

## Testimony for US House Judiciary & House Administration Committees

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Thank you for having me here to discuss the preparations for the Election 2008. My organization represents the men and women who are election professionals. We specialize in voter registration and election administration issues only, so we pay a great deal of attention to the elections process and how it is administered for Americans.

I come here knowing that there is an expectation of perfection in elections. The dedicated men and women who do this work as a profession have that same expectation of themselves and their staff and their poll workers. But before we begin Election 2008, let me state that it is a goal, not a realistic expectation. The complexities of a Presidential election in the United States simply means that we will have an honest election and a fair election, not a *perfect* election. Voters are entitled to have the election be an accurate reflection of the public will, but not an election that goes without any hiccups along the way. If we can have your help to focus on the final work processes, that have built in backup procedures, and self checking procedures, then we and the voters will be confident in the final outcomes.

***The Challenge:*** Before we get too far into the discussion let me present the magnitude of the effort required to conduct a presidential election in America. First consider just the overwhelming numbers:

- There are 227.7 million Americans who are 18 and older – this is known to the Census Bureau as the Voting Age Population (also according to the Census bureau that is 75.6 percent of the total population of the United States).
- In election 2004, there were 178 million registered voters: we believe this number will dramatically increase for Election 2008.
- In election 2004, there were 122 million actual voters. We believe the numbers for Election 2008 will produce the highest number of voters in our working lifetime.
- There are roughly 7,500 election jurisdictions in the U.S. [There are slightly more than 3,000 counties and the New England states and Michigan and Wisconsin elections are conducted at the city and/or township levels]
- There are roughly 800,000 voting devices
- There are somewhat less than 200,000 polling sites
- There are 1.4 million poll workers
- There are roughly 19,000 paid county, city and state election officials for whom at least part of their job is to conduct elections.

To make the task more understandable in terms of its complexities, it is equivalent to ordering several divisions of several armies into the field all at once with part-time officers who have each received an average of two hours training and expecting it to come off flawlessly. In a large geographical area such as Los Angeles County, there will be more than 30,000 poll workers on election day. In my hometown of Houston, TX, there will be 7,500 election workers throughout a large geographical county. The logistics of election day alone would strain most large businesses, let alone the smaller ones. And all of this is accomplished with an average of one full-time election employee each serving 6,241 voters on one day (using the numbers of voters from 2004). What other endeavor in society, government or business, has such a ratio?

### ***Additional Complications***

For us to analyze it further, look at the additional complications:

- The election official has little control over voter registration agencies outside of the election official's own office, and this is a continuing source of problems at the polling place. The federal requirement for provisional voting, so that voter eligibility questions can be determined after allowing the voter to cast a provisional ballot, is a major step in the right direction but is unlikely to solve the total problems of multiple agency registration issues.
- Voter registration groups are important contributors to the overall growth of participation in elections. They are also the source of tremendous problems in voting. This problem is discussed more in the ***Third Party Registration*** section.
- The facilities used for elections are not under the permanent control of the election officials. The school buildings, the churches, the public facilities, and even the private facilities are usually available on the day before the election and election day (with many being available only on election day). In only rare instances are those facilities used exclusively for elections (although a room may be used exclusively), so parking facilities and building access have competing influences beyond the regulation and control of the election official.
- The election official has no control over the candidates, partisan advocacy groups, the campaign volunteers, and the political parties except directly within a boundary established around the polling site. And yet many of those same groups give misinformation to voters that causes problems for the voters – and election officials -- at election time.
- The election official has little control over legally mandated “poll watchers,” i.e., partisans who represent their party or their candidate. Voters incorrectly assume that poll *watchers* are official poll *workers* or *election officials* – when they are not.
- The election official has no control over the news media and if the media gets the story wrong about something in the elections process, it is difficult to correct the misinformation.
- The election official has only limited ability to assist the voter and the attempts to identify and educate voters with little or no voting experience has been frustrating. New and inexperienced voters are unlikely to self-identify and whatever methods we use to reach them, to inform them and to keep them from making mistakes which result in uncountable votes, all while inside the polling place, has to be done in three minutes or less...which is a major challenge for anyone.

