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THE 2010 ELECTION: A LOOK BACK AT WHAT WENT RIGHT AND WRONG

HEARING

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

OF THE

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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THE 2010 ELECTION: A LOOK BACK AT WHAT WENT RIGHT AND WRONG

THURSDAY, MARCH 31, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:35 a.m., in Room 1310, Longworth House Office Building, Hon. Gregg Harper (chairman of the subcommittee) presiding.

Present: Representatives Harper, Nugent, Lungren, and Gonzalez.

Staff Present: Peter Schalestock, Deputy General Counsel; Kimani Little, Parliamentarian; Joe Wallace, Legislative Clerk; Yael Barash, Assistant Legislative Clerk; Salley Wood, Communications Director; Bob Sensenbrenner, Elections Counsel; Karin Moore, Elections Counsel; Kyle Andersen, Minority Press Secretary; Matt Defreitas, Minority Professional Staff; Khalil Abboud, Minority Elections Staff; Thomas Hicks, Minority Elections Counsel; and Gregg Abbott, Minority Professional Staff.

Mr. HARPER. I now call to order the Committee on House Administration's Subcommittee on Elections' oversight hearing evaluating the 2010 midterm elections. The hearing record will remain open for 5 legislative days so that members may submit any material that they wish to be included therein.

A quorum is present, so we may proceed.

The Subcommittee on Elections has the important task of overseeing Federal elections and considering legislative means to improve and protect the integrity of our electoral system. This committee previously explored the issue of military and overseas voting as well as the operations and budget requests of the Election Assistance Commission. Today, I look forward to hearing about what we can further learn from the 2010 elections.

According to the United States Elections Project, 40.9 percent of the Voting Eligible Population turned out in 2010. That is slightly higher than in the last two mid-term elections. Nonetheless, we need to remain constantly vigilant in ensuring that all eligible voters have proper access to the polls and that they are not disenfranchised by illegal voting or equipment malfunctions.

I look forward to hearing from our witnesses regarding recent reports of noncitizen voting in their States and about the measures we can take to stop such activity. We will also hear about technological issues in the 2010 elections, which is vitally important as

we seek to ensure no vote is lost or disenfranchised from lax oversight of our voting equipment.

Through the Help America Vote Act, the Federal Government spent several billion dollars helping States purchase new voting equipment. HAVA also established a new Federal system to test and certify voting machines. These are important investments, and we need to monitor how they translate into the actual voting experience.

My colleagues and I are committed to ensuring the integrity of elections, of protecting the hard-fought right to vote, and in learning from the past as we evaluate proposals for the future of our electoral system. I thank each of them for being here, and all of you for taking the time to be here and would like now to recognize my colleague, Mr. Gonzalez, who is now the ranking member of this subcommittee, for the purpose of providing an opening statement.

Mr. Gonzalez.

[The statement of Mr. Harper follows:]

Chairman Harper:

I now call to order the Committee on House Administration's Subcommittee on Elections' oversight hearing evaluating the 2010 midterm elections. The hearing record will remain open for five legislative days so that Members may submit any materials that they wish to be included therein. A quorum is present so we may proceed.

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My colleagues and I are committed to ensuring the integrity of our elections, of protecting the hard-fought right to vote, and in learning from the past as we evaluate proposals for the future of our electoral system.

I thank each of them for being here and would now like to recognize my colleague Mr. Brady, the Ranking Member of the Committee and this Subcommittee, for the purpose of providing an opening statement. Mr. Brady . . .

Mr. GONZALEZ. Mr. Chairman, thank you very much.

And of course, I appreciate all of your hard work, and I do want to acknowledge the hard work of our staffs.

And I welcome the witnesses. I am going to be brief. Mr. Brady may be here a little later, but I am not sure at what time. But, again, this is obviously an issue dear to all of us.

I think we all share the same goal, and that is to, basically, accommodate the voter, make sure that the voting experience is one that is easy, of course, to exercise. And if that is our goal, the differences we may have is, How we use limited resources, What are perceived problems as opposed to actual problems, and What can we do?

So I am hoping that today we can identify common ground. Again, I am not real sure that we are going to agree what needs more attention. That may be another issue or another matter and, as the testimony may develop, maybe it won't.

I am hoping that today we all leave here today still united in that single purpose and goal in trying to find the best solutions, as I said, with the limited resources that you have at the local and State level—and I know you may be looking to the Federal Government for assistance—and we are also limited by the economics of our time and budgetary constraints.

But, when it is all said and done, if we don't have an open process and a process that accommodates the voting experience, then what are we all doing in the respective positions that we hold?

And, with that, I would yield back, Mr. Chairman. Thank you.

[The statement of Mr. Gonzalez follows:]

Mr. HARPER. I would like now to introduce our witnesses.

STATEMENTS OF THE HONORABLE SCOTT GESSLER, COLORADO SECRETARY OF STATE; THE HONORABLE MARK RITCHIE, MINNESOTA SECRETARY OF STATE; SUSAN GILL, SUPERVISOR OF ELECTIONS, CITRUS COUNTY, FLORIDA; KEN CARBULLIDO, SENIOR VICE PRESIDENT OF VOTING SYSTEMS, ELECTION SYSTEMS & SOFTWARE, INC.; LAWRENCE NORDEN, DEPUTY DIRECTOR, DEMOCRACY PROGRAM, BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW

Mr. HARPER. The Honorable Scott Gessler is the 37th Secretary of State of Colorado, elected this past November. Mr. Gessler was previously a partner at Hackstaff and Gessler, where he focused on election law, constitutional law, and campaign finance. He has also served at the Department of Justice as a trial attorney focusing on international criminal law and terrorism, and I know has made many recommendations to the Colorado General Assembly following the 2008 elections.

The Honorable Mark Ritchie is the 21st Secretary of State of Minnesota. Prior to his election as Secretary in 2006, Mr. Ritchie served for many years in Minnesota's Department of Agriculture. He served as president of the Institute for Agriculture and Trade Policy from 1988 to 2006, and currently is the President of the National Association of Secretaries of State.

Ms. Susan Gill is the Citrus County Supervisor of Elections, elected in 1996. She was reelected—something we all envy—without opposition in 2000, 2004 and 2008.

Congratulations.

Ms. Gill is a member of the Florida State Association of Supervisors of Elections, serving as president in 2005 and 2006, and has held, I believe, every office position in that organization and has been very, very active on our voting process. She served as the chair of the Rules and Legislative Committees, and is currently the cochair of the association's Vote Center Task Force and has great expertise in this area.

Mr. Ken Carbullido—I hope I said that right.

Mr. CARBULLIDO. Exactly right.

Mr. HARPER. Mr. Carbullido is senior vice president of Voting Systems, Election Systems & Software, one of the country's most successful election management companies. He has over 30 years of experience in a variety of technology development and management roles.

Prior to joining Election Systems & Software, he was the Chief Information Officer for First Data Resources. Over his career, Mr. Carbullido has been active in application software development, systems software development, hardware engineering—many items, including quality assurance. And we look forward to hearing your testimony also.

Mr. Lawrence Norden is the Deputy Director of the Democracy program at the Brennan Center for Justice at the NYU School of Law. He is also the Director of the Brennan Center's Voting Technology Project. He has authored several nationally recognized reports related to voting rights, voting systems, and election administration. He also served as chair of the Ohio Secretary of State's bipartisan election summit and conference.

We appreciate all of you taking the time to be here today. The committee has received written testimony from each of you. At the appropriate time, I will recognize each of you for 5 minutes to present a summary of the submission. To help you keep that time, we have a timing device that you will see there in front of you. The device will have a green light for the first 4 minutes and will turn yellow when 1 minute remains, and when the light turns red, your time would be up.

Secretary Gessler, we will begin with you for your remarks.

STATEMENT OF THE HONORABLE SCOTT GESSLER

Mr. GESSLER. Thank you, Chairman Harper and Congressman Gonzalez, and other members of the committee.

I appreciate the opportunity to appear before you today to discuss the results of a study that my office conducted regarding the citizenship of registered voters in Colorado.

What we did is we compared our driver's license database to the registered voter database. And Colorado requires legal presence in order to issue a license to someone, a driver's license, and starting in 2006, our State began collecting data on what type of evidence was presented to receive a driver's license, whether it was a citizenship document or an immigration document, in order to receive

that. And so what we did was we compared that information against the registered voter database.

What we found was that there were 11,805 individuals who had registered to vote in Colorado and also had provided sort of self-affirmed—provided evidence that they were not citizens starting in 2006—or going back to 2006, that they were not citizens when they got their driver's license. Of those 11,805 individuals, 106 first registered to vote, and then when they got their driver's license later, showed that they were noncitizens when they got their driver's license. Of the 11,805 individuals, about 5,000, almost 5,000, voted in the last election. So that was sort of the basic contours of the study we did.

What we think this study shows is that Colorado has a problem with noncitizens who are registered to vote and may be voting as well. We don't quite know the size or the magnitude of that problem. So the analysis is in some ways preliminary. What we do know is that there is some problem here. We know the 106, we are reasonably certain that when people register to vote and then later show that they are a noncitizen, that they are improperly registered to vote.

Our data only goes back to 2006, and for many immigrants, it takes at least 5 years before they can become a U.S. citizen after they first get their green card. So some people may have gotten a driver's license when they were a noncitizen, become a citizen, and then registered to vote. And some did not, some registered to vote improperly and remain that way.

And we also have some anecdotal information. Within the last 2 or 3 years, we have had about 150 people in the State of Colorado who registered as noncitizens and then later withdrew their registration, so they sort of self-identified themselves and withdrew their own registration. So we know we have a problem here. We don't know the size of it.

One of the things that we are looking at in Colorado—and that I would suggest to the committee members as well—is that we need additional tools to be able to measure the size of this issue and resolve it as well. Issues regarding immigration and regarding registrations of noncitizens to vote draw a lot of attention and intense debate. Unfortunately, oftentimes there is not very thorough analysis that goes on there, so that is one of the things that we need to do.

What we are trying to do in Colorado is create a system where the Secretary of State can reach out to these folks, send letters to them asking them to provide proof of citizenship, and if they don't respond, we will put them in a suspended status. It is a crime to register to vote or to vote as a noncitizen in the State of Colorado. We don't think criminal prosecution or investigation is the right way to go. It is a very cumbersome approach here, and our goal is just to maintain accurate databases.

One of the things we have also done is reached out to Federal authorities to identify information. Now the SAVE program has been very—we are working with them, with immigration authorities to get lists of noncitizens who reside in Colorado.

The other thing we tried to do is we contacted the United States District Court for the District of Colorado and we asked them for

noncitizen juror recusals, so when someone goes into a jury panel and those are drawn from voting rolls and they recuse themselves because they are noncitizen, we asked for that information so we can check it against the voting rolls. GAO published a study several years back that stated that was a possibility to maintain clean voting rolls. Unfortunately, our district court has denied us access to that information, and that is certainly one area that would be helpful.

So, overall, I think what we have been able to learn is that there is an issue with noncitizens registered to vote and voting in Colorado. We know there is a problem. We don't know the size of it. We are looking to get the tools to better be able to measure this and to resolve this in an administrative fashion. And we certainly hope that we will receive assistance from the Federal Government with those sources of information as well. So thank you very much for your time.

[The statement of Mr. Gessler follows:]

Statement of Colorado Secretary of State Scott Gessler
Before the
Committee on House Administration
U.S. House of Representatives

The 2010 election: A Look Back At What Went Right and Wrong
March 31, 2011

Chairman Lungren, Ranking Member Brady, and Members of the Committee, thank you for the opportunity to appear before you today to discuss the results of a study my office conducted regarding the citizenship of registered voters in Colorado.

The results of the study indicate Colorado has a problem. Individuals who have presented proof of non-citizenship during transactions with the Colorado Department of Revenue are also listed on the voter rolls. I intend to share with you today the methodology we used in conducting the study and the proposed solution we are working to pass in the Colorado legislature. Though I can speak only for our situation in Colorado, I know the evidence from our study may raise questions that this committee may see fit to investigate further. Additionally, there may be actions that can be taken on the federal level that would help states with this issue.

The study, conducted by Department of State staff, compared Colorado's voter registration database with driver's license records to determine whether non-citizens are registered to vote in Colorado. Starting in August 2006, people seeking a Colorado driver's license have been required to show proof of lawful presence. Accordingly, in 2006 the Department of Revenue began recording the type of document that established an applicant's lawful presence in Colorado. The Department of State requested these records from the Department of Revenue this January and compared them to the voter rolls.

The comparison identified 11,805 individuals who (1) were non-citizens at the time they obtained a driver's license, and (2) are registered to vote. The study indicates we are nearly certain that 106 individuals are improperly registered to vote. And potentially many of the remaining 11,805 individuals are also improperly registered to vote. It is impossible to provide a precise number, however, because voter registration data are inconclusive.

When the proof of lawful presence policy became law, the Department of Revenue began recording the type of document that established legal residence. For U.S. citizens seeking a Colorado driver's license, required documentation includes a passport, birth certificate, social security card, driver's license from Colorado, or driver's license from another U.S. state or territory that requires lawful presence.

For non-U.S. citizens, proof of legal residence means a valid immigration document. This includes: Employment Authorization Document (EAD Form I-766) - commonly called a work permit; United States Permanent Resident Card (USCIS Form I-551) - commonly called a green card; INS Arrival/Departure Record (USCIC Form I-94) - a document completed at the time of entry to the U.S. by foreign citizens who are not permanent residents and who are being admitted into the U.S. for 90 days or less.

The Department of Revenue provided the Department of State all records indicating the document that a non-citizen presented to prove lawful presence. From August 2006 until mid-February 2011, 211,200 driver's licenses or ID cards were obtained using a non-citizen's lawful presence document.

The 211,200 non-citizens represent only a fraction of all driver's licenses, because the number (1) only includes new or updated licenses or identification cards after August of 2006, and (2) does not include applicants who provided another state driver's license.

The Department of State compared these records against the statewide voter registration database. After removing all duplicates, the comparison produced 11,805 unique registrants currently on the voter registration rolls. This represents 5.6% of the 211,200 non-citizens in the Department of Revenue database. As I will explain, the data are incomplete and this number does not prove that all 11,805 non-citizens were registered improperly.

When reviewing the 11,805 individuals who (1) were non-citizens at the time they obtained driver's licenses and (2) are registered to vote, the Department of State noted the voter registration date and drew certain inferences by comparing the date a person registered to vote with the date the person applied for or updated a driver's license.

First, 106 individuals presented the Department of Revenue with a non-citizen document after the date they registered to vote. It is nearly certain that these 106 non-citizens are improperly registered to vote, because they were registered on or before the day they applied for a license using a non-citizenship document.

Second, 11,699 individuals provided the Department of Revenue with a non-citizen document and later registered to vote. In each case, the voter registration date took place after the license application date. The Department of State does not currently have the data to determine with certainty the person's citizenship status at the time of registration. That said, two explanations likely cover the vast majority of cases: either (1) the person provided a non-citizen document to apply for a license but later became a citizen and legally registered to vote or (2) the person remained a non-citizen and registered to vote. Because the Department of State currently does not have access to a database that contains the date that non-citizens become naturalized citizens, it cannot determine the exact number of improper registrants.

The Department of State must nonetheless conclude that some of the 11,699 were registered to vote prior to obtaining U.S. citizenship for three reasons. First, most green card holders must wait three to five years before they may apply for citizenship, and the Department of Revenue data only date back to 2006. Based on this time range, it seems unlikely that all 10,048 green card holders from the analysis have become citizens since the time they registered.

