi-interactive) or the report's methodology at [www.pewstates.org/epi-methodology](http://www.pewstates.org/epi-methodology). The 17 indicators are:

1. **Data completeness.** How many jurisdictions reported statistics on the 18 core survey items in the U.S. Election Assistance Commission's Election Administration and Voting Survey?
2. **Disability- or illness-related voting problems.** What percentage of voters did not cast a ballot due to an "illness or disability (own or family's)"?
3. **Mail ballots rejected.** What percentage of mail ballots were not counted out of all ballots cast?
4. **Mail ballots unreturned.** What percentage of mail ballots sent out by the state were not returned?
5. **Military and overseas ballots rejected.** What percentage of military and overseas ballots returned by voters were not counted?
6. **Military and overseas ballots unreturned.** What percentage of military and overseas ballots sent out by the state were not returned?
7. **Online registration availability.** Were voters allowed to submit new registration applications online?
8. **Postelection audit required.** Was a voting equipment performance check required after each election?
9. **Provisional ballots cast.** What percentage of all voters had to cast a provisional ballot on Election Day?
10. **Provisional ballots rejected.** What percentage of provisional ballots were not counted out of all ballots cast?
11. **Registration or absentee ballot problems.** How many people reported not casting a ballot because of "registration problems," including not receiving an absentee ballot or not being registered in the appropriate location?
12. **Registrations rejected.** What proportion of submitted registration applications were rejected for any reason?
13. **Residual vote rate.** What percentage of the ballots cast contained an undervote (i.e., no vote) or an overvote (i.e., more than one candidate marked in a single-winner race)—indicating either voting machine malfunction or voter confusion?
14. **Turnout.** What percentage of the voting-eligible population cast ballots?
15. **Voter registration rate.** What percentage of the voting-eligible population was registered to vote?
16. **Voting information lookup tools.** Did the state offer basic, easy-to-find, online tools so voters could look up their registration status, find their polling place, get specific ballot information, track absentee ballots, and check the status of provisional ballots?
17. **Voting wait time.** How long, on average, did voters wait to cast their ballots?

## Overall elections performance improved

The addition of 2012 data to the Elections Performance Index makes it possible for the first time to compare a state's performance over time and against other states. In general, state election administration improved between 2008 and 2012. This was true for the performance of individual states compared with prior years and nationwide on many indicators.

Nationally, states' overall scores, which are calculated as an average of all 17 indicators, increased 4.4 percentage points on average in 2012, compared with 2008.

### States

Forty states and the District of Columbia improved their overall scores, compared with 2008:

- 21 states and the district raised their performance more than the national average increase.
- 19 improved but less than the average increase nationally.

The 21 states and the district that improved more than the national average vary widely in size and region; they cover the political spectrum from deep blue to battleground to solid red.

The district's overall score improved the most—by 20 points—from 2008 to 2012. Although the city's EPI average is still below the national average, the district made major strides across multiple indicators. The district and Alabama were the only jurisdictions to improve more than 9 points above the mean increase since 2008. Both were in the bottom 25 percent in 2008 and remained among the lowest performers in 2012.

While the national trend was clearly upward, not all the news was good. Ten states' overall scores declined.

Georgia had the sharpest decrease, dropping 7 points from 2008 to 2012. The state's voter turnout fell by more than the national decrease, and it had one of the largest increases in nonvoting due to disability or illness. The state's rate of nonvoting due to registration and absentee ballot problems also increased, and Georgia did not add online voter registration or postelection audits, which many other states have implemented since 2008. The state did pass online voter registration legislation, but it has not been implemented. Lastly, it was one of only 10 to report less data to the federal Election Assistance Commission as measured by the index in 2012 than in 2008.

After Georgia, the states with the largest decreases in overall average since 2008 were Hawaii and Vermont.

High-performing states stay strong; low performers remain near the bottom

One of the most important facts emerging from the index is that certain states consistently perform at a high level on elections, and others are chronic underperformers. Over time, better data and a clearer understanding of the characteristics of these two groups will help all states identify the problems that most commonly hinder improvement and recognize truly effective election administration.