Those are factual conditions which affect elections. I bring them up simply to indicate why it is so important to have excellent policies, practices and procedures. Without well thought out and well executed policies and procedures, there are simply too many points of failure. Even with the best administration, even with excellent procedures, and even with policies and procedures handled well, it is still possible to have an ugly election – and have it be an accurate reflection of the voters' choices.

What I hope becomes the standard for all policy makers and elected officials is the standard of a *fair, honest and accurate election* – not a “perfect” election.

What you, as Congressional Representatives, need to know is that extraordinary preparations have gone into Election 2008. The election professionals around the nation have been looking for the best way to have backup processes to virtually every part of this process. There is a Plan A, a Plan B and even a Plan C.

But you also need to know that due to the enormous stress of this profession since Election 2000 and the microscopic examination of even the most innocent of mistakes, almost half of the people conducting elections in this cycle were not in the profession eight years ago. That turnover has brought many positive aspects but it also means that a whole generation of experience has left the elections profession.

The preparation for Election 2008 didn't begin in 2008. It began in 2001, and 2002, and 2004, and 2006. We are applying the lessons learned in each of those elections to this year's election. By dissecting the hiccups of each of those elections, we are continuously striving to improve each succeeding election.

However, the point needs to be made: good elections require stability. We need stable rules and laws from election to election. We need to settle in on stable choices of voting equipment. We need to have training and stability in the elections professionals who do the job. In many areas of the country we have been faced with constant changes in all aspects of the process either from federally mandated changes, or state legislative changes, or court induced changes, or changes ordered by the Chief Election Official of the state. In some of those states the directives issued this year alone exceed the volume of the entire elections code for the state.

Good elections come from knowledge of what to expect, knowledge of the equipment and what voters are likely to do with that equipment, from knowledge and development of good practices and procedures. When the rules keep changing from election to election – or sometimes even sooner than that – then it becomes far more difficult to assure that voters will have a positive experience.

From the time of the passage of HAVA in 2002 through the continuing legislative or executive mandated changes in the last six years, the implementation of new laws, new practices, new procedures and new systems has resulted in more changes in elections in six years than in the previous 30 years. That is the kind of challenge that is facing those in this profession as they prepare for Election 2008.

***Budget Woes.*** What may be the most troubling of all situations in Election 2008 is that county and township governments have reduced election budgets in what may be the largest election conducted in US history. Due to the economy, local governments have ordered cuts in spending at a time when we expect more registrations, more voters, more ballots, more voting equipment. Our needs are greater than at any other period in election history, yet local governmental leadership has ordered – and implemented – budget cuts in election offices throughout America. So when you see shortages of equipment or ballots or poll workers, you will have to remember that the local election officials have been forced to reduce spending to levels below some non-election cycles to comply with budget authority edicts. All while we are expecting a tsunami of voters that can overwhelm even the best of planning and preparation.

***Third Party Registration.*** Well intended groups seeking to expand voter registration are also a source of problems and disenfranchisement of voters. As election officials, we want and encourage third party registrations. We believe they contribute to the growth and outreach of democracy. But we also recognize that there absolutely *must* be some requirements placed on these efforts. The major abuses of 2004 and 2006 were the result of third party voter registration efforts.

In a review of Election 2004, a task force of the nation's election administrators at local and state levels clearly recognized that abuses have gotten worse.

Voters are being disenfranchised as a result of third party efforts and Congress must act responsibly in this matter. Third party groups are holding onto validly completed voter registrations and turning them in too late to be processed adequately by the election offices. The result is that voters are then offered provisional ballots rather than regular ballots. The latter will be counted whereas provisional ballots may or may not be counted based on whether the voter was actually registered in time and/or appropriately in accordance with law. Where third party groups collect registrations months or weeks in advance, the voter thinks he or she has done all that is necessary to be a qualified voter. Voter groups must be required to turn in registrations no later than three days from the time collected from the voter so that the elections office has time to verify information and to send the voter needed information to facilitate voting.