Second, the other two types of non-citizen residents – the 1,338 holding an employment authorization document and the 419 holding an INS arrival/departure record – were not eligible to become citizens until they first converted to green card status. In short, the individuals who presented an Employment Authorization Document or an INS Arrival/Departure Record still had

a long road to citizenship, including at least three years as a green card holder. By contrast, green card holders were much more likely to have become citizens since 2006.

Third, the Department of State's own database shows that over the last two years 154 people initially registered to vote as non-citizens but then voluntarily withdrew their registrations. These instances of self-reporting likely provide a glimpse at a larger problem where non-citizens accidentally become registered through a mistake made by themselves or by someone else.

Of the 11,805 people who showed a non-citizen credential when they received their driver's licenses, 4,947 – or 41.9% -- voted in Colorado in the 2010 general election. By comparison, 55.5% of all registered voters in Colorado turned out to vote in the 2010 election.

As I noted previously, the Department of State does not know if a person became a citizen after obtaining a driver's license or identification card. Similarly, a non-citizen may have been improperly registered to vote, but may have later become a citizen and legally voted. For the reasons discussed above, however, it is likely that many of the 4,947 voters were not citizens when they cast their votes in 2010.

The above analysis draws tentative conclusions based on a small fraction of driver's license records that contain information about a person's citizenship status. There exist, however, other state and federal databases that contain relevant information related to citizenship status, including the Department of Homeland Security SAVE program, state and federal court jury recusal lists, and out-of-state driver's license records from other states that require proof of lawful presence like Colorado. As I noted in my introduction, we have proposed legislation at the state level to provide our office greater access to databases. We know we have a problem in Colorado, but we do not know how big the problem is.

In addition, the state legislation would allow our office to handle the issue administratively, rather than through criminal enforcement. The Colorado bill (HB1252) would allow the Secretary of State's office to send a letter to individuals when there is a discrepancy asking for proof of citizenship. In the case of the individuals in our study, if a person had obtained a driver's license as a non-citizen and then later become naturalized before registering to vote, the individual could simply respond with a copy of his or her naturalization papers and his or her voter registration would remain active. Under the bill, if our office does not receive a reply within 90 days, the registration is marked incomplete until the information is provided.

There are also steps that could be taken on the federal level that could assist states like Colorado with this issue. The GAO produced a study in 2005 entitled "Additional Data Could Help State and Local Elections Officials Maintain Accurate Voter Registration Lists." The report noted federal juror recusal lists could be used to help states maintain accurate voter rolls. Federal court districts survey prospective jurors, including a question about U.S. citizenship. If these lists were made available to states, we could run a further analysis against the voter rolls to determine citizenship of registered voters.

My office sent a request for such information to the U.S. District Court for the District of Colorado. We recently received a response denying the request. The Clerk of the Court wrote in the response, "After thorough consideration of your request, the U.S. District Court has come to the conclusion that the Juror Qualification Questionnaire, when completed by a potential juror, is a document that is for the Court's use only." The GAO study noted "there is no Judicial Conference policy that instructs the courts to notify election officials when it is determined that a potential juror is not a U.S. citizen," though the study also noted that one of the 14 U.S. district courts contacted for the study, the Eastern District of Virginia, provided feedback to voter registration authorities if a prospective juror claimed not to be a U.S. citizen. The GAO recommended in the report "that the Administrative Office of the U.S. Courts determine the feasibility and steps necessary to implement a requirement that U.S. district court jury administrators provide notice to state election officials of potential jurors who identify themselves as non-citizens on their jury qualification questionnaire." This could possibly be an issue for this body to consider as well.

There are other federal databases that could assist state election officials in maintaining voter registration lists. The Department of Homeland Security Systematic Alien Verification for Entitlements, or SAVE, database, noted above, is one example. The Colorado Secretary of State's office already uses the SAVE system to verify non-citizen lawful presence documents for notary applicants. Our office has recently inquired with DHS about expanding our access to the database to assist our effort to maintain accurate voter registration lists. We have not yet received a response from DHS to this inquiry.

As with the sharing of any data between government entities, there would need to be safeguards in place to protect privacy and security of the information. We are willing to fulfill these obligations as we already do with other agencies and levels of government with whom we share information. As I noted above, our office already uses the SAVE program. The expanded access to federal databases and lists containing accurate citizenship information would provide an important tool for state officials to maintain accurate voter rolls.

In summary, after an initial investigation of Colorado's voter database, we know we have a problem with possible non-citizens on the voter rolls. We do not know how big the problem is and we believe we lack the tools to efficiently handle the problem. Proposed legislation in Colorado could address both aspects of the issue. But the federal government can also take steps to assist states in maintaining proper voter rolls, including access to databases and lists with citizenship information.

I thank you again for allowing me to address the committee today and for any help you can provide in the effort to maintain the highest integrity of our elections process.

Mr. HARPER. Thank you very much, Mr. Gessler.

Now we will hear from Mark Ritchie and look forward to your remarks.

STATEMENT OF THE HONORABLE MARK RITCHIE

Mr. RITCHIE. Thank you very much, Mr. Chairman.

To all members, I want to first thank you very much for your willingness to come over to our NASS national meeting. It was a great honor for us. We want to really continue that relationship, so thank you again; we look forward to continuing that conversation.

I am testifying today on behalf of my great State, but I do also serve as the current President of NASS. In that position, I follow fairly closely upon your colleague, now Congressman Rokita, who was our former President.

Minnesota has the habit, or the culture, of going back after each election and talking about what went right, what went wrong, what can we do better? So we were very appreciative to hear this hearing was going to be happening here today. And after the last two election cycles, I have traveled statewide—typically to 30 or 40 places, so that all 87 counties can participate—gathering up their impressions. I have three main impressions from the 2010 election:

First, we were thrilled that even though we didn't have a presidential race, a Senate race, an issue on the ballot, a constitutional amendment, we still had a very high turnout. Again, Minnesota was number one in the Nation. We know that is because our citizens very much trust our system, and they have always had that experience. We vote on paper ballots. We are a local-based system, and people trust the system. But we also are aware that at a national level, turnout was 40 percent, as you cited; so just as a longer-term issue, there is the question of very low voter participation.

Some States that have typically been higher were down in the 30 percent range and a couple States down in the 20 percent range. This is a very serious issue for our Nation, and I think it is something we all need to think about and imagine what we could do. And some of the work that you have done, especially making sure our overseas voters, the military voters, can vote will help with that.

The second thing is that we were strongly affirmed in the progress we made, thanks to the MOVE Act, in being able to change the date of our primary to extend the time for our overseas voters.

When I was elected in 2006, sitting on my chair when I was sworn in—actually, the day I was sworn in—I found this letter from the Federal Voting Assistance Project. It said, Dear Secretary of the State—it was addressed to the prior Secretary of State—and it essentially said, very politely, Minnesota does great in elections, but terribly when it comes to military and overseas voters, and it had 10 suggestions. I did not know they had been sending that letter for 10 years and that it had been ignored, but in any case, we picked up the letter. We worked with the legislature. We passed much of that agenda. We implemented it. We had a lot of success from that, but we were not able to get the Governor's agreement

to change the date of the primary. That bill was vetoed. Thanks to the MOVE Act, we were able to overcome the veto.

The 46 days—our State implemented the MOVE Act with absentee ballots sent 46 days before the elections—we have had the effect of reducing the late returns. That was the most common thing. The unanticipated but very important secondary effect was that that length of time allowed many people to be able to correct a small error that they had made, either forgetting a signature or forgetting a date on an absentee ballot envelope. I think ultimately we had, in 2008, 540 late ballots; in 2010, approximately 130 or 140. But we also reduced the error rate from 2 percent in 2008 to less than half of a percent in 2010, and that is much lower than our domestic rate as well. So the extra time had several different positive benefits, and that was terrific.

The third thing we implemented was the use of newly available electronic databases that really lowered the cost and increased the efficiency and the integrity at the local level. We used our "change of address" files from the postal service and reduced our post-election data entry by about 100,000—a very great savings to local officials. We use Social Security databases now to take people who die in other States off our list. If you die inside of Minnesota, we know very soon. If you die in Florida—some Minnesotans go to Florida in the winter—it is very complicated. I am sure anyone who has run for office who has done any phoning knows what it means to have that pause at the other end when you ask for somebody and you know. I get these calls in my own home, and that little touch of grief happens when somebody calls and asks for my daughter. So I am very positive about that use of electronic databases improve our list.

So we also use electronic databases effectively to challenge voters before election day—similar to what was mentioned about Colorado, we use the system of challenging before election day, and we use the system afterwards to identify if anyone has potentially voted illegally and then turn those names over to our county attorney, who is the prosecuting authority in Minnesota.

Thank you again for putting attention on this topic. I look forward to your questions.

[The statement of Mr. Ritchie follows:]

STATE OF MINNESOTA
Office of Minnesota Secretary of State
Mark Ritchie

Mr. Chairman, thank you for this opportunity to reflect on the 2010 elections.

First, I want to thank you again Chairman Harper, for speaking before our National Association of Secretaries of State (NASS) winter conference last month. We very much appreciate every opportunity to share ideas and perspectives and hope that we can count on your participation again. I also want to greet my friend and former colleague in NASS, Congressman Rokita – a wonderful addition to this Committee with deep experience in the real world of election administration. While I currently serve as the President of the National Association of Secretaries of State, I am here today to testify as the chief elections officer for the great State of Minnesota. Our experience in last year's elections was very positive, providing a number of lessons that may be of interest.

First, although we did not have a US Senate race we still had excellent citizen participation. We retained our position as the nation's leader in voter turnout – with 56% of our eligible voters going to the polls. Why are we always so high? We know there are at least three reasons. First, Minnesotans trust in our system and show it through their extremely high levels of civic engagement. Second, at all levels of government we have policies that are designed to encourage instead of discourage participation. From township level voting to Election Day registration we work hard to live up to the Constitutional guarantee of the right to vote to every eligible citizen. Third, we do a lot of work to make sure our residents, especially our young adults just turning 18 and new folks who have recently moved into our state, know the importance of participation in our Democracy. Our Vote in Honor of a Veteran program, which reached nearly 100,000 Minnesotans in 2008 and 2010, is a good example of the kind of outreach effort that we organize to remind everyone of the importance of public service including participation in our armed forces and in our elections.

Year after year we set new records for turnout and overall civic engagement in Minnesota. But I am aware that this is not the case in all parts of the country. While I was happy to see our large turnout, it was alarming that 44% of Minnesotans did not participate and to see so many other states experiencing significant drops in voter turnout, especially in the Midwest, that normally have higher turnout rates fell down into the 20 and 30 percentage range. As a nation our participation rate was down to only 40%. I have attached the data collected by George Mason University for your reference.

In terms of the goals for the hearing today- - looking back at what went right and what went wrong – it is clear that in a lot of states something went terribly wrong in terms of citizen participation. This hearing is an excellent opportunity to look at ways to address this serious problem.

The second lesson we can draw from our 2010 election is the tremendous difference that moving our primary from September to August made for our military and overseas voters – and for our local election administrators. The extra time gained allowed UOCAVA voters to successfully cast their ballots at much higher rates. When I came into office 4 year ago, there was a letter sitting on my desk from the Pentagon's Federal Voting Assistance Program (FVAP). The letter said, in very polite terms, that Minnesota was doing a poor job of helping our UOCAVA voters. I was very familiar with these concerns because my chapter of the Association for the US Army

180 State Office Building | 100 Rev. Dr. Martin Luther King, Jr. Blvd. Saint Paul, MN 55155-1299
Phone: 651-201-1324 or 1-877-600-8683 Fax: 651-215-0682 | MN Relay Service: 711
E-mail: secretary.state.@state.mn.us | Web site: www.sos.state.mn.us

made this a key issue and I was already considering ideas for new legislation to address this concern even before I saw this letter.

To my dismay, I learned that FVAP had been sending a similar letter to Minnesota year after year for almost a decade, but the Governor and the legislature had done nothing in response.

The FVAP letter included a short list of recommended legislative initiatives to help UOCAVA voters. Our office went to work right away with state legislators from both sides of the aisle to turn these suggestions into legislative language which were then passed but unfortunately vetoed the first time around.

However, we reintroduced them again in early 2008 and passed them again with unanimous support in both Houses and this time they were signed, just in time to implement most of the provisions for the 2008 elections.

Unfortunately, one legislative initiative that was not approved was the very strong recommendation from the Pentagon that Minnesota create a minimum of 45 days for getting out our absentee ballots before our primary and general elections. With our very late primary, we had only a 30-day requirement in our state law. Legislation to move our primary to allow the full 45 days was vetoed and it was not possible to overcome this opposition until Congress passed the MOVE Act, the Military and Overseas Voter Empowerment Act, which was very important.

With the help of the MOVE Act a compromise was reached to move our primary to August and required absentees to be sent 46 days before both elections. This simple change made a big difference. For example, in 2008 we had 535 late UOCAVA ballots, in 2010 that number fell to 140 with only 35 late military ballots in that total. In 2008 the rejection rates due to errors made by voters, such as a missing signature or address information, was 3.5% for domestic absentee ballots and 2% for UOCAVA voters. In 2010, thanks to the extra time mandated by Congress, the rejection rates for all absentee ballots dropped by half. In fact, only 5 military ballots were ultimately rejected due to errors on the part of the voters in 2010. We learned many valuable lessons in 2010 in regards to military voters. The two most important were that the new 45 day mandate made it possible for many more voters to get their ballots back in time and this extra time gave local election administrators time to contact absentee voters who made small but crucial mistakes on their balloting materials and to get these corrected in time for their votes to be counted.

One other factor that we know made a difference in getting such a good result was the heavy traffic on our special customized website built for our military voters by the Overseas Vote Foundation. Overall, we are really pleased with the results of these changes thus far and know that this success will help us in our work to turn-around the long-held belief by many of our military voters that they shouldn't even try to get their ballot in on time. With a continued commitment to intensive outreach to families and individuals we will keep making progress on making sure our military and overseas voters know that many of the previous barriers have been lifted. We still have a long way to go but we are making significant progress.

Congress could help with this in one specific way. Right now Minnesota and a number of other states do not have provisions that clarify how US citizens who live overseas, like the children of missionaries or military personnel, and who have not yet established their own residency can legally vote. National legislation would be a tremendous help in addressing this shortcoming.

The final set of lessons I would like to draw your attention to are the tremendous advances that are now possible with the new opportunities for data matching. Thanks to technology developments and changes in legislation we were able to make use of publicly available databases that have given us access to much better data.

For example, we now have authority to use the national Social Security death registry. Many Minnesotans spend part of each year living outside of our state, primarily in the winter. When one of our voters dies outside of the state it is not always easy to get this information into our system. I am guessing you can relate to the experience that I and others who run for office have when we call someone to ask for their support and find out, through a very awkward conversation with a surviving spouse or other family member, that the voter we were trying to reach had died the previously year or perhaps a few years before. Using the national list we have been able to keep our voter list current.

Another example is the difficulty of keeping current with felony convictions. Minnesota's rules on felon voting are different than some of our neighboring states. In North Dakota, for example, if someone is out of prison they can vote no matter where they are in their parole or probation cycle. In Minnesota a convicted felon cannot vote until fully "off paper" meaning fully completed in the serving of their sentence including parole.