High performers continue to lead the way

At the state level, the highest-performing states in 2012—those in the top 25 percent—were Colorado, Connecticut, Delaware, Maryland, Michigan, Minnesota, Montana, Nevada, North Carolina, North Dakota, Washington, and Wisconsin. Seven of these—Colorado, Delaware, Michigan, Minnesota, North Dakota, Washington, and Wisconsin—were also high performers in 2008 and 2010, and six states—Colorado,

Connecticut, Maryland, Montana, Nevada, and North Carolina—saw their overall scores rise more than the national average increase from 2008 to 2012.

North Dakota, Minnesota, and Wisconsin had the highest rankings for both presidential election years. This consistently strong performance could be due, in part, to their voter registration policies. Minnesota and Wisconsin allow Election Day registration, and North Dakota doesn't require voters to register. Previous research shows these policies can correlate with higher turnout, and in most cases it eliminates the need for provisional ballots.<sup>3</sup> Turnout was highest in Minnesota and Wisconsin in 2012; both exceeded 70 percent of the eligible population.<sup>4</sup>

#### Registration Policies Improve Elections Performance

States that offer more convenient and efficient ways for voters to register and update their registrations can avoid many common issues, such as registrations rejected, use of provisional ballots, and nonvoting due to registrations problems.

Seven of the 10 states with the lowest rates of registration or absentee ballot problems in 2012—Idaho, Iowa, Maine, Minnesota, New Hampshire, North Dakota, and Wisconsin—allowed Election Day registration or did not require voter registration. Maine, Minnesota, and Wisconsin had the lowest rates of these problems: 1 percent.

Additionally, states that adopt online voter registration can increase the accuracy of their rolls while also reducing costs to election officials and taxpayers.<sup>5</sup> States using the latest technology to conduct data matching of voter registration lists, such as those participating in the Electronic Registration Information Center, or ERIC, have reduced the number of provisional ballots cast and rejected, as well as the proportion of the population that fails to vote due to a registration problem.<sup>6</sup> The Presidential Commission on Election Administration recommends both online voter registration and participation in ERIC. For more information, visit [ericstates.org](http://ericstates.org).

#### Low performers still face challenges

Eleven states—Alabama, Arkansas, California, Hawaii, Idaho, Kansas, Mississippi, New York, Oklahoma, Texas, and West Virginia—and the District of Columbia were in the lowest 25 percent of the index in 2012. Six of these—Alabama, California, Mississippi, New York, Oklahoma, and West Virginia—were also ranked at the bottom in 2008 and 2010. Mississippi was the lowest performer in all three years. Of those at the bottom in 2012, only the overall averages of Hawaii, Oklahoma, and Texas decreased since 2008.

Importantly, because overall averages are calculated based on the performance of other states, sometimes even dramatic improvement or decline within a state will not be reflected in its ranking relative to other states. As noted earlier, this is evident in the case of the District of Columbia. The district improved the most in 2012 compared with its performance in 2008, but it still fell into the group of low performers because widespread improvement elsewhere also raised the national average significantly. This highlights the value of considering multiple points of comparison, made possible by the index: evaluating states against the national average; state against state; and a single state with itself year over year. The district gets high marks for improving on multiple indicators as compared with its 2008 performance; relative to the rest of the nation, however, it still has much room for improvement.

Whether a high performer, low performer, or somewhere in between, all states have the opportunity to do better in coming years. Learning more about those states that consistently outperform, and those that consistently struggle, can help all states improve.

## Indicators

Individual indicators reveal critical information about what is driving better overall state performance, as well as what consistently holds states back.

### The nationwide view

Nationally, 12 of the 17 indicators improved, with notable gains in six areas:

- **Wait times** decreased about 18 percent, or by about 3 minutes, on average, from 2008 to 2012.
- 13 states had **online voter registration** in 2012, compared with just two in 2008.
- 18 states and the district reported 100 percent **complete data** to the Election Assistance Commission in 2012, compared with only seven in 2008.
- Rates of **nonvoting due to disability or illness** declined nationally by nearly 0.5 percent; rates declined in 27 states and the district.
- Rates of **nonvoting due to registration or absentee ballot problems** decreased nationally by nearly 0.4 percent; rates declined in 28 states and the district.
- 30 states and the district required **postelection audits** in 2012, compared with 23 in 2008; audits allow states to ensure that voting equipment is functioning properly and delivering an accurate result.