Please understand that we too appreciate the hard work many of these groups do to make sure voters have an opportunity to participate. But rational policy indicates that fairness to voters ought to be our objective. Our objective must not become the unrestricted right of groups to do whatever they want in relation to voter registration efforts. Congressional and other elected leaders need to support efforts to make sure third party registration groups truly learn the laws and rules of the registration process in each state. Turning in tens of thousands of incomplete voter registration cards does a disservice to the individuals who would like to be voters. And, when those are turned in too close to the voter registration cutoff period for complete processing, because of the lack of proper data, the voter becomes disenfranchised because they no longer meet the requirements of the state to be an eligible voter. That is a tragic consequence not only for the voter but for democracy.

***Equitable Allocation of Voting Systems, Poll Workers, and Election Resources.*** There isn't an election administrator anywhere in America that wants voters to stand in line if there is a way to avoid such an occurrence.

The root causes of problems in election resource allocation is currently difficult to overcome. Here are samples of what causes these kinds of problems:

- State requirements on size of precincts. If a state allows a precinct to grow too large in size then lines result and perhaps too few machines are allocated. If a state mandates precincts that are too small, then poll worker recruitment is more difficult and the number of machines that can be bought and distributed stretches too thin.
- If states allow too many referendum, initiatives, or constitutional amendments to be placed on the general election ballot, then it is inevitable that long lines develop.
- If county or city or state budget authorities don't allow the elections office to purchase enough equipment to take care of peak period voting, then it becomes a problem that simply cannot be resolved during an election. Purchasing voting equipment must occur, at a minimum, one year before an election where you are crystal gazing as to how many voters you believe will show up. Budget authorities have a nasty habit of reducing the numbers of voting equipment to less than the election officials tell them is needed. If 100 machines are required, government has a habit of funding 80 (or less) and then doesn't allow the local elections office to buy spares to use in case some of the equipment malfunctions. Government also likes to take averages such as there are 1,000 voters and

polls are open 12 hours so you need to be able to vote just over 80 voters an hour, therefore you need only “x” number of machines. But voters don’t show up in averages – they show up at poll opening, during the lunch hour and, typically, the tsunami occurs at the end of the day in the last 2 or 3 hours of the polls.

- Population growth also affects this. In areas where the population is increasing quickly, the local authorities sometimes can’t keep up with it financially in time to take care of the problem by the next election. Look at areas of intense growth in many of the Sunbelt states and this becomes apparent. Usually high growth areas are able to overcome the problems in later elections because the increased tax revenue allows for increased resources.
- Long ballots due to high numbers of offices to be filled. Some locations simply have many more positions to be voted on than others and that variation is hard to address in a benchmark.
- Poll workers don’t show up to open polls. This is the most troubling of all. We know it is likely to occur in urban areas because it usually does. We make provisions to recruit additional poll workers who can be sent to a site once you know you have a problem. But until that problem actually occurs – and you learn about it – there will be a lag time of responding to the problem and overcoming it. In some areas that may not get “fixed” for several hours due to poll worker shortages. We still haven’t been able to employ enough mind readers and sooth-sayers to predict exactly where and when that will happen.

These are but a handful of the considerations that affect this. Clearly, we may also need to learn and to develop better management tools, so we welcome a study of this area. I assure you election officials want to get this right for voters. We want voters to have a good experience. We want voters satisfied with the process even if they are not always satisfied with the choices.