In the past we did not have the authority to access certain databases and the ones that we could access were not electronic, creating incredible difficulties for our local election officials. In 2010, thanks to new technology and changes in laws we were able to use electronic databases to update our voter lists before the elections. This meant we could flag newly convicted felons who had been legal voters prior to their convictions and remove challenges from former felons who were "off-paper" and therefore eligible again to vote. After the election, we were also able to use the electronic databases to determine if anyone appeared to have voted while still on paper. As a result, there have only been a handful of cases turned over to the county attorney for investigation and potential prosecution.

Using another database we have been able to search for non-citizens who may have registered and/or voted. We have done multiple data matches since the election and thus far we have not found any non-citizens who voted last November.

The lessons for us are twofold. First, the new digital tools make it possible to have much cleaner and more accurate pre-election voter lists. If we want to have exceptionally clean voter lists, then we need to get every single eligible citizen pre-registered through some of the proposed universal, portable and automatic voter registration systems.

Second, we have learned that the data matching challenges, especially the work that this can create as unfunded mandates to local election officials, can be overcome with a relatively small amount of investment in new digital technology. National Change of Address data from the US Postal Service, costs our office after the initial investment about $15,000 per year. This data allows us to save a tremendous amount of work at the local level by automatically updating addresses when voters move. In Minnesota you must re-register even if you move across the hall inside the same apartment building. We reduced the need for data entry on over 100,000 voters in 2010 alone and anticipate that this number will grow significantly in 2012.

We were also able to help save our local officials some money by reducing the number of calls their staff had to field by putting more information on-line. New technology and on-line tools made it possible for voters to find out where and when to vote, to view a PDF of their actual ballot, and to get links to candidate information. Our new absentee ballot tracking tool was very popular and significantly reduced calls to local officials. Another new tool we developed was a way for voters to check their voter registration status on line- a tremendous help to local officials who had to field many calls on this in the past. What we have not done, I am sorry to say, is to follow the example of Indiana, Arizona, Utah, Washington and other states to move to on-line voter registration. A push from Congress on this would be greatly appreciated.

In 2010 we were proud to retain our position as number one in the nation for voter participation, even though we did not have a high profile national race. We are also proud that the changes we made in our primary election law, thanks to the MOVE Act, helped our military and overseas voters. And many of the new digital tools now available have made it possible to incorporate data matching that has made a huge difference in our ability to keep our records up to date.

Mr. Chairman, I am pleased that under your leadership you are looking to the past for lessons and insights and to the future to make positive changes. If you can find ways to help more states improve their voter participation rates you will have made a huge contribution to the well being of our nation. I appreciate this opportunity to bring these ideas forward today and look forward to further discussions.

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2010 General Election Turnout Rates

Last Updated: 1/28/2011

UPDATE: All states have now reported certified results for the 2010 election. States that are bolded have not yet reported. So far, 89.1 million votes were cast for the highest office in 2010. The estimated 2010 voter turnout expressed as vote for highest office divided by the voting-eligible population is 40.9%. Depending on how states report their election results, the vote for highest office may or may not include write-in votes, and it does not include blank or spoiled ballots. Many states have now reported the total number of valid ballots cast, including those without a recorded vote for the highest office in the state. Applying the ratio of the vote for highest office to total turnout for those states reporting both numbers, the national total ballots cast is estimated to be 90.7 million or 41.6% of those eligible to vote. Prior to the election, I hypothesized a national turnout rate among those eligible to vote (the voting-eligible population or VEP) of 41.3%. I will continue to update these statistics as more data become available. The next major update will be to revise the 2000-2010 populations to be consistent with the 2010 census.

Please see the FAQ for information on the construction of these statistics. The denominator data reflect the July 1, 2008 and July 1, 2009 voting-age population estimates extrapolated to Nov. 2010, non-citizen estimates from 2008 and 2009 American Community Surveys extrapolated to Nov. 2010, the year-end 2009 DOJ prison report and the year-end 2008 DOJ probation and parole report. The overseas eligible estimate is calculated from 2008 overseas citizen estimates provided by the Federal Voting Assistance Program. (Note: prior to 2008, state level turnout statistics are not entirely comparable because no state level overseas estimates were available.)

VEP Turnout Rate <recommended statistic> is the vote for highest office divided by the voting-eligible population or VEP. In a midterm election, the vote for highest office is the highest vote tally for Governor, U.S. Senator, combined House of Representatives. The voting-eligible population is the best estimate of the number of people eligible to vote.
VEP Total Ballots Counted Turnout Rate is the total turnout (or total ballots counted) divided by the voting-eligible population. The total ballots cast includes blank and other such ballots, but does not include rejected absentee and provisional ballots. This would be the preferred turnout rate statistic, but all states do not report total ballots cast in this election or in previous elections, so it is not a consistent measure across states or time. Applying the ratio of the vote for highest office to total turnout for those states reporting both numbers, the national total ballots cast is estimated to be 90.3 million or 41.4% of those eligible to vote.
VAP Rate is the vote for highest office divided by the voting-age population, all residents age 18 and older. Although not recommended, this statistic is provided for organizations such as polling firms that sample the voting-age population.

Again, please see the FAQ for more information.

State	VEP Highest Office Turnout Rate	VEP Total Ballots Counted Turnout Rate	VAP Turnout Rate	Voting-Age Population	% Non-citizen	Prison	Probation	Parole	Total Ineligible Felon	Overseas Eligible	Voting-Eligible Population	Highest Office	Total Turnout
United States	40.9%	41.6%	37.8%	235,809,266	8.3%	1,609,230	2,451,085	627,680	3,148,613	4,972,217	218,054,301	89,099,476	90,682,968
Alabama	43.2%		41.3%	3,622,380	2.8%	31,790	53,252	8,042	62,437	74,079	3,457,019	1,494,273	
Alaska	51.9%	52.4%	48.8%	524,740	4.1%	5,285	6,708	1,732	9,505	60,686	493,592	256,192	258,746
Arizona	39.9%	40.4%	34.7%	4,972,476	11.2%	40,627	82,232	7,534	85,510	90,036	4,331,851	1,727,791	1,750,840
Arkansas	37.6%	37.5%	35.5%	2,203,977	3.8%	15,208	31,169	19,908	40,747	43,963	2,079,647	781,333	779,957
California	44.1%	45.0%	36.0%	28,018,834	17.5%	171,275	0	120,753	231,652	486,207	22,882,532	10,095,485	10,302,324
Colorado	50.0%		45.9%	3,893,518	7.4%	22,795	0	11,654	28,622	71,854	3,578,616	1,787,730	
Connecticut	46.0%		42.1%	2,739,323	7.7%	19,716	0	2,128	20,980	45,799	2,507,296	1,153,115	
Delaware	48.7%	49.2%	44.6%	689,780	6.2%	6,794	17,216	551	15,678	12,658	631,634	307,402	310,946
District of Columbia	28.2%	28.9%	26.7%	497,102	5.4%	0	0	0	0	6,916	470,144	132,656	135,846
Florida	42.2%	42.6%	36.9%	14,649,791	10.9%	103,915	279,760	4,528	246,059	451,907	12,812,802	5,411,106	5,460,573
Georgia	39.1%		34.8%	7,396,296	7.2%	53,371	397,081	23,448	263,636	141,001	6,596,556	2,576,161	
Hawaii	41.1%	41.4%	37.7%	1,014,400	7.7%	5,891	0	0	5,891	20,090	930,624	382,563	385,385
Idaho	43.0%	43.6%	39.5%	1,146,515	5.3%	7,400	49,513	3,361	33,837	26,779	1,051,978	452,535	459,079
Illinois	41.8%	42.5%	37.9%	9,830,405	8.7%	45,161	0	0	45,161	200,530	8,934,072	3,729,989	3,792,770
Indiana	37.3%	38.2%	35.7%	4,883,444	3.6%	28,808	0	0	28,808	89,605	4,678,739	1,744,481	1,788,213
Iowa	50.3%	51.0%	48.3%	2,312,341	3.0%	8,813	22,958	3,159	21,872	43,108	2,220,718	1,116,063	1,133,429
Kansas	42.0%		39.3%	2,136,460	5.7%	8,641	16,263	4,958	19,252	42,495	1,995,927	838,790	
Kentucky	42.4%	44.2%	40.7%	3,336,867	2.6%	21,638	51,035	12,277	53,294	58,518	3,197,471	1,356,468	1,411,695
Louisiana	38.8%	39.8%	37.0%	3,419,249	2.6%	39,780	40,025	24,636	72,111	68,285	3,256,637	1,264,994	1,297,150
Maine	55.5%		53.5%	1,051,358	1.8%	0	0	0	0	21,362	1,032,820	572,766	580,538
Maryland	47.1%		42.2%	4,407,658	8.8%	22,255	96,360	13,220	77,045	77,074	3,944,006	1,857,880	
Massachusetts	48.0%	48.5%	43.9%	5,234,800	8.4%	11,316	0	0	11,316	77,830	4,783,819	2,297,039	2,319,963
Michigan	44.3%	44.8%	42.3%	7,633,499	3.9%	45,478	0	0	45,478	163,673	7,288,055	3,226,088	3,268,217
Minnesota	55.5%	55.9%	52.0%	4,054,688	4.4%	9,986	127,627	5,081	76,340	70,063	3,799,328	2,107,021	2,123,369
Mississippi	37.0%		35.8%	2,199,857	1.7%	21,482	22,267	2,922	34,077	45,082	2,129,092	788,549	
Missouri	43.8%		42.2%	4,602,691	2.2%	30,563	57,360	20,683	69,585	96,710	4,433,443	1,943,899	
Montana	47.8%	48.7%	47.1%	765,165	1.0%	3,605	0	0	3,605	22,898	793,666	360,341	367,096

Nebraska	38.4%	39.1%	35.9%	1,360,165	5.4%	4,474	19,606	846	14,700	27,311	1,271,875	487,988	497,248	
Nevada	42.6%	42.7%	36.2%	1,992,875	14.0%	12,482	13,337	3,908	21,105	45,656	1,692,499	721,404	723,515	
New Hampshire	45.2%	45.6%	43.7%	1,045,681	3.0%	2,731	0	0	2,731	25,558	1,011,125	456,598	461,423	
New Jersey	36.5%	37.9%	31.5%	6,731,010	12.2%	25,382	128,737	15,849	97,675	110,559	5,811,886	2,121,584	2,200,974	
New Mexico	43.1%	43.4%	38.9%	1,524,640	6.9%	6,519	20,883	3,724	18,823	31,444	1,400,217	602,827	607,700	
New York	34.9%	35.6%	30.5%	15,254,435	11.9%	58,687	0	52,225	84,800	263,787	13,355,984	4,658,586	4,756,679	
North Carolina	39.3%	39.9%	36.7%	7,249,678	5.4%	39,860	109,678	3,409	96,404	133,483	6,760,227	2,660,079	2,780,383	
North Dakota	48.1%	48.5%	46.9%	508,832	2.1%	1,486	0	0	1,486	11,179	496,664	238,812	240,876	
Ohio	44.6%	45.8%	43.4%	8,880,120	2.2%	51,606	0	0	51,606	174,703	8,637,282	3,852,453	3,956,028	
Oklahoma	39.0%		36.8%	2,810,420	4.1%	26,397	27,940	3,073	41,904	57,046	2,653,821	1,034,767		
Oregon	52.3%	53.5%	48.3%	3,006,767	7.0%	14,403	0	0	14,403	63,480	2,780,456	1,453,548	1,487,210	
Pennsylvania	41.7%		40.2%	9,908,379	2.9%	51,429	0	0	51,429	203,791	9,565,259	3,987,551		
Rhode Island	45.3%		41.2%	829,944	8.6%	3,674	0	0	3,674	13,827	755,179	342,290		
South Carolina	39.8%	40.4%	37.9%	3,550,482	3.6%	24,288	41,254	1,947	45,889	72,241	3,375,958	1,344,198	1,365,480	
South Dakota	52.8%	53.9%	51.9%	621,856	2.7%	3,434	0	2,720	4,794	20,144	600,029	317,083	323,410	
Tennessee	34.4%		32.9%	4,874,719	3.1%	26,965	58,109	10,578	61,309	127,930	4,659,865	1,801,349		
Texas	32.3%		27.1%	18,350,170	13.7%	171,249	427,080	102,921	436,250	549,216	15,407,666	4,979,870		
Utah	34.9%	35.4%	32.7%	1,967,864	6.0%	6,533	0	0	6,533	31,783	1,843,282	643,307	653,274	
Vermont	48.9%	49.3%	48.4%	499,582	1.2%	0	0	0	0	10,546	493,696	241,605	243,617	
Virginia	38.5%	38.9%	35.7%	6,140,615	6.2%	38,092	53,614	4,471	67,135	124,689	5,689,910	2,189,941	2,214,503	
Washington	53.1%	54.3%	48.2%	5,210,007	7.7%	18,233	113,134	11,768	80,684	138,296	4,728,332	2,511,094	2,565,389	
West Virginia	37.4%		36.8%	1,441,127	0.8%	6,367	8,283	2,005	11,511	33,788	1,418,691	529,948		
Wisconsin	51.7%		49.5%	4,389,033	2.9%	23,153	50,418	18,105	57,415	78,721	4,203,366	2,171,331		
Wyoming	46.4%	47.0%	44.5%	423,250	2.9%	2,075	5,438	727	5,158	13,832	405,861	188,463	190,822	

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Mr. HARPER. Thank you, Mr. Ritchie. I appreciate you being here and hearing your testimony.

Ms. Gill, we ask to hear from you now. Thank you very much. And again, you are now my idol. So go ahead.

STATEMENT OF SUSAN GILL

Ms. GILL. Well, it is a good start anyway.

Chairman Harper and Mr. Gonzalez, members of the committee—and a special hello to my Congressman, Richard Nugent—I want to thank you for the opportunity to participate in this hearing.

First, I would like to thank Congress for the Help America Vote Act. I have been in this job for more than 14 years now and I can tell you we were able to use the HAVA funds to provide equipment for people with disabilities, to enhance our voter education programs, and to provide additional poll worker training tools. All the grants were greatly appreciated.

A major concern at every level of government, whether it is local, State, or Federal, is the budget. Shrinking budgets can cause serious problems for elections. A March 22nd article in the Fresno Bee entitled, "Report: Blame Budget Cuts on November Election Snags," it reports on a November 2010 election and the problems that were caused by the slashed budget. The grand jury recommended that the country supervisors should "provide adequate funding to ensure the ability of the county clerk to maintain credible elections." The article continues on saying that the funding could get worse, and that the county officials have asked their department heads to reduce their budget another 14 percent.

The article also reported that the county records indicated that the funding for the elections office is down 40 percent from what it was 5 years ago. If you take the 40 percent and the 14, this Fresno election official is asked to conduct elections with 54 percent less funding than 5 years ago.

I am not singling out Fresno. The problems Fresno encountered will be played out in many other jurisdictions in the Nation. We are charged with conserving tax dollars. We must ask the public to understand that there will be reductions in conveniences and services, or there will have to be tax increases, which nobody wants.

The fear of every election professional in America is how to assure that we serve voters well when the funds to conduct elections have been significantly reduced. I cannot overstate our concern. Cuts have consequences that have to affect expectations and potentially affect performance.