Five indicators declined from 2008 to 2012. Of these, the most significant was voter turnout, which dropped by 3.4 percentage points. This was not surprising because voters in the 2012 election expressed less enthusiasm than in the 2008 presidential contest, which recorded the highest turnout since 1968.<sup>7</sup>

Additionally, the number of provisional ballots issued increased 25 percent in 2012, and the number of provisional ballots rejected increased 7 percent.

### Performance varied by region

At least three indicators varied substantially by region:<sup>8</sup>

#### Nonvoting due to disability- or illness-related problems

The average rate for this indicator across both 2008 and 2012 in the Northeast was 17.7 percent and in the South was 19.0 percent, both significantly higher than rates in the Midwest, 14.4 percent, and the West, 12.4 percent.<sup>9</sup> Of the 10 jurisdictions with the highest rates in 2012, six—Alabama, the district, Mississippi, South Carolina, Virginia, and West Virginia—were in the South, and three—Massachusetts, New Jersey, and Rhode Island—were in the Northeast.

#### Turnout

Average turnout across both years was highest in the Midwest, 65.6 percent, and the Northeast, 64.5 percent, both significantly higher than the South's rate of 59.4 percent.<sup>10</sup> Two Midwestern states—Minnesota and

Wisconsin—had the highest turnout in both 2008 and 2012; but of the five states with the lowest turnout in 2012, four—Arkansas, Oklahoma, Texas, and West Virginia—were in the South.

#### Average voting wait times

Long lines at the polls in several states in 2012 made headlines, and as a result, wait times were understood by many voters to be a major problem nationwide. Data from the Survey of the Performance of American Elections, however, show that wait times actually decreased by about three minutes, on average, from 2008 to 2012.

Where longer wait times were recorded in both years, they generally were concentrated regionally. Of the 10 jurisdictions with the longest average waits to vote in 2012, eight were in the South—the District of Columbia, Florida, Georgia, Louisiana, Maryland, Oklahoma, South Carolina, and Virginia. And six of those also had some of the longest wait times in 2008, including:

- Florida, which had the longest wait in 2012 and one of the largest increases—16.1 minutes—from 2008 to 2012.
- South Carolina and Georgia had the two longest wait times in 2008. They also had the two largest decreases in wait times from 2008 to 2012—from 61.5 minutes to 25.2 minutes in South Carolina and from 37.6 to 17.8 minutes in Georgia. Both, however, still remained among the longest wait times in 2012.

### Directions for future research

Evidence from the Elections Performance Index indicates that state policies on mail voting and provisional ballots may have cascading effects—affecting scores on other indicators of election administration. Unlike other election policies, such as those to upgrade voter registration practices where the benefits of reform have been documented, policies for mail voting and provisional ballots deserve more research and attention from policymakers as future elections provide additional years of data for analysis.

#### Mail ballots

Mail voting has been one of the most substantive policy shifts in elections over the past few decades. The index recognizes four classifications of mail-voting policies in states:

- **Limited.** Registered voters must provide a specific reason, often from a pre-established list (e.g., illness, disability, travel, etc.), when requesting an absentee ballot.
- **No excuse.** Any registered voter may request an absentee ballot without providing a reason.
- **Permanent.** No-excuse mail voting is permitted, and registered voters have the option of automatically receiving absentee ballots by mail for all future elections.
- **Full vote-by-mail.** Elections are conducted entirely by mail.