### ***Machine Failure & Long Lines***

Probably the most common allegation we hear is that “machine failure” causes voters to be unable to vote. Unless the voter is in a location where only one voting device is located (and this would normally not be in an urban area), the only “machine failure” is if all voting devices in the polling place were to fail at once. This would be a rare occurrence indeed. If one device fails, there are other devices available to the voters within that polling place. Election officials also have done all they can reasonably think of to assure that there are backups available to assure that voters are able to vote in a timely and complete manner. In Guilford County, NC, and Johnson County, KS, and Harris County, TX and hundreds of other locations, they keep spare devices ready to be deployed where either devices don’t work or where long lines develop.

Of course that is for counties that have budgets and budgeting authorities that allow them to buy spares. We have many locations where the local jurisdiction is fortunate to have enough to start the day but they cannot produce more equipment when long lines develop. This is a reality of life and until there is sufficient funding from whatever source, some locations will simply not have enough equipment to handle the tremendous volume of voters. Since most of those buying decisions occur one to two years previous to the election, it would be difficult to have projected that 2008 was likely to have the most voters of any election in history.

The point here is that we can't just go to the local Best Buy and purchase more equipment when the lines get long. Our more enlightened jurisdictions (from a budget standpoint) will have the spares ready to go for whatever needs occur. But more than half of our jurisdictions will need something other than more equipment to handle the waves of voters we expect in 2008.

The three counties mentioned above in NC, TX and KS are examples of locations where they are planning for almost all eventualities, including backup generators in case of sustained power outage, to battery backup units for voting machines to operate most of the day, to spare units that can be placed into use rather quickly and other such preparations.

The point here is that paper ballots are not the only solution for "emergency" situations. Having repair technicians scattered around the county, and spare machines, can be valuable solutions.

***Suggestions for a Good Election Experience:***

What can be done *now* to make this a very good election for all concerned?

Here are some of our suggestions:

- Voters need to be checking now to see that they are registered to vote and on the official voting rolls.
- Confirm with the local elections office your *current* address; if it is different from the address that is on your voter registration, you need to assure that you can still vote. In many states, if you vote from the wrong precinct, your vote may not count so it is important to assure that your current residence is up-to-date in the voter registrar's records.
- Know where your polling place is BEFORE election day. Elections offices are swamped with telephone calls on election day and it becomes impossible for the elections office to get back to the voter with the correct information because they don't have the staff to handle the volume of calls. Virtually all jurisdictions now have some electronic means of assisting voters to find their polling place. Some have automated telephone systems, some have internet access to show the voter the polling location and virtually every jurisdiction is mailing the location of the voter's polling site on their voter registration card.
- Vote early if you can. We expect record turnouts – maybe the highest turnout in the history of American elections – so voters will be better served if they can vote an absentee ballot, or vote in person at an early voting site. But don't wait until the last days to request the absentee ballot or to vote early. Take action at the earliest possible time and voters will be better assured of getting their ballot in time to be counted in the election.
- Before going to the polls to vote, either in early voting or election day voting, know exactly who and what you will be voting for on the ballot. This will assure that you vote quickly and efficiently and don't create long lines for the voters who are in line after you.

***Lessons Learned and Cautionary Notes***

What we have learned over a period of years now is that many of the publicly reported stories have gotten material facts wrong. Perhaps that is not unusual since lawyers and partisans for losing campaigns

tend to stretch the information to fit circumstances they believe will assist their campaigns. In normal times we could live with some of that and chalk it up to rhetoric. But in recent years there has been a sustained attack on the process itself and the people who administer it. No election official minds when people find fault with genuine problems. We want to correct mistakes and make sure the process works well for voters. But some of the things that get labeled as problems and/or administrative errors could realistically only be labeled as such if we lived in the Twilight Zone.

Remember that all the rules of elections are not the same in each and every state. Applying a story or circumstance from one place without the context of the specifics of the affected state will most often result in a misrepresentation of what has actually occurred. For instance, some states use provisional voting as a true “fail safe” for when government may have made a mistake – for other states, they use provisional voting also as a method for effecting address changes, and so we will see enormous differences in the numbers of provisional votes and the disposition of those.