Florida had a smooth 2010 election, I am happy to report. As you know, Florida has had perhaps more election changes in the last 10 years than any other State, and so we know something about adapting quickly. I will say that the issue that captured attention was the late reporting of results in one county. Our election for the Governor was very close, 1 percent, and the results were not available until the next day. This caused a lot of criticism because nobody wants to wait for election results. So we have to remember that the accuracy of the votes is more important than the timeli-

ness. Timeliness is very important. However, it can't outweigh accurate results.

On the plus side, voter confidence and voter satisfaction has greatly increased. Voters can now vote early, vote by mail, or go to their polling place. This means if they vote by mail, they don't have to go to their polling place. If they vote at an early vote site, they are never at the wrong precinct. We are looking at vote centers in Florida as a result of this, as they do in Minnesota and Indiana; we think that might be the answer.

Redistricting takes place in 2012, as we all know. That is going to put additional pressure on the election process. We need to know what districts to put candidates on the ballot, and you need to know what district you are running in, so it is going to be tight there.

In conclusion, we have made great progress since the 2000 election. The progress in conducting fair, honest and accurate elections does come at a price. My hope is that the reduction in funding for elections does not cause issues on the upcoming 2012 elections.

My fear is that the cutting of funds at the State and Federal level end up in the laps of local government. We cannot afford to have the voter confidence that we have gained over these years eroded. Citizens must have confidence in their election process. If voters stop believing in the fairness of elections, they cannot believe in the government that results from it.

I assure you that elections officials are dedicated to the integrity of the elections process and will work to preserve the process to the best of our abilities with the resources provided.

Thank you very much for the honor and the opportunity to address this committee.

[The statement of Ms. Gill follows:]

Committee on House Administration
Hearing on
Challenges and Opportunities in 2012 Elections
1310 Longworth House Office Building
Thursday, March 31, 2011
10:30 am

Statement of
The Honorable Susan A. Gill, CERA
Supervisor of Elections, Citrus County, Florida

Chairman Lungren, Ranking Member Brady, members of the committee and a special hello to my Congressman Rich Nugent of the Fifth Congressional District in the State of Florida, thank you for the opportunity to participate in this hearing on **"The 2010 Election: A Look Back At What Went Right and Wrong."** The Fifth Congressional district is home to more veterans than any other congressional district in the nation. We are proud of our veterans and we honor them. Our small Citrus County City of Inverness was named the most patriotic city in the United States by the 40&8 veterans organization. Every November 11th we have a wonderful Veterans Day Parade to honor our veterans.

First, I would like to thank Congress for the Help America Vote Act. We were able to use the grants to provide voting equipment for people with disabilities, enhance our voter education programs and provide additional tools for poll worker training. All the grants were greatly appreciated and we will certainly miss them.

A major concern at every level of government whether it is local, state or federal is the budget. This is extremely difficult for election officials as we enter the 2012 presidential election cycle.

Shrinking budgets can cause serious problems in the conduct of elections. A March 22nd article in the *Fresno Bee* entitled ***"Report: Blame budget cuts for Nov. 2 election snags"*** reports on the November 2010 election and problems caused by slashed budgets which in turn caused a reduction in services. For future elections the grand jury recommended that the county supervisors "should provide adequate funding to ensure the ability of the county clerk to maintain credible elections." The article continues saying the funding for elections could get worse citing that for the budget hearings in June, county officials have asked department heads to prepare a budget with a 14% cut for the upcoming fiscal year. The article also reported that the County records indicate that the funding for the elections office is down 40% from what it was five years ago. Add the 40% plus the 14% and the Fresno clerk is being asked to conduct a presidential election with 54% less funding than 5 years ago.

I am not singling out Fresno. California is a bellwether state and we look to California to see what is in store for the rest of us, both good and bad. The problems Fresno encountered will be played out in many other jurisdictions throughout the nation. In many

cases, we are at the end of the line in "doing more with less". We are charged with conserving tax dollars. We must ask the public to understand that there will be reductions in the conveniences and services provided by our government or there will have to be tax increases that nobody wants.

The Election Center has been warning state and local governments since the summer of 2010 that lack of funding is likely to affect elections all throughout America. And elections organizations at the state and national level have begun the process of thinking through how budget cuts are likely to affect voters in 2012. We have to be aware that we cannot deliver the same kinds of voter services with cuts of 20 percent or 50 percent of local election budgets and expect that things will operate like they would at full funding. Expectations of policy holders, funding authorities and stakeholders need to be realistic in the reality of state and local governments facing financial difficulties.

Florida election officials have experienced voting systems challenges where many counties utilized three different voting systems in the last decade. The aftermath of the 2000 election caused the Florida legislature to ban the further use of punch card election equipment. Several counties in Florida purchased touch screen equipment because of the flexibility for multi-language, as well as accommodating people with disabilities. In 2007 when former Governor Charlie Crist assumed office, one of his first acts was to encourage the legislature to ban the use of touch screen voting equipment in the State of Florida. While I am not here to debate the merits or deficiencies of touch screen voting equipment, I will tell you that it has been an extremely expensive proposition for the counties that first had punch cards, then went to touch screens and then optical scan voting equipment all in one decade. Counties are still paying the bill.

Florida had a smooth 2010 election cycle. I will say that the major issue in the 2010 Florida election, however, was late reporting of results. Candidates, the media, the public are all demanding immediate results and have no tolerance for having to wait. In 2010, Governor Scott edged out former Chief Financial Officer Alex Sink by 1%. The results were not certain until the next day. Palm Beach County did not have the necessary equipment enhancements to have the results uploaded as fast as the public, candidates and media demanded. This was highly criticized. The speed of reporting has become an important indicator of the success of elections. No one wants to wait. As an election professional, I have to say to you that once voters have completed voting, that "accuracy" of counting those votes has to be more important than speed. Timeliness is important but cannot outweigh reporting accurate results.

On the plus side, voter confidence and voter satisfaction with the process has greatly increased in Florida and the nation as a whole. As the following graphic shows, voter confidence is at the highest level ever recorded. Voters can now vote early up to 15 days prior to Election Day, they can vote by mail or vote on Election Day. In the Citrus County 2008 presidential election, 61% of the people who voted cast their ballot prior to Election Day. The voters love the convenience. As election officials, we like the process because it provides us a better opportunity to serve the voter. Voters mailing their ballot

means they do not have to go to a polling place or if they vote at an early vote site they are never in the wrong precinct. Simple.

For this reason, we are exploring the concept of Vote Centers in Florida. Congressman Rokita knows all about the Vote Center concept as does Secretary of State Scott Gessler. I am co-chair of a Task Force in Florida formed by our Florida Association of Supervisors of Elections to study the concept with the goal of convincing the Florida Legislature to allow vote centers. We are looking at two things; the convenience to voters and the cost savings after initial investment to the jurisdictions. We are using Indiana and Colorado as models.

We are in a different time now where our society is very mobile. The traditional polling place, which was staffed by poll workers from the neighborhood, is not the model that works today. Most voters want the flexibility to vote at a location and time that fits in to their schedule. We think that vote centers are the answer.

In Florida, photo identification has been a requirement since 1998. I have to admit that at the beginning election officials thought this was going to be a big problem. It turned out not to be a problem at all. Our law allows for a variety of photo identifications and also allows that a voter who does not have photo identification may complete a provisional ballot. The signature on the provisional ballot envelope is matched with the signature on file, if it matches, their vote counts.

Some states do not see a reason to require photo identification. To them, it seems unnecessary. Some states conduct mail ballot elections like Oregon. There are states that conduct open primary elections and others conduct closed primary elections. This fact does not make one state right and the other wrong. The individuality of the states must be preserved.

Redistricting takes place in 2012 and places additional challenges on election officials both financial and logistic. While redistricting takes place every 10 years, redistricting in a presidential election year takes place only once every 20 years. The redistricting timeline for Florida has the state legislature meeting for 60 days ending March 9, 2012. The redistricting plan then goes to the Attorney General where 15 days is allotted for approval before it is onto the Florida Supreme Court, where the court has 30 days before sending the plan along to the Department of Justice. The Justice Department has 60 days for approval of the plan. If each approval along the way takes the full time allotted, Florida will be right on top of the federal and state qualifying deadline. We sincerely hope that there are no delays. If the process is held up by lawsuits or other delays, we are in danger of not meeting the overseas ballot mailing deadline of July 13th. We would have to mail advance ballots to give the overseas voters an opportunity to vote and then follow up with a regular ballot after the final redistricting decisions are made. This historically is very confusing for the voter and expensive for the counties.

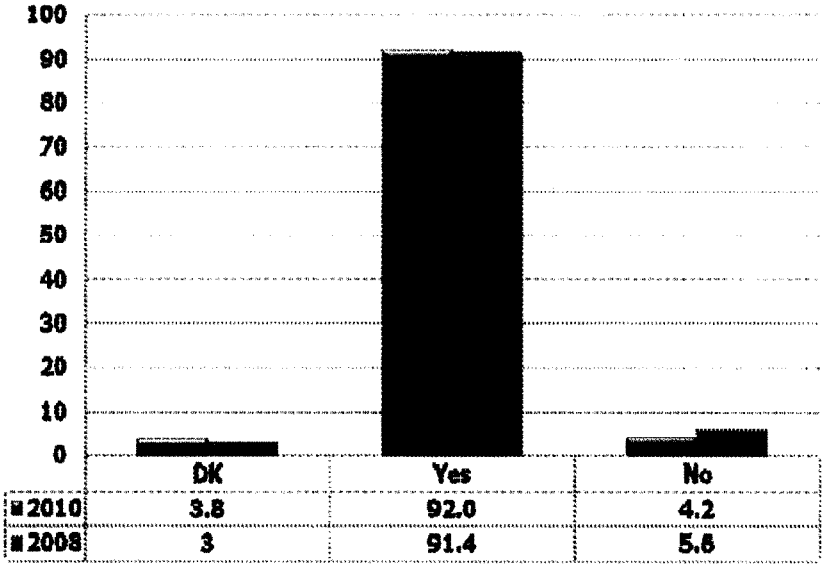
Uncertainty in the election world is not good. Conducting elections is all about planning. We need to know dates of elections and the districts candidates are running in to

complete the tasks of ballot layout, precinct changes, notification to voters, mailing ballots to overseas voters, poll worker training, equipment management and the long list of other election responsibilities. We need time to notify voters in a timely manner of the many changes a redistricting year and shrinking budgets will cause.

Elections have come a long way since the 2000 presidential election. Federal, state, and local officials have worked hard to correct election administration and election voting issues. Improvements will constantly be needed as we go forward. Our wonderful nation is made up of 50 states with varying personalities. It is like a family where no two children are exactly the same. What works in the State of Florida may not work well in another state. The states do not need to be micro-managed. The Help America Vote Act provided the continuity we needed on the national level but left the states to devise how best to serve their voters. HAVA was unique among Federal laws in that it actually engaged in a "trusted partner" relationship of letting state governments structure election processes that best served their voters. And, this is how it should be. We at the state and local levels know more about our voters and how best to accommodate their needs than Federal regulations which try to force uniformity.

In conclusion, we have made great progress since the 2000 election. The progress in conducting fair, honest and accurate elections comes at a price. My hope is that a reduction in funding for elections does not cause issues in the upcoming 2012 elections. My fear is the cutting of funds at the state and federal level end up in the laps of the local governments. We cannot afford to have the voter confidence gained over the years eroded. Citizens must have confidence in their election process. Elections are the backbone of democracy. I assure you that election officials are dedicated to the integrity of the election process and will work tirelessly to preserve the process to the best of our abilities with the resources provided. Thank you for the honor and opportunity to address this committee.

THINKING ONLY ABOUT THE ACT OF VOTING, NOT THE CANDIDATES OR THE PARTIES,DO YOU HAVE CONFIDENCE THAT YOUR VOTE WAS COUNTED FAIRLY AND ACCURATELY?



Source: The Election Center, 12543 Westella, Suite 100, Houston, TX 77077: a nonpartisan, nonprofit organization working to improve the administration of democracy in America. © 2011 – The Election Center, Houston, TX.

This was from a national survey by The Election Center, Houston, TX of 1400 valid voters (conducted after the election each year) in 2010 and 1058 voters in 2008 (nationwide in both instances) in a scientifically random sample of voters. Voter confidence is at an all-time high.

Mr. HARPER. Thank you very much, Ms. Gill.

And having been an observer for 2 weeks during the 2000 election recount, I can assure you that you have made eligibly great strides in the State of Florida.

We will now hear from Mr. Carbullido and look forward to your remarks.

STATEMENT OF KEN CARBULLIDO

Mr. CARBULLIDO. Thank you, Chairman Harper, Mr. Gonzalez, and members of the committee for inviting me here to testify on behalf of the ES&S.

My comments today are centered both on things that went right as well as things that could have been improved. Specifically, I am here to address the recent actions taken by the EAC to open a formal investigation of ES&S's Unity system, version 3.2.0.0. I have a deep understanding of the issues, solutions, processes, communications, and the involvement of the EAC. I have an observation to make as well as some recommendations that I would like the committee to consider.

What were the issues? The initial issue, first identified by Cuyahoga County, Ohio, during preelection testing, was a freeze/shutdown in a limited and random instance on the DS200 scanner. This freeze/shutdown occurred in extremely low instances. It is critical to note that this situation was recoverable by merely restarting the unit. No votes were lost; voting was not interrupted. ES&S takes all system issues very seriously. So, while the interruption itself was not an accuracy issue, ES&S recognizes that it could potentially be concerning to voters that might witness such an event, and therefore, this became a top priority for ES&S to correct this issue.

Because the occurrence of the issue was infrequent, random, and not easily and always reproducible, because there were two separate low level issues at the root cause, one which involved COTS software, it took a significant effort to identify the root causes and the software corrections. And it took quite an effort to ensure and validate that the corrections and the updates were completely resolving the freeze/shutdown issue.

Prior to completion of the testing of these updated software at Wyle Laboratories, there were a series of additional events that transpired. Additional software issues were identified and addressed. We were forced to transfer the testing of this new improved software version to a new voting system test laboratory. A fix was introduced to correct a previously reported issue that involved the processing of skewed ballots. Another issue was the occurrence of a ballot drop issue that occurred in the laboratory when the ballot dropped into the box without being counted.

I am pleased to report that all of these issues have been resolved. The EAC has now certified Unity 3.2.1.0, which contains the updated version of the DS200 software that corrects all of the abovenoted issues as well as many other enhancements. This updated version will be used to amend the 3.2.0.0 release, which will provide the required cure outlined within the EAC's formal policies and procedures.

Relatively speaking, each software solution was found rather quickly. Getting these corrections and improvements into the field in a timely manner is where ES&S believes the process could be improved. For example, the skewed ballot issue was reported to ES&S on October 8, 2009. The software was corrected by October 15, 2009. The first approval of this correction was granted by the EAC on July 22, 2010. It took 7 days to correct the issues and 9 months to obtain an EAC approval.

The freeze/shutdown initially reported on April 6, 2010, was corrected by ES&S on June 29, 2010. Just earlier this week, the EAC certified the corrected software. ES&S devoted 3 months of intensive investigation to isolate and correct the problem, and 9 long additional months transpired while the EAC, the VSTL and the EAC technical reviewers reviewed our analysis and corrections, developed a test plan, and finally validated the corrections to their approval. The ballot drop issue was discovered on November 11, 2010. ES&S corrected it on December 23. Final approval was just received this week.