Research shows that voters like the convenience of casting their ballot by mail. This is especially true in states with fewer limitations on the use of mail ballots.<sup>11</sup> With respect to the index, only six states allowed individuals to cast a domestic ballot by mail without an excuse in 1988. By 2012, that number had grown to 27 states and the District of Columbia.<sup>12</sup> Mail-voting policies are related to performance on a number of indicators:

- On average, states with limited mail voting had higher rates of nonvoting due to disability or illness—18.6 percent in 2008 and 2012, compared with states offering no-excuse and permanent mail voting—14.3 percent and 14.7 percent, respectively.<sup>13</sup> This is reaffirmed in preliminary research, which suggests that, even though

disability is a valid reason for requesting a mail ballot in limited mail-voting states, more permissive regimes are associated with higher turnout among the disabled.<sup>14</sup>

- On average, mail ballot rejection rates in permanent mail-voting states were nearly double those of states with no-excuse mail voting and more than three times those of states with limited mail voting.<sup>15</sup>
- Permanent mail-voting states had much higher rates of mail ballots not being returned, on average: 14.3 percent in 2012, compared with 6.5 percent in limited states and 9.0 percent in no-excuse states.
- Permanent mail-voting states typically had higher rates of nonvoting due to registration or absentee ballot problems: 7.9 percent, compared with 5.9 percent in no-excuse and 5.8 percent in limited states.<sup>16</sup>

As there are apparent trade-offs with different types of mail-ballot regimes, additional research is needed to better understand the effects of mail-voting policies, particularly the high rates of unreturned and rejected absentee ballots in permanent and full vote-by-mail states, as well as the lower rates of nonvoting due to disability or illness in these states.

### Provisional ballots

Provisional ballots are most often cast when there is a discrepancy between a voter's registration record and the information he or she presents at the polls. If the voter is deemed eligible in a later review, the ballot is counted. The EPI rewards states for low rates of provisional ballots cast and high rates of provisional ballots counted. This means that states that issue provisional ballots more frequently are penalized in the index, even if most are ultimately counted.

This judgment is based on recent research. Compared with standard ballots, provisional ballots are more costly, inefficient, and administratively burdensome. Large numbers of provisional ballots have also been cited as contributing to long lines at polling places. Testimony before the Presidential Commission on Election Administration indicated that laws resulting in large numbers of provisional ballots tended to slow the voting process at the polls.<sup>17</sup> These burdens can exacerbate controversy in close races, when provisional ballots often become the focal point for any challenged election or recount.<sup>18</sup> Consequently, provisional ballots—designed as a fail-safe to allow a voter, otherwise disenfranchised, to cast a ballot that could be counted after eligibility was confirmed—have been compared to canaries in the coal mine, because in large numbers they can indicate that an election system is not working efficiently.<sup>19</sup>

The use of provisional ballots varies dramatically. Future research should include systematic evaluation of state laws regarding the use and counting of provisional ballots. Policy choices by states can inform our understanding of provisional ballot use, and research on the cost and administrative burden of provisional ballots will help states weigh their options.

## Recommendations

From 2008 to 2012, states' elections performance improved overall. For all states, but especially those with low scores or that were near the bottom in both years, strategies are available to spur improvement. These recommendations are not Pew's alone. Most were also included in the Presidential Commission on Election Administration's 2014 report.

- **Ensure that more and better elections data are collected.** Data completeness, specifically as reported to the federal Election Assistance Commission, is an indicator that offers a clear path toward improvement. Some

states have systems designed to effectively and accurately collect source data from local election jurisdictions, but many do not. Not only will the best use of technology improve data collection by and from local election jurisdictions, it will also lead to higher completeness rates and help provide necessary tools to states to more finely assess how well elections are run and how to improve the voting experience. As the Presidential Commission on Election Administration notes, “If the experience of individual voters is to improve, the availability and use of data by local jurisdictions must increase substantially.”<sup>20</sup>