***Pollworkers:*** We have all heard the complaints about pollworkers, but the reality is that we cannot run this process without them. And for every bad one there are at least four good ones. Complaining about pollworkers is not a solution. Recognition has to sink in: we are expecting far too much from our pollworkers. We expect them to know 80 to 200 page manuals on what to do in the polling place. We expect them to get all the legal provisions correct every time.

We expect them to remain polite and cordial for the 14 to 16-hour day we work them when some voters or some partisans are not cordial in their dealings with pollworkers. We expect them to be able to set up voting equipment and/or to repair it when it doesn't work. We expect them to be able to explain to people how to vote on the equipment even when voters indicate they don't want any assistance. We expect them to know secondary languages to assist voters in their native language. And, we expect them to continue doing this even when some in the society deride their efforts and their capabilities.

We have to recognize that if our pollworker base continues to primarily consist of those 65 and older, then we must be looking at a redesign of the process. We have made this process far more complicated than it was even 20 years ago, and loaded on more and more responsibilities.

Frankly, we have come to the point that we expect too much from pollworkers. The Election Center began a National Task Force on Training in 2007, where we are looking at training of staff, pollworkers, voters, candidates and media. One key element of that Task Force is pollworker training. We have to revisit the ways we train them and how much information can be retained from the kinds of training we do for one to two to three hours. We will be looking for innovative and model pollworker training methods.

***Confidence of Voters:*** We know from national polls now that a substantial majority of Americans and the majority of voters have faith in our processes that elections in this country are run fairly, honestly, and competently. Therefore, should we ignore the groups and individuals who express their fears and concerns as a result of previous elections, simply because we think some of the solutions they offer will do greater harm than good?

I would hope not. We also know that there are some groups of voters who do not trust the process. We know that some racial and ethnic minority populations have less confidence in the electoral process.

When we look at the data, the affected populations seem to have distrust not only of voting but of all other aspects of society as relates to the quality of goods and services available to them.

For democracy to work, voters have to have faith in the process. If you don't believe the process is fair and that the process is honest, you cannot believe in the government that results from the electoral process. That is why it is critically important that stereotypes and myths about elections need to be dispelled. Those who continue to pander to the distrust ultimately succeed in assuring that some lose complete faith in democracy. Is partisanship so important that the loss of faith in democracy is worth the political strategy of distrust? For those of us who make this our profession, we will tell you that the process *is* more important than partisanship.

***Where We Go From Here***

Elections administrators throughout America have the same goals you have: to assure that voters are well served, to assure that all properly qualified voters get to cast their ballots and to have their votes counted.

Trust the people who do this job. They are honest and decent Americans who are under appreciated. They truly believe in an honorable and fair democracy. And regardless of political party affiliation and regardless of political philosophy, the Democrats and Republicans and Independents and liberals and conservatives and moderates who make elections their profession serve voters well. Trust them and their abilities. Ask the local election officials from your home state what they think of the men and women who do this job. You will find them confident in and complimentary of their colleagues throughout America.

Give them the tools and training and funds necessary to the job right. But recognize their role: they are the referees of the system. They can't be partisan participants and still engender faith that the process is open, fair, and honest for all. When they implement the election laws as the legislatures of the states intended, it may result in partisans being unhappy. Which probably means that elections are being run just as they should be run.

And, because of them, Election 2008 will be a good election. It may not be perfect. It even may not be pretty. But it ultimately will be an accurate reflection of the public's choices.

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The National Association of Election Officials (The Election Center) has been focused on voter registration and election administration issues since 1985. Its members are the government employees at the township, city, county and state levels whose professional responsibilities are to handle voter registration and election administration. It is the largest elections related organization in America. The association's chief role is to promote and preserve democracy. Election officials can earn the highest designation of the profession as a Certified Election/Registration Administrator (CERA) through The Election Center. The association trains more than 1,000 election officials each year to improve the methods of serving voters. The website is [www.electioncenter.org](http://www.electioncenter.org)