As you can tell, our primary concern is the timing of advancing these often-needed corrections into the field in a way that is beneficial and cost-effective, not only to the vendors but, more importantly, to the election officials and the voters. My second concern is with the action taken by the EAC to open a formal investigation of these issues.

At the time of the investigation, all the facts were known, all the documentation was given to the EAC, and testing was in final stages. We are not opposing an investigation where one is warranted, but in this case, we exhibited total compliance in working with the EAC to ensure that these issues were corrected and that the EAC was in full possession of all the documentation and technical analysis.

It is our belief that the EAC can provide a reliable, standardized, efficient and effective service for all States and customers that they can rely on.

Since this is a hearing of what went right in 2010, I would be remiss if I did not applaud our customers, including Jane Platten of Cuyahoga County and all of our customers across the Nation, who conducted over 8,500 elections in 2010 with polls opening on time, voters voting in confidence, and results reported in a timely manner in a system maintained in a secure environment.

We stand committed to working with this esteemed body and the EAC to continue to find ways to improve the voting system test program. It is not broken. It is on the right track, but it does need some work and adjustments to keep it functioning at a level that is beneficial and timely for all.

Once again, thank you for your time and the opportunity to speak here today.

[The statement of Mr. Carbullido follows:]

Testimony on "A Look Back at 2010 Election Year"
Before the Committee on House Administration
Ken Carbullido, Senior Vice President of Systems at Election Systems and Software
March 31, 2011

Thank you Chairman Lungren, Ranking Member Brady, and members of the Committee on House Administration for inviting me to testify on behalf of Election Systems & Software (ES&S) at today's Hearing. My name is Ken Carbullido and I serve as the Senior Vice President of Systems at ES&S. My responsibilities include oversight of all hardware and software design, development, manufacturing, testing, and certification of all ES&S voting systems and software.

Your topic today is "**The 2010 Election: A Look Back At What Went Right and Wrong.**" My comments today are centered on both things that went right as well as things that could have been improved. Specifically, I am here to address the recent actions taken by the EAC to open a formal investigation of ES&S system version Unity 3.2.0.0 which obtained EAC federal certification approval on July 7, 2009. My goal is to address this from a voter confidence and system integrity point of view. I have a deep understanding of the issues, root causes, and solutions. I also have knowledge and understanding of the processes and communications surrounding the first observations of these issues in Cuyahoga County, Ohio, the ES&S diagnostic and resolution efforts, and the involvement of the EAC. Because of such understandings, I also have some additional observations and recommendations that I would like to share that I hope this Committee will consider in its capacity as a governing authority.

What were the issues? The initial issue which was first identified by Cuyahoga County Ohio, during pre-election testing, was the potential for a freeze/shutdown to occur in limited and random instances on the DS200 optical precinct scanner. This freeze/shutdown condition was documented to occur in extremely low instances of only approximately once per thousands of ballots cast. When an interruption did occur, it is critical to note that this situation was recoverable by merely re-starting the unit, much like you would a laptop that may lock up while in use. Voting was never interrupted and votes were not lost. ES&S takes very seriously all system issues, including this operational interruption of service and while the interruption itself is not an accuracy issue, ES&S recognized that it could be potentially concerning to voters that might witness or encounter such an event. For this reason locating and correcting the issue became a top priority for ES&S. In addition to correcting this issue ES&S also improved the logging functionality of the software to ensure that all actions (including the freeze/shutdown) were properly documented.

Two low level software issues were the root cause of the freeze/shutdown issue. Because the occurrence was infrequent, random, and not always reproducible, and because there were two separate low level software issues, and especially since one of the software issues was born in complex commercial off the shelf software (COTS), it took a significant effort to test and identity the root causes and to confirm that the software corrections and COTS updates completely resolved the freeze/shutdown issues.

Prior to the completion of the final test report at Wyle laboratories there were a series of additional events which transpired. Additional software issues were identified and addressed during the lengthy test campaign. We also were forced to transfer our testing of this improved version of software to a new Voting System Test Laboratory (VSTL) when our original laboratory dropped out of the federal testing program. A fix was introduced to correct a previously reported issue when processing ballots that may have either been printed out of specification or inserted into the DS200 scanner in an overly skewed manner. Issues related to the system event log, such as logging of time changes, operator password entry errors, or unintentional system shutdowns were identified. Another issue was an occurrence of a ballot drop issue when a ballot dropped into the box without the counter being incremented. This last issue was never identified or reported in a live election but rather exhibited itself in a final round of lab testing.

I am pleased to report that all of the above issues have been resolved. The EAC has provided an initial certification approval decision for Unity 3.2.1.0, which contains an updated version of the DS200 software with improvements that correct all of the above noted issues as well as including a number of other enhancements. This updated DS200 software version will be used to amend the Unity 3.2.0.0 release, which will provide the required "cure", outlined within the EAC's formal investigation policy and procedures.

Relatively speaking, each software solution was found and created rather quickly. Getting these corrections and improvements approved and into the field in a timely manner is where ES&S believes that the process could be improved.

The skewed ballot issue was initially reported to ES&S engineers on October 8th, 2009. The software was corrected by October 15th, 2009. The first approval of this correction was granted by the EAC on July 22, 2010. It took seven days to correct the problem and nine months to obtain an EAC approval.

The freeze/shutdown issue was initially reported to ES&S engineers on April 6, 2010, and the software was confirmed corrected by ES&S on June 29, 2010. Last week, on March 22, 2011 the EAC provided an initial decision on approval to grant certification of the corrected software. ES&S devoted three months of intensive review and diagnostic testing to isolate and correct the

software. Once that critical part of the process was complete nine long additional months transpired while the EAC, the VSTL's and the EAC technical reviewers reviewed ES&S' analysis and corrections, developed a test plan, and validated the corrections.

The ballot drop issue was discovered by the VSTL, on November 11, 2010. The software was corrected by December 23, 2010. Approval for this correction was received from the EAC on March 22, 2011.

While much of the focus has been on the issues which surfaced, the test campaign and resulting investigation, it is imperative to take note of the fact that while awaiting the final completion of the testing and approval of these corrections that we worked diligently with the EAC and their staff to ensure that all of our affected customers were notified of the issue, and prepared to run their elections. ES&S posted technical bulletins for our customers on the ES&S customer portal. ES&S also provided extra support and equipment during the elections to help customers using the DS200s. As the EAC noted, it is not likely that any of the reported issues had any impact on past or present elections.

ES&S is fully committed to the Federal Voting System Test Program. Our mission at ES&S is to maintain voter confidence while enhancing the voter experience and we see the Federal Voting System Test Program as a vital part of that commitment. Our goal is to provide quality voting systems that met the highest level of security, accuracy and reliability. ES&S has always been and will continue to be supportive and committed to upholding the highest level of voting systems standards and the certification process. In fact, we have been at the forefront of the standards development and certification process. We were the first major manufacturer to achieve EAC certification on our products and have more EAC certified products deployed across the United States than any other manufacturer.

One of my primary concerns is the timing of advancing these often much needed corrections and enhancements to the field in a way that is beneficial and cost effective to not only the vendor but more importantly the local election official and the voters. My second concern is with the action taken by the EAC to open a formal investigation into these identified issues. At the time the formal investigation was instigated all of the research, development, root cause analysis and testing was in its final stages. ES&S is not opposed to an investigation when one is warranted but in this case we had exhibited total compliance in working with the EAC to ensure that these issues were corrected and the EAC was in full possession of all of the documentation and technical analysis of this fact. While we may respectfully disagree with the EAC on the length of time that transpired in moving these corrections through the process and while we may disagree with their decision to seek a formal investigation, we cannot overemphasize our willingness to be a part of this program. It is our belief that the EAC can provide a reliable, standardized, efficient and effective service that all States and customers can rely on.

Obviously, rather than having 50 different state testing processes, one single consistent, but efficient, method is much preferred.

We also commend one of our largest customers, Cuyahoga County, Ohio for their role in assisting us in with these issues. ES&S is very proud of the excellent elections that Cuyahoga County has enjoyed since deploying ES&S systems. Our M650 central scanners and both our M100 and DS200 precinct scanners have performed very well. We hold Jane Platten, Director of Elections at Cuyahoga County, and her staff in the highest regard. Cuyahoga County has a tremendous challenge, with the size and volume of their jurisdiction, and they run a very disciplined organization and election administration process.

The same can be said of all of our customers, both those who utilize this particular version of software and those that use other versions. Our goal and the goal of our customers, the election officials, is to ensure we maintain voter confidence. Since this is a hearing on what went right in 2010 I would be remiss if I did not applaud our customers who conducted over 8,500 elections in 2010 with polls opening on time, voters voting in confidence, results reported in a timely manner and system being maintained in a secure environment.

We stand committed to working with this esteemed body and the EAC to continue to find ways to improve the voting system testing program. It is not broken and it is on the right track but it does need some work and adjustments to keep it functioning at a level that is beneficial and timely for all. Once again, thank you for your time and the opportunity to speak here today.

Mr. HARPER. Thank you, Mr. Carbullido. I appreciate you being here today.

I now ask unanimous consent to allow Mr. Lungren, the chairman of the full committee, to participate in this subcommittee hearing.

Hearing no objection, Mr. Lungren, we welcome you here.

At this time, we will hear from Mr. Lawrence Norden, and look forward to your remarks.

STATEMENT OF LAWRENCE NORDEN

Mr. NORDEN. Thank you to the committee for giving the Brennan Center the opportunity to share with you the results of our studies of the Nation's election infrastructure in the 2010 elections. The Brennan Center is a nonpartisan public policy and law institute based at NYU School of Law, and we work on issues of democracy and justice.

What went right and wrong in 2010? As we heard from Ms. Gill, given the pace of change that we have seen in election administration over the last several years and given the shrunken budgets of election officials around the country, it is fair to say that things went remarkably well in 2010.

Unfortunately, in some important ways, national election infrastructure has not kept up with modern society, and this has continued to cause problems in our elections—it did in 2010—and I want to point to the continued critical need for two specific changes.

One is a modernization of our country's registration system, including the adoption of automated and online registration for consenting eligible citizens. And the second is the creation of a national database that identifies voting system malfunction and flaws to prevent their recurrence.

First I want to talk about voter registration. The 2010 election showed, again, that we have a 19th century system that needs to be upgraded. It overwhelms election officials with burdensome and needless paperwork, and it prevents many American citizens from exercising their right to vote. I am sure many on the committee are aware of the Harvard/MIT study that estimated in 2008 as many as 2 to 3 million Americans were not able to vote because of problems with voter registration. And we saw similar problems again in 2010.

The good news is, as a result of the Help America Vote Act of 2002, every State has or soon will have a statewide voter registration database. And many, as Secretary Ritchie mentioned they are doing in Minnesota, have been leveraging these databases to modernize their antiquated systems.

Specifically, I want to talk about four things that States have been doing. One is that they have automated the registration process at voter registration agencies for consenting eligible citizens. Registration information is transmitted electronically and securely to election authorities, and this gets rid of the paperwork and the potential for clerical errors in that process.

Several States have made registration portable. If I go to a government agency and I update that information, that information will be updated for registration purposes, unless I say that it should not be. Eleven States have created online interface for voter

registration, meaning citizens can register online; they can make sure that their information is accurate; and they can find the right polling locations. And finally, some States are allowing for election day corrections, creating a fail-safe to ensure that errors or omissions on the rolls don't keep people from voting.

The result is increased registration rates, more accurate and secure rolls, substantially less burden for election officials, less data entry, more managing of elections, and substantial savings for States.

At the Federal level, Representative Lofgren last year introduced a bill that would allow registration through the Internet, and we hope that this committee will consider opportunities to build on that bill.

Something I want to talk about briefly is voting machines. We have made much progress with voting machines. Unfortunately, we still see the unnecessary recurrence of problems. The same failures occur in one jurisdiction with the same machines in another jurisdiction at a later election. And this has, unfortunately, resulted in disenfranchisement.

Unlike most products that we purchase and use in the United States—automobiles, airplanes, even toasters—for the vast majority of systems in use today manufacturers are not required to report malfunctions to any Federal agency, and there is no Federal agency that either investigates such alleged failures or alerts election officials and the general public to possible problems. I am running out of time, so I won't talk about some of the progress that the EAC has made in this area, but I do think that it is worth coming back to.

I just want to wrap up by saying that, when it comes to voting machines and the importance of voting systems to our democracy, the Brennan Center has concluded that we do need a national searchable database of voting system problems to ensure that voting system defects are caught early, disclosed immediately, and corrected comprehensively.

[The statement of Mr. Norden follows:]

BRENNAN
CENTER
FOR JUSTICE

United States House of Representatives
Committee on House Administration

Statement of
Lawrence D. Norden
Deputy Director, Democracy Program
Brennan Center for Justice at NYU School of Law
March 31, 2011

"The 2010 Election: A Look Back At What Went Right and Wrong"

The Brennan Center for Justice thanks the Committee on House Administration for holding this hearing. We appreciate the opportunity to share with you the results of our extensive studies of the nation's election infrastructure, and to provide an overview of the 2010 Elections.

The Brennan Center for Justice is a nonpartisan public policy and law institute that focuses on issues of democracy and justice. We work to ensure accurate and fair voting and voter registration, and to promote policies that maximize participation of eligible citizens in elections. We have done extensive work on the subjects of voter registration, the maintenance of voter registration lists, and ensuring the accessibility, security and accuracy of voting systems. This work has included conducting studies, publishing reports, providing assistance to federal and state administrative and legislative bodies with responsibility over elections, and, when necessary, litigating to compel states to comply with their obligations under federal law and the Constitution.

WHAT WENT RIGHT AND WRONG IN THE 2010 ELECTIONS

The way we conduct national elections in this country has changed radically in the last few years: new statewide registration databases and voting machines, early voting and expansion of vote by mail programs represent some of the biggest changes in election administration in decades. The Brennan Center and other invited guests have been asked by this committee "what went right and wrong" in 2010? Given the pace of change in the last few years, the answer to this question must be that a lot went remarkably well. This is particularly true if one considers how drastically state and local election administration budgets have been cut across the nation. It is because of the hard work and dedication of state and local election officials and their staffs that the vast majority of Americans who

chose to vote in 2010[1] were able to do so, and regardless of the method by which they voted, were confident that their votes were accurately counted.[2]

Unfortunately, in some important ways, our national election infrastructure has not kept pace with modern society. And that failure to adapt has been the cause of some of the greatest Election Day problems. In particular, the 2010 elections showed the continuing and critical need for (1) modernization of our country's voter registration system, including the adoption of automated and online registration systems for consenting eligible citizens, and (2) the creation of a national database, accessible by election officials and others, that identifies voting system malfunctions that are reported by voting system vendors or election officials.

While we have made important progress in both of these areas in the last two years, much remains to be done.

A. Modernizing the Nation's Antiquated Registration System

The 2010 election demonstrated, yet again, that our voter registration system urgently needs an upgrade. Developed in the early 19th century and still based largely on paper, the current system in most of the country is costly, inefficient and unreliable. The system overwhelms election officials with burdensome and needless paperwork, and prevents many American citizens from exercising their right to vote. This outdated system is the single greatest cause of election problems for voters and election officials alike.

The good news is that, as a result of the Help America Vote Act of 2002, every state now has (or soon will have) a statewide voter registration database that can be leveraged to modernize our antiquated registration system. Building on these lists, several states have been working to automate the registration process, and provide adequate safeguards to correct errors or omissions on the voter rolls through online tools. Ultimately, these improvements will save state and local governments significant money, ease burdens on election officials, make our voting system less susceptible to fraud, and greatly increase the ability of eligible citizens to register and vote.