- **Implement online voter registration.** Offering voters the opportunity to register and update their information online provides measurable benefits to states and helps improve overall election administration. In particular, online voter registration saves taxpayer dollars, increases the accuracy of voter rolls, and provides convenience to voters.<sup>21</sup> And by giving voters a simple way to keep their records up-to-date after a move or name change, online registration may reduce voter registration problems and the need for provisional ballots.
- **Upgrade voter registration.** There are several ways to do this, including online voter registration. Additionally, eight states and the District of Columbia have joined the Electronic Registration Information Center, a data-sharing partnership that helps participating states to keep better track of voters who have moved or died and to encourage those who are eligible to vote but have not yet registered. This keeps voter information more up-to-date while helping eliminate some of the registration problems that may result in provisional ballots on Election Day.<sup>22</sup>
- **Offer a complete set of online voting information lookup tools.** More states offered a wider range of online voter information tools in 2012 than in 2008. In 2008, 11 states had none of these tools. In 2012, only two states, California and Vermont, did not furnish any of these tools. The more states provide such tools, the more access voters will have to election information where they look for it most—online—and the more problems, such as being at the wrong polling place and thus voting by provisional ballot, can be avoided.<sup>23</sup>
- **Require postelection audits.** Mandating a postelection audit allows states to ensure that voting equipment is functioning properly, correct procedures are being followed, and problems are identified quickly.

## Conclusion

The Elections Performance Index provides the first opportunity for policymakers, election administrators, and the public to see how states performed in 2012 and to evaluate changes since the 2008 presidential election. Future iterations of the index will offer still more opportunities to compare similar elections—such as the 2010 and 2014 midterms—and to see the state of elections over a much longer time frame, from 2008 to 2016 and beyond.

As data improve, there will be additional uses for the index. When states change policy or administration, the index will be able to track the effect of those actions. Additionally, as we learn more about how elections run and how best to measure them, we expect to refine the index by adding, changing, or subtracting indicators to better reflect the characteristics of effective, efficient election administration.

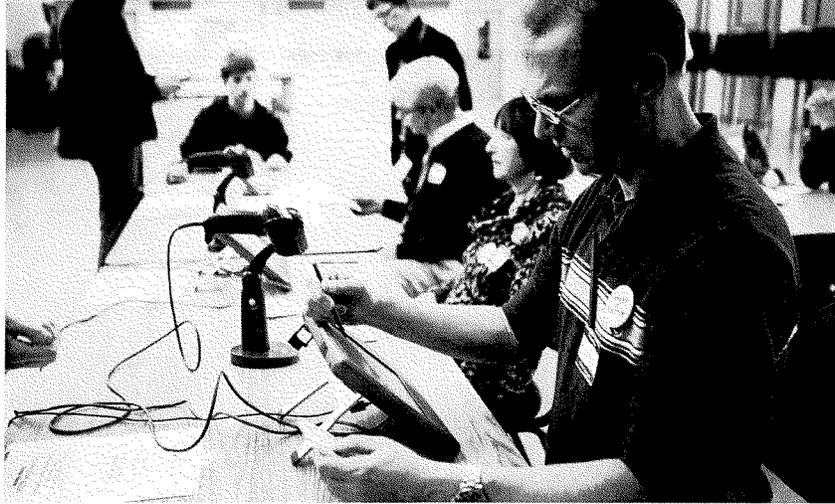
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“Future iterations of the index will offer still more opportunities to compare similar elections—such as the 2010 and 2014 midterms—and to see the state of elections over a much longer time frame, from 2008 to 2016 and beyond.”

