

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.¹

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

¹ 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

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.

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, 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.