1. Voter Registration Problems in 2010

At least three data points from the 2010 election point to the continuing need to modernize the country's voter registration system:

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[1] The estimated 2010 voter turnout among the voting eligible population was only 40.9%. MICHAEL P. MCDONALD, UNITED STATES ELECTION PROJECT, 2010 GENERAL ELECTION TURNOUT RATES (2010), http://elections.gmu.edu/Turnout_2010G.html.

[2] *Voters Show Confidence in Tuesday's Election Process*, RASMUSSEN REPORTS, Nov. 8, 2010, http://www.rasmussenreports.com/public_content/politics/general_politics/november_2010/voters_show_confidence_in_tuesday_s_election_process.

Election Protection Data Reveals Voter Registration Still a Major Problem

The 2010 Election revealed that voters still face many of the problems they have experienced in previous years. In 2008, the biggest obstacle to the ballot box was problems with the voter registration system. Voter registration was the number one most reported problem to Election Protection, the nation's largest non-partisan voter protection effort.[3] In 2010, Election Protection received over 21,000 calls to its voter hotline, of which registration problems were 24% of the call volume, making it the second most reported problem.[4] It is significant that in a midterm election with significantly lower turnout and fewer registrants than in 2008, issues with our nation's outdated registration system would persist at such a high rate.

Election Officials Report Persisting Issues with Outdated Registration System

Election officials, too, voiced commonly heard frustrations. In the coming months, the Brennan Center will release an analysis of post-Election reports from election officials from across the United States. Our preliminary research reveals that officials experienced the same yearly headaches with the current paper-based voter registration system, from inaccurate registrations to a last minute flood of registration forms.

Voter Registration Rates Were Lower in 2010

The 2010 election also saw dramatically lower voter registration rates as compared to the last midterm election. Almost every jurisdiction with available data showed dramatic drops in new voter registrations.[5]

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[3] ELECTION PROTECTION, ELECTION PROTECTION 2008: HELPING VOTERS TODAY, MODERNIZING THE SYSTEM FOR TOMORROW (2008), *available at* http://www.866ourvote.org/tools/documents/files/0077.pdf. Polling place problems were the number one reported problem.

[4] ELECTION PROTECTION, ELECTION PROTECTION 2010 REPORT, (forthcoming 2011).

[5] Florida: From January through August 2006, 370,190 Florida citizens registered to vote, compared to 267,933 in the same period in 2010, a 27.6% decline. Source: Florida Division of Elections, *Voter Registration Statistics*, http://election.dos.state.fl.us/NVRA/reports.shtml (last visited Feb. 2011); Illinois: From November 2004 through November 2006, 823,988 Illinois citizens registered to vote, compared to 687,462 from November 2008 through November 2010, a 16.6% decline. Source: Email from Illinois State Board of Elections Official (Jan. 24, 2010) (on file at the Brennan Center); Indiana: From January through October 19, 2006, 175,235 Indiana citizens registered to vote, compared to 113,893 for the same period in 2010, a 35% decline. Source: Email from Indiana Elections Division Official (Oct. 19, 2010) (on file with Brennan Center); Louisiana: In 2006, 132,573 Louisiana citizens registered to vote, compared to only 126,310 in 2010, a 4.7% decrease. Source: Email from Office of Louisiana Secretary of State (Jan. 21, 2010) (on file at the Brennan Center); Maryland: From January through September 2006, 155,114 Maryland citizens registered to vote, compared to 121,814 in the same period this year, for a decline of 21.5%. Source: Maryland State Board of Elections, *Voter Registration Statistics*, http://www.elections.state.md.us/voter_registration/statistics.html (last visited Feb. 2011); North Carolina: In 2006, 311,127 North Carolina citizens registered to vote, compared to 222,696 through the end of

2. The Solution: Voter Registration Modernization

The current, paper-based voter registration system creates a range of problems for election officials and voters alike. Each election year, millions of Americans must submit new or updated voter registration forms, generating a mountain of paperwork that must be processed by an army of election clerks. A substantial portion of voters submit their paperwork at the last minute before an election, and so election offices are typically inundated with paper to process at the eleventh hour of the election cycle — the very time their attention should be focused on ensuring that Election Day operations run smoothly. Such a labor-intensive system in such a compressed time frame is costly and inefficient. It also multiplies the possibilities for error. Inaccuracies on the voter rolls result from difficulties deciphering voter handwriting, typographical and data entry errors, voters' failure to update their registration information, lost or incomplete registrations, and inability to process registrations on time, among other things. Inaccurate voter rolls create a range of election administration and voter list maintenance headaches, including increased numbers of provisional ballots to process and confusion at the polls.

Fortunately, modernizing the voter registration system offers incredible opportunities to make voting registration easier, faster, and more reliable for voters, all while saving time, money, and resources for election officials and making the voting system more secure. The Brennan Center applauds Representative Zoe Lofgren's efforts to modernize the voter registration system through the Internet with H.R. 1719, introduced in the last Congress, and hope the Committee will consider opportunities to build upon her online registration bill.

Experts, election officials, and policymakers across the country are recognizing the need to modernize our outdated, paper-based voter registration systems. Those

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August this year, a 28.4% decline. Source: Email from North Carolina State Board of Elections Official (Oct. 19, 2010) (on file with Brennan Center); Ohio: In 2006, 530,873 Ohio citizens registered to vote, compared to only 457,171 in 2010, a 13.9% decline. Source: Email from Office of Ohio Secretary of State Election (Jan. 20, 2010) (on file with the Brennan Center); Tennessee: From January 2006 through June 2006, 111,417 Tennessee citizens registered, compared to 92,611 registrants during the same period in 2010, a 16.9% decline. Source: Tennessee Department of State Elections Division, *Election Statistics*, http://www.tn.gov/sos/election/data/index.htm (last visited Feb. 2011); Utah: In 2006, 70,466 Utah citizens registered to vote, compared to only 55,491 registrations in 2010, a 21.3% decline. Source: Email from Office of Utah Lieutenant Governor (Jan. 25, 2010) (on file at the Brennan Center); Wisconsin: From January through October 19, 2006, 181,977 Wisconsin citizens registered to vote, compared to 103,258 during the same period for 2010, a 43.3% decline. Source: Telephone interview with Wisconsin Government Accountability Board Official (Oct. 18, 2010) (on file with Brennan Center); Clark County, Nevada showed a smaller drop than other jurisdictions, dropping from 89,401 registrations from January through October 2006 to 86,863 for the same period in 2010, a 2.8% decline. Source: Email from Clark County, Nevada Election Official (Oct. 11, 2010) (on file with Brennan Center). The county might have experienced greater drops had the state not introduced online registration, known to boost registration rates, in September 2010. Before that, in August 2010, the county's registration figures were lagging more than 5% behind the 2006 figures.

systems are overly costly, inefficient, error-prone, and can unnecessarily exclude eligible voters at the polls. Fortunately, new technologies point the way to an improved Twenty-First Century voter registration system. As more and more states are discovering, a modern voter registration system boosts registration rates, increases the accuracy of the voter rolls, and reduces the opportunity for fraud, while saving millions of dollars a year.

The key components of a fully modernized voter registration system are:

- *Automated Registration.* Under an automated registration system, states automatically register eligible, consenting citizens, including newly eligible citizens, when they interact with other government agencies. Election officials retain their traditional authority to determine voter eligibility.

- *Permanent or Portable Registration.* Under permanent registration, once a voter is on a state's voter rolls, she will remain registered and able to vote at the polling place associated with her address so long as she continues to reside in that state. Permanent registration can be accomplished by automatic registration record updates and procedures allowing voters to update their records before and on Election Day.

- *Election Day Correction.* Under an Election Day correction process, citizens can correct errors and omissions on the voter rolls before and on Election Day.

- *Online Registration.* Online registration provides another critical safeguard to ensure accurate voter rolls.

This reform leads to many benefits. A Brennan Center report, *Voter Registration in a Digital Age*, provides detailed information about the steps states across the country have taken toward a more modern voter registration system. [6] The report finds three main benefits of modernization:

- *Increased Registration Rates.* Registration rates at DMVs doubled in Washington and Kansas, increased even more in Rhode Island, and increased seven-fold in South Dakota after the states automated the voter registration system at DMVs. After Arizona introduced online and automated registration, registration rates for 18-24 year-old citizens rose from 28 to 53 percent.

- *More Accurate and Secure Rolls.* A 2009 survey of incomplete and incorrect registrations in Maricopa County, Arizona found that electronic voter registrations are as much as five times less error-prone than their paper-based counterparts.

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[6] CHRISTOPHER PONOROFF, BRENNAN CTR. FOR JUST., VOTER REGISTRATION IN A DIGITAL AGE (Wendy Weiser, ed.) (2010), *available at* http://www.brennancenter.org/content/resource/voter_registration_in_a_digital_age/.

- *Substantial Savings for States.* Upgrades to the voter registration system are surprisingly inexpensive to implement, ranging from no additional cost to several hundred thousand dollars. This is immediately offset by enormous savings. It cost Arizona less than $130,000 and Washington just $279,000 to implement both online voter registration and automated voter registration at DMVs. Online and automated DMV registrations saved Maricopa County, Arizona over $450,000 in 2008. The county spends 33¢ to manually process an electronic application, and an average of 3¢ using a partially automated review process, compared to 83¢ for a paper registration form. Delaware's paperless voter registration at DMVs saves election officials more than $200,000 annually on personnel costs, above the savings they reaped by partially automating the process in the mid-1990s. Officials anticipate further savings. Washington saved over $120,000 in 2008 in Secretary of State's office alone, and far more in each of its counties.

3. Progress In The States

States that have modernized their registration systems have saved hundreds of thousands of dollars on election administration, with savings likely to run into the millions after just a few years of implementation. Because of this, there is incredible momentum in the states towards modernization:[7]

- *Automated Registration.* At least seventeen states—Arizona, Arkansas, California, Delaware, Florida, Georgia, Kansas, Kentucky, Michigan, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas and Washington—have fully or substantially automated the voter registration process at DMVs.

- *Permanent or Portable Registration.* Eight states—Colorado, Delaware, Florida, Maryland, Ohio, Oregon, South Dakota, and Washington—have systems of permanent registration that allow registered voters who move to cast valid ballots even if they do not update their registrations before Election Day.

- *Election Day Correction.* Eights states—Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming—offer Election Day registration, allowing eligible citizens to register or update their records on Election Day. A number of other states offer same day registration in some circumstances or allow voters to correct registration errors on Election Day.

- *Online Registration.* Eleven states—Arizona, California, Colorado, Delaware, Indiana, Kansas, Louisiana, Nevada, Oregon, Utah, and Washington—currently

[7] BRENNAN CTR. FOR JUST. *Voter Registration Modernization in the States*, http://www.brennancenter.org/content/pages/voter_registration_modernization_states (last visited Mar. 28, 2011).

or will soon offer online voter registration. North Carolina is considering implementing online registration.

Current voter registration modernization bills are pending in Nevada and Massachusetts,[8] and Maryland has recently stated it will automate at motor vehicle agencies.[9] Beyond automation at motor vehicle agencies, Delaware is set to automate at public service agencies. Georgia, too, has taken steps to do the same. We believe this Committee should take notice of these successes in the states and work to bring the benefits of modernization across the country.

B. Creating A National Database To Reduce Voting System Malfunctions

Much of the news relating to the use of voting technology in the United States is surprisingly positive: nearly 10 years after Congress passed the Help America Vote Act,[10] states and counties have successfully replaced outdated and often unreliable systems that have dramatically reduced the kinds of errors we saw in earlier elections,[11] and many disabled voters have been able to vote privately and independently for the first time in their lives. Moreover, as election officials, poll workers and voters have become familiar with these systems, we are avoiding many of the problems that came with the initial transition to new technology: localities have developed better logic and accuracy testing regimes, so that they have been able to catch system problems before Election Day;[12] more states require redundancies like independent voter verified paper records,[13] which has made it easier for them to institute post-election audit[14] and reconciliation

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[8] Nevada AB 108, 76th Reg. Sess. (2011), *available at* http://www.leg.state.nv.us/Session/76th2011/Reports/history.cfm?ID=246; Massachusetts S 306, 187th Gen. Ct. (2011), *available at* http://www.malegislature.gov/Bills/187/Senate/S00306.

[9] Annie Linskey, "MVA to overhaul voter registration process," *The Baltimore Sun,* Mar. 20, 2011, *available at* http://articles.baltimoresun.com/2011-03-20/news/bs-md-motor-voter-20110320_1_voter-registration-mva-office-voter-rolls.

[10] Pub. Law 107-252.

[11] *See* Michael Traugott, et. al., *The Impact of Voting Systems on Residual Votes, Incomplete Ballots, and Other Measures of Voting Behavior* (conference paper presented at the Midwest Political Science Association, Chicago, IL, Apr. 7-10, 2005), Charles Stewart III, *Residual Vote in the 2004 Election* (Caltech/MIT Voting Technology Project, VTP Working Paper No. 2.3, 2005).

[12] *See* Joan Mazzolini, *10 percent of Cuyahoga County's voting machines fail pre-election tests,* THE PLAIN DEALER, Apr. 14, 2010, *available at* http://blog.cleveland.com/metro/2010/04/some_cuyahoga_countys_voting_m.html.

[13] In 2004, only 10 states provided a voter-verifiable paper record (VVPR) for every vote cast (ROBERT KIBRIK, VOTER-VERIFIED PAPER RECORD LEGISLATION, VERIFIEDVOTING.ORG, June 18, 2009, http://www.verifiedvoting.org/article.php?list=type&type=13); as of 2010, 40 states have moved towards requiring VVPR. However 7 states did not fully implement their VVPR requirements until some time after the 2010 election (VERIFIEDVOTING.ORG, AMERICA'S VOTING SYSTEMS IN 2010, (2010) http://www.verifiedvotingfoundation.org/downloads/VV_BackgrounderNov2010.pdf).

[14] Prior to 2005, only five states had enacted legislation with provisions requiring manual audit requirements. As of 2010, 25 states and the District of Columbia have enacted legislation with provisions requiring manual audit requirements (VerifiedVoting.org, Manual Audit Requirements (2010), http://www.verifiedvoting.org/downloads/State%20Manual%20Audit%20Provisions-05-24-10.pdf.).

regimes, and to catch failures that might otherwise have resulted in lost votes,[15] and; as election officials have become more comfortable with their new systems, they have had more time to focus on critical issues like system usability, utilizing the EAC's guidelines for ballot design,[16] and working with organizations like the Brennan Center, Design for Democracy, and the Usability Professionals Association to create ballots that are as user-friendly as possible, within the constraints of state law and the limitations imposed by current voting technology.[17]

Still, as in past elections, the 2010 election saw some serious voting system related problems.[18] That should not be surprising. The voting systems used in the United States today are complicated machines; each runs on tens of thousands of lines of software code. As with automobiles and airplanes, automatic garage door openers and lawnmowers, occasional malfunctions are inevitable – even after rigorous product testing.

When it comes to system failures, however, voting machines *are different* from automobiles and airplanes, and other products, in at least one important respect: for the vast majority of voting systems in use today, (1) manufacturers are not required to report malfunctions to any government agency, and (2) there is no agency that either investigates such alleged failures or alerts election officials and the general public to possible problems (let alone requires voting system manufacturers to fix such problems).