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## Endnotes

- 1 Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration* (January 2014), <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.
- 2 A state's overall EPI average is calculated from its performance on all 17 indicators, relative to all states. A state with an average of 100 percent would have the best value of any state on every indicator across both 2008 and 2012, and a state with an average of zero would have the worst value on every indicator across both years. Because these averages are based on the performance of all states in those years, even a state with a 100 percent average has room for improvement in future elections.
- 3 Stephen Knack, "Election Day Registration: The Second Wave" (1998), [http://mpr.aub.uni-muenchen.de/25011/1/MPRA\\_paper\\_25011.pdf](http://mpr.aub.uni-muenchen.de/25011/1/MPRA_paper_25011.pdf).
- 4 Although these Election Day registration states do well on the indicators we measure, high performance is not a universal feature of states with this policy. Idaho and Montana have Election Day registration and do not have higher overall averages in any of the years. Further, as discussed in the methodology ([www.newstates.org/epi-methodology](http://www.newstates.org/epi-methodology)), the index is not able to capture certain empirical evidence of the performance or implementation of Election Day registration that occurs in the polling place. Some have questioned how to measure the quality or integrity of the implementation of an Election Day-registration system, but the lack of comprehensively good data means that scores for this indicator may be inflated.
- 5 The Pew Charitable Trusts, "Understanding Online Voter Registration" (January 2014), [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2013/Understanding\\_Online\\_Voter\\_Registration.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2013/Understanding_Online_Voter_Registration.pdf).
- 6 Gary Bland and Barry C. Burden, "Electronic Registration Information Center (ERIC): Stage 1 Evaluation," report to The Pew Charitable Trusts by RTI International (Dec. 10, 2013), [http://www.rti.org/pubs/eric\\_stage1report\\_pewfinal\\_12-3-13.pdf](http://www.rti.org/pubs/eric_stage1report_pewfinal_12-3-13.pdf).
- 7 The drop in interest and enthusiasm among adults nationally was demonstrated in a number of polls before and after the 2012 election. Gallup found that the proportion of adults who were "more enthusiastic than usual about voting" decreased from 62 percent in 2008 to 47 percent in 2012. See <http://www.gallup.com/poll/153038/gop-slightly-ahead-voting-enthusiasm.aspx>.
- 8 The index uses the U.S. Census Bureau regional designations of Northeast, Midwest, South, and West. The Northeast includes Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. The Midwest is made up of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin. The South includes Alabama, Arkansas, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. The West is composed of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.
- 9 In nonvoting due to disability or illness, the difference between the South and the Northeast, compared with the Midwest and the West, is statistically significant,  $p < 0.01$ .
- 10 The difference in turnout between the Midwest and the Northeast, compared with the South, is statistically significant,  $p < 0.05$ .
- 11 John Fortier, *Absentee and Early Voting: Trends, Promises, and Perils* (Washington: AEI Press, October 2006). The proportion of voters casting ballots by mail in 2012 almost tripled, to 20 percent, compared with 1980.
- 12 "Absentee and Early Voting," the National Conference of State Legislatures, <http://www.ncsl.org/research/elections-and-campaigns/absentee-and-early-voting.aspx>.
- 13 The difference between the average rate of nonvoting due to disability or illness for permanent states and for limited states and the difference between the average rate of nonvoting due to disability or illness for limited states and for no-excuse states is statistically significant at  $p < 0.01$ .
- 14 Lisa Schur and Douglas Kruse, "Disability and Election Policies and Practices," in *The Measure of American Elections*, eds. Barry C. Burden and Charles Stewart III, forthcoming.
- 15 The difference between the average rejection rate for permanent states and for limited states and the difference between the average rejection rate for permanent states and for no-excuse states is statistically significant,  $p < 0.01$ . It is unclear whether there is a difference between the rejection rates for limited and no-excuse states.
- 16 The difference between the average rate of nonvoting due to registration or absentee ballot problems for permanent states and for limited states and the difference between the average rate of nonvoting due to registration or absentee ballot problems for permanent states and for no-excuse states is statistically significant,  $p < 0.01$ .



Election Day, Nov. 5, 2013, Tuckahoe Elementary School, Arlington, VA.