1. Recurring Voting System Problems

The failure to require manufacturer reporting of problems, or to require independent investigation and notification of such failures has had unsurprising consequences. As documented in the Brennan Center in *Voting System Failures: A Database Solution*, a study issued in September 2010, too often in the past this has meant that voting systems fail in a particular county in one election, and then again later under

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[15] For examples of a lag in vendor acknowledgement of voting system problems, see the case studies in LAWRENCE NORDEN, VOTING SYSTEM FAILURES: A DATABASE SOLUTION, BRENNAN CTR. FOR JUST. (2010), from Butler County, Ohio (at 10 - 11) and Humboldt County, California (at 12 - 13), *available at* http://www.brennancenter.org/content/resource/voting_system_failures_a_database_solution/ [hereinafter VOTING SYSTEM FAILURES].

[16] U.S. ELECTION ASSISTANCE COMMISSION, EFFECTIVE DESIGNS FOR THE ADMINISTRATION OF FEDERAL ELECTIONS (2007), http://www.eac.gov/assets/1/workflow_staging/Page/68.PDF.

[17] These three organizations have worked directly with election officials to improve ballot design in California, Florida, Kansas, New Hampshire, Nevada, New York, Oregon, Texas, and Washington State, among other locations.

[18] *See* Joan Mazzolini, *10 percent of Cuyahoga County's voting machines fail pre-election tests*, THE PLAIN DEALER, Apr. 14, 2010, http://blog.cleveland.com/metro/2010/04/some_cuyahoga_countys_voting_m.html. (noting problems with the voting systems in Cuyahoga County, Ohio); Election Protection estimates that 11% of the calls to its voter hotline were for voting system problems, ELECTION PROTECTION, ELECTION PROTECTION 2010 REPORT, (forthcoming 2011).

similar circumstances, in another locale and election.[19] These repeated failures disenfranchise voters and damage public confidence in the electoral system.

Because there is no central database of voting system failures, to conduct its study, the Brennan Center combed through hundreds of cases reported in the media. News items about voting system troubles tend not to include many details; this makes it difficult to identify from the reports the precise nature of the particular problem. Whatever the causes of a particular problem, it is fair to assume that their occurrence in one jurisdiction will often eventually be repeated in another unless election officials throughout the country are made aware of both the causes of the problem and how to avoid them.

Of the hundreds of reports of voting system malfunctions and vulnerabilities, the Brennan Center closely studied fourteen. Most of the election officials we interviewed in connection with these case studies claimed to have had no prior warning of the problems eventually identified. By contrast, in most cases, the vendors were (or should have been) aware of the problems – often because the same problem had been reported to them earlier by another election official.

Three fundamental findings result from the Brennan Center's study of past reported problems, review of current law and contracts for the use and regulation of voting systems, and interviews with election officials:

There is no central location where most election officials can find comprehensive information about problems discovered with their systems before each election.

State and local election officials we interviewed tell us that they must rely almost exclusively on the voting system vendors for information about malfunctions, defects, vulnerabilities and other problems that the vendors have discovered, or that have occurred with their voting systems in other states. These problems are compounded by the fact that a change in election administrators can sometimes mean a loss of knowledge about all of the potential problems with a voting system as well as procedural safeguards necessary to prevent those problems.

Vendors are frequently under no legal obligation to notify election officials or the public about problems with their systems.

While purchase or service contracts sometimes bind election officials to inform vendors of malfunctions, vendors are not always similarly obligated to inform officials of problems reported to them. At the same time voting system vendors are under no legal obligation to notify any federal agency of problems they discover with the vast majority of their systems in use in the United States today,

[19] VOTING SYSTEM FAILURES, *supra* note 15 at 1.

despite the fact that hundreds of millions of federal dollars have been spent to purchase such equipment.

The same failures occur with the same machines, in one jurisdiction or another, election after election.

Most of the election officials we interviewed in connection with our review of reported problems claimed to have had no prior warning of the issues we discuss. By contrast, in most cases, the vendors were (or should have been) aware of the problems – often because the same problem had been reported to them earlier by another election official. Frequently, these malfunctions – and their consequence, disenfranchisement – could have been avoided had election officials and/or public advocates known about earlier problems and had an opportunity to fix them.

2. Recent EAC Progress

Prior to the 2010 election, the Election Assistance Commission (the "EAC") took some important steps toward addressing these problems, and making information about voting system issues more readily available to election officials and the general public. In particular, the EAC adopted a number of important reporting requirements for both voting system manufacturers and testing labs that participate in its newly established Voting System Testing and Certification Program.[20] Pursuant to the Quality Monitoring Program established in the Voting System Testing and Certification Program Manual (the "VSTCPM") the EAC now posts on its website "test reports" for all systems tested for EAC certification, regardless of whether or not they are ultimately certified. These test reports include a list of "discrepancies" identified during the testing.[21] It also posts information related to site audits that it conducts on manufacturers who participate in its program.[22] All of this is potentially valuable information for the public and election officials as they consider purchasing new machines.

Under the VSTCPM, election officials and the public get more data about certain voting system failures in EAC *certified* systems. Vendors must report to the EAC "malfunctions" of *EAC* certified systems. The VSTCPM defines "malfunction" as "a failure of a voting system, not caused solely by operator or administrative error, which causes the system to cease operation during a Federal election or otherwise results in data loss."[23] The EAC posts this information on its website.

As a result of this new system, election officials and the public learned of two

[20] U.S. ELECTION ASSISTANCE COMMISSION, TESTING AND CERTIFICATION PROGRAM MANUAL VERSION 1.0 (2007) [hereinafter VSTCPM].
[21] E-mail from Jeannie Layson, Director of Communications and Congressional Affairs, U.S. Election Assistance Commission, to Lawrence Norden, Senior Counsel, Brennan Center for Justice (May 14, 2010, 17:09 EST) (on file with the Brennan Center).
[22] *Id.*
[23] VSTCPM, *supra* note 20 at 2.3.2.7.

important voting system problems ahead of the 2010 election.[24] The discovery and publicity of these failures provided election officials with valuable information and allowed them to ensure that their voters' choices were accurately recorded on Election Day.

3. Limits of the EAC'S VSTCPM Reporting Process

While the recent steps by the EAC are unquestionably valuable, there are a number of factors which limit the usefulness of this reporting system. They are discussed in greater detail in the Brennan Center report *Voting System Failures*. The EAC is in the process of addressing some of these limitations,[25] but others remain. Among them:

- Because the VSTCPM reporting rules only apply to EAC certified systems, most machines in use today are not covered by these reporting rules, or any federal reporting requirements for that matter.[26]

- Reporting under this system is limited to vendors and election officials for a very specific type of problem. For instance, it is not clear that manufacturers would have to report potential flaws they discover before they result in actual loss of votes on Election Day, or "merely" because they cause delay and long lines rather than a loss of data.

- Independent investigators and voters with credible reports, no matter how numerous or serious, are not entitled to report problems.

- Some election officials have complained that neither the EAC nor the vendors are required to notify election officials immediately upon learning of a malfunction. Douglas A. Kellner, co-chair of the New York State Board of Elections, in a letter to the EAC praising them for issuing their first Voting System Technical Advisory last June, noted that it came two months after the EAC was first notified of the problem and urged "the EAC to put in place a system that would allow an immediate preliminary notice to be distributed to all jurisdictions using the equipment involved as soon as EAC staff has been able to verify a report."[27]

For these and other reasons, most state and local election officials we interviewed tell us that they must still rely almost exclusively on the voting system vendors for information about malfunctions, defects, vulnerabilities and other problems that the

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[24] *See* VOTING SYSTEM FAILURES *supra* note 15 at 8-9 for a discussion of these problems and the notices that were sent.
[25] *See generally* U.S. ELECTION ASSISTANCE COMMISSION, TESTING AND CERTIFICATION PROGRAM MANUAL VERSION 2.0 (forthcoming 2011) (Draft for Public Comment, on file with the Brennan Center).
[26] U.S. ELECTION ASSISTANCE COMMISSION, CERTIFIED VOTING SYSTEMS, http://www.eac.gov/testing_and_certification/certified_voting_systems.aspx (last visited Mar. 28, 2011).
[27] VSTCPM, *supra* note 20 at 8.7.4.

vendors have discovered, or that have occurred with their voting systems in other states.[28] As Jane Platten, Director of the Cuyahoga County Board of Elections put it, "One of the more frustrating aspects of encountering problems [with voting systems], often while preparing and testing for elections as well as on election day or during tabulation, is that the vendors themselves often know about the problems and never disclose any details whatsoever prior to the moment of crisis."[29]

Of course, vendors do frequently notify election officials of problems when they occur, and often provide software patches or other procedural safeguards to ensure that such problems do not occur in the future. Unfortunately, in at least some instances, vendors have appeared slow to acknowledge such problems.[30]

More to the point, there is no centralized location where election officials can find information about anomalies, malfunctions, usability concerns,[31] and other problems discovered with systems they are currently using before each election. A change in election administrators can sometimes mean a loss of knowledge about all of the potential problems with a voting system as well as procedural safeguards necessary to prevent those problems.[32]

The result, as *Voting System Failures* demonstrates, is that all too frequently the same failures in the same voting systems occur in one jurisdiction or another, election after election. Often, these malfunctions – and their consequence, disenfranchisement – would have been avoided had election officials and the public known about previously encountered problems and had an opportunity to fix them.

4. The Solution: A National Database of Voting System Problems

Given the nature and importance of voting systems to our democracy, we need a new national system to ensure that voting system defects are caught early, disclosed immediately, and corrected quickly and comprehensively. We conclude that this new system must center around a mandatory national clearinghouse, administered by a federal

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[28] *Compare* County of San Diego Registrar of Voters Contract No. 46619 between County of San Diego and Diebold Election Systems, Inc. and Diebold Incorporated at 20-21 (2003), *available at* http://accurate-voting.org/contracts/CA/San_Diego/CA_sandiego_2003.pdf (demonstrating a contractual obligation for the county to inform the vendor of defects in the voting system with no similar obligation on the part of the vendor), *with* Contract No. 08455, Voting Equipment Agreement between Election Systems and Software, Inc. and Kansas Secretary of State at 7 (Nov. 16, 2005) (stating that the contractor will notify the customer of any defects or problems that arise.

[29] *See* VOTING SYSTEM FAILURES *supra* note 15 at 9.

[30] For examples of a lag in vendor acknowledgement of voting system problems, see the case studies in., VOTING SYSTEM FAILURES *supra* note 15, from Butler County, Ohio (at 10 - 11) and Humboldt County, California (at 12 - 13).

[31] By usability concerns we mean flaws in the machine's programming, software or hardware that make poll worker or voter error significantly more likely, and which lead to significant disenfranchisement.

[32] This appears to be precisely what occurred in Humboldt County, California in 2008. This case is detailed VOTING SYSTEM FAILURES *supra* note 15 at 12-13.

agency empowered to investigate violations and enforce the law.

Based upon our interviews with election officials and regulatory experts, and our review of analogous regulatory structures in other important industries, we conclude that the clearinghouse must include four key elements to work effectively:

1. **A Publicly Available, Searchable Centralized Database.** Election officials, in particular, would benefit from a publicly available, searchable online database that includes official (i.e., election official-reported or vendor-reported) and unofficial (i.e., voter-reported) data regarding voting system failures, and vulnerabilities, and other reported problems and establishes criteria for the database's contents and organization.

2. **Vendor Reporting Requirements.** Vendors must be required to notify the appropriate government agency of any known and suspected voting system failures and vulnerabilities, and other reported problems, including customer (i.e., election official) complaints, warranty claims, legal actions and/or actions taken by the vendor to satisfy a warranty or investigate a reported problem.

3. **A Federal Agency with Investigatory Powers.** The best way to ensure that vendors address potential problems in a timely manner is to empower the appropriate government agency to investigate all voting system failures and vulnerabilities listed on the database, grant the agency subpoena power to facilitate its investigations, and require vendors to, among other things, maintain records that may help the agency determine whether there are indeed voting system failures or vulnerabilities, and whether the vendor has taken appropriate action to address the failures or vulnerabilities.

4. **Enforcement Mechanisms.** The appropriate government agency must have the power to levy civil penalties on vendors who fail to meet the reporting requirement or to remedy failures or vulnerabilities with their voting systems.

CONCLUSION

Election officials and staffs should be applauded for their successful efforts in 2010. Under serious budget constraints and vast changes, they oversaw another successful national election. The recommendations offered in this testimony – to modernize our antiquated registration system and establish a national database of voting machine problems – would significantly ease the burden we place on them, allowing them to focus on election management, and make it easier to ensure that all eligible voters are able to vote and have their votes accurately counted.

Mr. HARPER. Thank you, Mr. Norden.

I appreciate that very much.

We now have time for committee members to ask questions of the witnesses. Each member is allotted 5 minutes to ask questions of the witnesses. To help us keep up with it, just like the witnesses, we use a timing device on the witness table. We will alternate back and forth between the majority and the minority.

To begin with, I will recognize myself for 5 minutes, and first, I will start with Mr. Gessler.

I would like for you to just comment on the progress of your investigation into noncitizen voting in Colorado.

Mr. GESSLER. Thank you, Mr. Chairman.

Right now, the next steps that we have for our investigation is looking into the legal framework as to how we are going to be able to deal with this issue, where we have sort of an articulable reason why people who have self-affirmed as noncitizens are nonetheless on the voting roll. Again, some of it may be willful. Some of it may be erroneous, and some of it may stem from misunderstandings. We don't know. We don't have the tools, or we have not exercised tools in the past to measure this. So what we are looking at is a way to reach out to folks, to send them a letter and require them to provide proof of citizenship. Our view is it is better for someone to receive a letter in the mail than a knock on the door for a criminal investigation.

Of course, we are reaching out to some of the Federal agencies for databases. Unfortunately, we have run into that roadblock with the district court in Colorado. And we are trying to create smoother legislative tools. My view on this is that we have uncovered an issue that does raise the likelihood that there are a large number of people who are operating illegally in Colorado. We want to remove that. We are not looking for a criminal tool, but we are going to take action on this.

Mr. HARPER. Can you tell me if anyone from the Voting Rights section of the Department of Justice has contacted you regarding your findings?

Mr. GESSLER. We have not received, to my knowledge, any contact from the Department of Justice.

Mr. HARPER. So what administrative remedies would best help you to deal with this issue that you are working on?

Mr. GESSLER. Well, I think the administrative remedy is an efficient way to reach out to the folks who have self-identified as noncitizens in the recent past and to get more information from them. So we are looking at a way to do that efficiently, ideally through letters, through the mail, rather than personal investigations. And then the other thing we are looking at is to be able to reach out to other databases to be able to check.

In Colorado, we recently had legislation that would require people to provide proof of citizenship up front—that was proposed legislation. It was not accepted by our State legislature; it died in our State Senate. So we don't have a screen for citizenship on the front end when people register to vote. What we are looking to do is, alternatively, to search databases and find other sort of objective ways to identify people who may have self-affirmed as noncitizens and maintain accurate voter rolls on the back end as it were.

Mr. HARPER. Thank you.

Mr. Ritchie, do citizens in Minnesota have a right not to register? I mean, the way that your system works, do they have a way to opt out or is it automatic—tell us how that is going to work in your State.