- 17 States that rely on provisional ballots as a mechanism for updating voter registration rolls may be less likely to seek out more cost-effective and efficient solutions to their administrative procedures. See Daron Shaw and Vincent Hutchings, "Report on Provisional Ballots and American Elections," submitted to the Presidential Commission on Election Administration (June 21, 2013), <https://www.supportthevoter.gov/files/2013/08/Daron-Shaw-Provisional-Ballots-Shaw-and-Hutchings.pdf>; Presidential Commission on Election Administration, *The American Voting Experience*; "Provisional Ballots General 2012," Maricopa County, AZ, Elections Department (Jan. 30, 2013), <http://recorder.maricopa.gov/voteroutreach/pdf/english/1-2013%20General%202012%20Provisionals.pdf>; Gregory J. Diaz, "Voting and Registering to Vote: The 2013 Report of the Nevada County Elections Office" (March 28, 2013), <http://www.mynevadacounty.com/nc/elections/docs/The%202013%20Report%20of%20the%20Nevada%20County%20Elections%20Office.pdf>; and "After-Action Report on the November 6, 2012, General and Special Elections," District of Columbia Board of Elections (Feb. 4, 2013), [http://www.dcboee.org/popup.asp?url=/pdf\\_files/nr\\_1108.pdf](http://www.dcboee.org/popup.asp?url=/pdf_files/nr_1108.pdf).
- 18 States that issue large numbers of provisional ballots risk having an election outcome hinge on these ballots. See David C. Kimball and Edward B. Foley, "Unsuccessful Provisional Voting in the 2008 General Election" ([http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2009/ProvBallots\\_Kimball\\_Foley\\_essay%281%29.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2009/ProvBallots_Kimball_Foley_essay%281%29.pdf)), in Martha Kropf and David C. Kimball, *Helping America Vote: The Limits of Election Reform* (New York, London: Routledge, 2012).
- 19 Heather Gerken and J. Skelly Wright, "Provisional Ballots: The Miner's Canary for Election Administration," research for The Pew Charitable Trusts (July 2009), [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2009/ProvBallots\\_Gerken\\_essay\(1\).pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2009/ProvBallots_Gerken_essay(1).pdf).
- 20 Presidential Commission on Election Administration, *The American Voting Experience*.
- 21 Matt Barreto, Bonnie Glaser, and Karin MacDonald, "Online Voter Registration (OLVR) Systems in Arizona and Washington: Evaluating Public Usage, Public Confidence, and Implementation Processes," a report for The Pew Charitable Trusts' center on the states (2010), [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2010/online\\_voter\\_reg.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2010/online_voter_reg.pdf); and Christopher Ponoroff, "Voter Registration in a Digital Age," Brennan Center for Justice (2010), [http://brennan.ccdn.net/806ab5ea23fde7c261\\_n1m6b1s4z.pdf](http://brennan.ccdn.net/806ab5ea23fde7c261_n1m6b1s4z.pdf).
- 22 Bland and Burden, "Electronic Registration Information Center."
- 23 A September 2013 survey by Public Opinion Strategies and the Mellman Group on behalf of The Pew Charitable Trusts found that 58 percent of registered voters look for election information online. <http://www.pewstates.org/research/analysis/polling-summary-updating-voter-registration-85899538627>.

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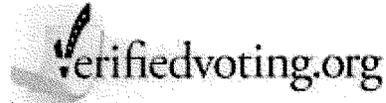
We would like to thank our advisory board of more than 20 election officials and academics who provided invaluable insight and feedback in developing the Elections Performance Index. Charles Stewart III, the Kenan Sahin distinguished professor of political science at the Massachusetts Institute of Technology, and his research assistant, Stephen Pettigrew, contributed unmatched guidance and research support for the project. Additional thanks go to Jennifer Carlson, Joshua Hart, Emily Lando, Melissa Maynard, Benjamin Navarro, Mary Tanner Noel, Kao Phetchareun, and Jacintha Wadlington for their review of this report and the online interactive. Throughout the editorial process, Jennifer V. Doctors provided critical advice and feedback. The team at Pitch Interactive Inc. designed the online interactive for this report, while printable graphics and design for this research were created by Kristin Centrella with assistance from Dan Benderly and Jennifer Peltak. Frederick Schecker and Natalia Pelayo contributed Web support. Stephanie Bosh and Tammie Smith provided strategic advice and production and media assistance on this product.

## External reviewers

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The Honorable Charles Schumer, Chairman  
 United States Senate  
 Committee on Rules and Administration  
 305 Russell Senate Office Building  
 Washington, DC 20510-6325

The Honorable Pat Roberts, Ranking Member  
 United States Senate  
 Committee on Rules and Administration  
 481 Russell Senate Office Building  
 Washington, DC 20510-6325

Re: Statement for the Record: Senate Rules Committee hearing, "Collection, Analysis, and Use of Data: A Measured Approach to Implementing Election Administration," May 14, 2014

Dear Chairman Schumer and Ranking Member Roberts,

I am Pamela Smith, the President of Verified Voting. Verified Voting is a non-partisan, non-profit organization founded and governed by leading technologists in the U.S. As the nation's foremost promoter of secure, reliable and accessible voting systems and election administration practices, Verified Voting strives to safeguard elections in the digital age. Among other achievements, Verified Voting co-authored the seminal study: *Counting Votes 2012: A State by State Look at Voting Technology Preparedness*.

We strongly support the collection of relevant data to improve election administration in the US and appreciate the inquiry of this Committee into this important subject matter. We request that this letter be included in the hearing record for the Senate Committee on Rules hearing, "Collection, Analysis, and Use of Data: A Measured Approach to Implementing Election Administration," that was held May 14, 2014.

I write to you today concerning potential solutions to long lines in the voting process in the U.S. The use of Direct Recording Electronic (DREs) voting machines as the primary voting system in a polling place often contributes to long lines in elections.

**The Use of DREs Contributed to Long Lines in 2012**

For background, the U.S. voting public now largely uses one of two basic kinds of voting systems in the polling place. The most widely used is voter-marked paper ballots counted by scanner-tabulators (often called "optical scan"). The other system (DREs) involves a machine on which one marks one's choices, and which also tabulates those choices in the same device (known as direct recording electronic voting machines, or DREs). For additional details on these systems in use nationwide, see <http://verifiedvoting.org/verifier>.

If you divide problems that arose in the 2012 election into "easy to solve" and "hard to solve", the "easy to solve" problems tended to be in polling places that used optical scan [paper ballots], and the "hard to solve" problems occurred in places using DREs.

Long lines were pronounced in locations with DREs where there was no alternative for a working machine and little or no access to a sufficient supply of emergency paper ballots. In many instances,

DREs broke down, failed to boot up or "flipped" votes during the voting process. Due to the fact that DREs force voters to use the machine interface for marking their ballot, voters had to wait until a machine was available. If even one machine breaks down during the voting day, that means fewer voting stations, which contributes to long waits.

Further, even in DRE polling stations that had emergency paper ballots on hand, in some instances, poll workers had not been trained to use paper ballots in the event of machine failures or long lines. Difficult to solve problems reported to the Election Protection 1-866-OUR-VOTE hotline included: Machines that don't boot, or crash; ballot display and ballot set up problems; poll worker error in assisting voters when equipment problems occurred.

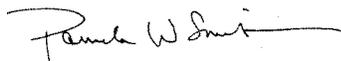
#### **Optical Scan Problems Can be Prevented in the Future**

The long lines seemed to be caused primarily by voters waiting for DRE machines, though not exclusively. There were lines in a number of jurisdictions using optical scan systems too. These could be divided into two categories of causes: first, the excessive ballot length of a jurisdiction like Miami-Dade County, Florida (some seven pages), which would have caused delays no matter what type of voting system were involved; and second, the incorrect response of pollworkers who had not been sufficiently trained when problems with scanners arose. For example, the Hotline received reports of pollworkers experiencing jams when inserting ballots into the scanner. Instead of accepting the ballots into a locked container to be scanned later when the jam could be cleared, in some instances they asked voters to "try again" with a new ballot, or to wait until the jam was fixed. These were incorrect reactions, and are easily solved by advising the pollworkers of how to handle the situation until the scanner could be fixed.

It is most important to note that when optical scan systems are in place, there is no need for to bring in additional "emergency DRE" machines to address lines and wait times if the scanner should happen to break down. However, when DRE systems are the voting system in place, it is **essential** to have "emergency paper ballots" to address lines and wait times if the DREs should happen to break down, as we witnessed in the elections in 2012.

Again, we strongly support the collection of relevant data to improve election administration in the US and appreciate the inquiry of this Committee into this important subject matter. We urge the consideration of the type of voting system as a relevant data point for this Committee as demonstrated by reports in the 2012 and previous elections to the Election Protection hotline at 1-866-OUR-VOTE.

Sincerely,



Pamela Smith  
President