Mr. RITCHIE. Mr. Chairman, the only State that I know of where all citizens are just in a sense automatically "registered" is North Dakota, which the Secretary there builds the system. Minnesota's system is very similar to I believe all other 49 States, that in the process of getting a driver's license there is a box where you are asked—typically you are asked—would you like to register to vote, or reregister, in terms of changing your address? If the person says yes, that box is marked. That is signed, and then that goes to the Department of Public Safety, the Division of Motor Vehicles. That information is then transferred electronically.

It has been screened for citizenship, for corrections, for everything else. So we have, I would say, a similar system to the other 49 States other than North Dakota, which is the one State where everybody does get "registered", so to speak.

Mr. HARPER. I know noncitizens can get their driver's license, obviously, in Minnesota, and you referred that you access maybe another database. What is that other database that you are accessing to crosscheck?

Mr. RITCHIE. Mr. Chairman, that is correct. Our driver's licenses have a date, they have a way—we call it a "status check" that they use within the inside of the process of applying for driver's licenses. We use that information to scan both before elections, to challenge voters on the front end, and we use it on the back end to see if in fact somebody registered through the Department of Public Safety, through vehicle services, that is a noncitizen. The legislature has also taken action to raise some fees, to provide additional moneys to the Department of Public Safety to be able to expand some of their capacity. But so far, it is all done electronically, basically using their data.

Mr. HARPER. Thank you, Mr. Ritchie.

I will now recognize Mr. Gonzalez for questions.

Mr. GONZALEZ. Thank you very much, Mr. Chairman.

Mr. Gessler, let me ask you, there is a difference between someone who is not qualified, let's say a noncitizen, in registering, and it would be something separate if that person then exercised that particular right that they are not entitled to. Registration and actual voting: They are two different things, is that right?

Mr. GESSLER. Congressman Gonzalez, that is correct. In Colorado, however, they are both illegal if someone registers, and they know—which is willful behavior—and they know they are not——

Mr. GONZALEZ. We understand. And if you were going to devote limited resources, you probably would be targeting those that exercised an illegal right. I mean, you were a prosecutor once, right?

Mr. GESSLER. That is correct.

Mr. GONZALEZ. And so you know what I am talking about as far as making your best case and then guarding against what would be detrimental to the voting process and the rights of all Americans that are citizens and exercise their right to vote.

Do you have any idea the resources that you expended in pursuing the comparison of the different data—and I have got here I think your letter or our report, "Comparison of Colorado's Voter Rolls With Department of Revenue Noncitizen Records, March 8, 2011." Do you know what you devoted to that effort in the way of manpower and dollars?

Mr. GESSLER. I know that we did not expend any additional dollars in our budget. We did expend some manpower. I know I worked several late nights. However my salary is fixed, so that did not cost the State of Colorado any additional fees.

Mr. GONZALEZ. We are not talking about extra money. We all work within budgets, or we attempt to—and you will hear that the Federal Government doesn't, but nevertheless, the attempt is made.

Let me ask, you were a prosecutor once. Would you take a case, based on the information that you were able to compile—because I have read your report—would you present a case that uses words to a judge like, "impossible to provide a precise number," "data are inconclusive," "incomplete," "does not prove," "cannot be determined"? You wouldn't base any case with that kind of conditioning language, would you?

Mr. GESSLER. Well, I think, Mr. Congressman, there are sort of two different frameworks here.

One is a prosecutorial framework, as far as going forward. A second is whether or not that warrants criminal investigation. And I should say there is a third framework, is there an administrative way to resolve these uncertainties? What we are looking at in Colorado is not prosecuting, nor are we even looking at criminally investigating.

What we are looking at, however, is to administratively resolve this. So I would agree with you that that is not adequate to be able to provide a basis for prosecution.

Mr. GONZALEZ. So, then, let's just work on what you might be able to do administratively. Working with the resources that you do have, who would be those individuals that would be able to assist you in ascertaining why someone who is not a citizen would fill out a registration form? Wouldn't that be, let's say, the Mesa County Clerk and Recorder? Is that Sheila Reiner; is that her name?

Mr. GESSLER. Yes, sir, Sheila Reiner.

Mr. GONZALEZ. All right. My understanding is she was very concerned about your allegations, and she requested the information of these individuals—obviously within her jurisdiction—and that you refused to provide her with that information; is that correct?

Mr. GESSLER. It is a tentative refusal at this point. We have an agreement with the Department of Motor Vehicles, and we are very concerned about making sure we protect people's private information. So we are still running the legal traps to be able to make sure that we are legally able to share that information with her.

If, in fact, we are—and I believe our tentative conclusions at this point is that we are, but we are still conferring with the attorney general's office on that—if we are able to share that information without violating those privacy concerns, yes, we will do it. But I

think our first concern is to make sure that we are not violating various State privacy requirements.

Mr. GONZALEZ. I just can't imagine that someone like Ms. Reiner would not be entrusted with some information regarding something that comes under the purview of her responsibilities, but we will move on.

Isn't every voter registration, as a result of the Help America Vote Act, have a provision at the outset that asks the question of whether you are a citizen or not a citizen? And if you are not a citizen, you are not to proceed further with filling out the form?

Mr. GESSLER. That is correct. We have had problems in Colorado, however, some administrative errors where people that have filled out a registration form, said they are not a citizen, yet they nonetheless registered——

Mr. GONZALEZ. So who is authorized to have someone fill out a registration form? Because I am familiar with Texas; I am not with Colorado.

Mr. GESSLER. The clerks and recorders are the ones who receive that. Unfortunately, we have no verification process in the State of Colorado——

Mr. GONZALEZ. The individual that presents this form, let's say a Motor Vehicle, an individual, a clerk—in Texas, before you can have someone actually fill out a registration form, there is some training. You actually deputize folks. But there is some training involved so that they are placed on notice that a noncitizen is not to fill out this form. That is the first question that they will be asking. Do you not follow that in Colorado?

Mr. GESSLER. I am unfamiliar with the Texas training.

Mr. GONZALEZ. So, in Colorado, anyone can fill anything out, and there are no instructions. If there is an individual who represents a State, the county, or whatever, they are not charged with any responsibility to make sure that that individual is not signing that, and the question is posed. Because I think there actually is a simple answer to all of this.

Mr. GESSLER. I apologize, Congressman, I didn't fully follow that last question.

I can say this, however, that people are instructed to read the questions and to fill them out accurately. I will say that we have seen human error. We have seen our database that allows people to be registered and to vote even though they are in a noncitizenship status. That is a problem with our database that we have recently resolved.

I do also know that there is no verification, and our election officials do not verify the accuracy of any of the information on the voting rolls. I think that is what gives rise to this problem.

Mr. GONZALEZ. There is an affirmation that subjects somebody to penalties if they lie.

Mr. GESSLER. That is correct.

Mr. GONZALEZ. So there is then. You said there is—okay, there is no verification. All we have is affirmation, and that is, the individual who signs it under the penalty of law affirms that all of the information on here is correct.

Mr. GESSLER. That is correct.

Mr. GONZALEZ. And I've way exceeded the time.

Thank you for your patience, Mr. Chairman.

Mr. HARPER. Thank you, Mr. Gonzalez.

I will now recognize Mr. Nugent for questions.

Mr. NUGENT. Well, thank you for appearing today in front of this panel.

Ms. Gill, we absolutely appreciate having you here, particularly since you are on the front lines in regards to voter registration and doing elections, and you have done a very good job in Citrus County.

Going back to this conservation we were having as it relates to Colorado, what is the verification process in Florida as it relates to those that are not citizens?

Ms. GILL. Okay. Well, the form says, as Mr. Gonzalez mentioned, that you are affirming that you are a United States citizen on our Florida form. That is one of the very first things that you do. And you are signing that you are. We are not requiring someone to provide us with proof of their citizenship because they are affirming that that is so.

Now if we have information, as supervisors, that would lead us to believe that this person is not a citizen, then we would proceed from there. Other than that, it is a system that is built on trust.

It is the same thing, we have the box on our Florida registration form that says, Are you a convicted felon, and if you are, have your rights been restored? This is part of the Florida law. So those boxes are there.

And of course, with the felons, though, we do have a way of checking. They are matched up against the database with the Department of Corrections and such.

But as we go forward with this and you talk about citizenship, you have to be really careful because back in 2000—you may remember this—when we were trying to make sure that we didn't have felons on the voting list, the first list that came out was very inaccurate, and it came out just before election. It was dumped in the laps of supervisors of elections just before elections and said, do something with this. And then we had to send a letter that said, Dear Mr. Nugent, are you a convicted felon? We were trying to find the right words to say this for a database that was very flawed.

So, as we move forward with this, I mean, it does have merit. We, as election officials, want to make sure that only those people who are eligible to vote do vote and are registered, but we need to be careful on how we go through that process of making sure that we have the right person.

Mr. NUGENT. Have you seen situations where actually those that are not citizens have——

Ms. GILL. I have had two incidents that I can recall—very interesting because neither of them were willful. It was actually a person who, after having served in the military in World War II, thought that he was an American citizen and only found out when he went to get a U.S. passport to go on a trip that he was not a United States citizen, in which case he immediately saw an attorney and came to my office, took himself off the voting rolls until he did become a citizen. That is not willful.

And then the other incident was very much like that, the person did not believe because of where he was born and his parents

were—the citizenship of his parents and such. So both of them were not willful. That is Citrus County, Florida, though, which you are very familiar with.

Mr. NUGENT. Yes. Have you heard of any other cases in Florida that that has been an issue that you are aware of?

Ms. GILL. I am sure there are because there are a lot of people out there. But again, I have to get back to the fact that we are asking these individuals who are signing up to affirm that they are a United States citizen, and our system right now is built on trust, unless we have some other information.

Mr. NUGENT. And I know that representatives from ES&S, when they talk about flaws or problems that occur during an election cycle particularly, it falls back on the supervisor of election, at least in Florida; you are the one who takes the heat.

Ms. GILL. That is correct.

Mr. NUGENT. And that is not a good spot to be in as an elected official.

You were talking about budgets, and obviously, we are all very concerned about budgets. What kind of budget cuts have you faced as supervisor of elections?

Ms. GILL. Well, fortunately, in my county, they know we are working really hard to control our budgets, so nobody in my county has said to me, Susan, you have to cut your budget by 14 percent. I keep telling them—and I have started last year telling them—look, we have an added election of the Presidential preference primary; it is a redistricting year; we have certain expenses that are just happening every 10 years, notifying voters, letting them know what their new districts are, letting them know where their new polling places are. So this is an added expense. So I have been preparing them.

Other counties in our State, they are going forward and saying, hey, you have to cut your budget, even with those things, the fact that we have an additional election and then also the redistricting issues.

Mr. NUGENT. The State of Florida I believe has taken on a very aggressive approach when folks come in for a driver's license renewal and for first-time driver's licenses in regards to showing basically whether they are a citizen or not because Florida's laws are somewhat different. I believe that may help in regards to identifying those that should or should not be voting that are citizens or not. I would just recommend to those States that do not do that—I understand that as Secretary of State, you can only recommend to the legislature, as we see up here, and that you still have to get a bill passed. But I would suggest to you that anything that you can do obviously to shore up the ability to make sure that we have U.S. Citizens voting in U.S. elections, I would be grateful.

Thank you.

Mr. HARPER. I now recognize Mr. Lungren for any questions he may have.

Mr. LUNGREN. Thank you very much, Mr. Chairman. Thank you for having this hearing.

I understand that our system is based on trust. Ronald Reagan used to say "trust but verify," and it is the last part of it that I am a little concerned about.

I worked on the Voting Rights Act extension in the 1980s, and then worked for it when I came back here this time. I also worked on the immigration bill since it was early in the 1980s. One of the things that I found out there is that unless you have an enforcement program, some people take advantage of it.

I am the author of H.R. 4, which is to get rid of an extraneous part of the health care bill that would have—or still does, unless the Senate wakes up and finally deals with the bill—would have put a tremendous onus on business people, particularly small business people, to file 1099s any time they had a transaction or a series of transactions that totalled over $600 in a single year.

And yet the thinking behind that was not that the 1099 had to be filed because the person filing it had an obligation to pay something; it was to report on the other side of the transaction. And then we had the Federal Government score that section of the bill as worth 19, and then if it involved mom and pop shops who rented out some property, $21 billion. The assumption was that business men and women cheated so much that we would get $21 billion if someone talked about it, yet it almost presumes that even though business men and women cheat, nobody else cheats, particularly when it comes to registration to vote.

I would love to believe in the perfection of humankind that nobody cheats, but I suspect that that is not true. And as important as it is to protect one's right to vote is to protect one's right not to have your vote canceled out by someone who isn't eligible to vote.

So here is my question to the first three panelists: Do you have any reason to believe there is any measurable percentage of people on our voting rolls who don't have a right to be there? Or is it perfection that we have reached in this society?

Ms. GILL. Well, if I may, personally, I think that, yes, there are people on the rolls who probably should not be there, some of them willfully and some of them not willfully. However, to your point, what do we do about it?

Mr. LUNGREN. Well, that is my question. We have three people here who are experts, and I would like to know what you think we ought to do about it.

Ms. GILL. Right. How do we enforce it? The only thing that we can do to enforce it is make people show some sort of proof of citizenship. Now if that is the way you want to go as far as nationalization papers or birth certificates. I think with the driver's license, as we go forward with the new type of driver's license where, when we go to the driver's license bureau, now we have to bring a birth certificate. We have to bring—if we have had a name change, we have to bring some indication of a marriage certificate or something that proves your identity. We are moving toward that way.

But as far as making it part of the voter registration process, I have to really question whether we would disenfranchise more people by doing it, really eligible voters, than actually having them have to bring it and show proof. So if we haven't shown proof, I think we are going to disenfranchise more people than we save——

Mr. LUNGREN. So you don't have an answer.

Ms. GILL. Well, no. My answer is, right now, I think that we have to go with what we have got right now. And if we have cred-

ible information that somebody is a noncitizen, then we pursue it from there.

And as we move forward with this driver's license, that we are now going to have some proof of identification.

Mr. LUNGREN. Has anybody ever been prosecuted in your jurisdiction?

Ms. GILL. Not in my jurisdiction.

Mr. LUNGREN. In the State of Florida, to your knowledge?

Ms. GILL. I don't really know.

Mr. LUNGREN. Mr. Ritchie.

Mr. RITCHIE. Chairman Lungren, yes. In fact, in our State, it is mandatory that county attorneys must investigate any allegations or anything that we refer, and so it is mandatory. I think our situation is different than Colorado in that way.

Second, all crimes related to elections are felonies in our State. I don't believe that is the same—Congressman Gonzalez asked the question about differentiation—for us it is all felonies. This is an important thing.

The third thing is that we work very hard to try to reduce the cost to law enforcement, and the judicial system, by making sure things are flagged beforehand, making sure that people who are inadvertently on the list because of a typo at the Department of Public Safety or some other reason are flagged beforehand so that we don't have to deal with that situation after the election because it is very expensive.

Let me give you one quick example. Election day 2008, a young man way up on the Canadian border, just out of the prison, was very proud, getting his life back together, putting his life back together, called his parole officer and got the answering machine and said: I am getting my life back together. I am going to be a good citizen. I am a very strong supporter of Senator McCain and Senator Coleman. I am going down to vote. Aren't you proud of me for being a citizen and for being active? He, unfortunately, was not yet off parole. And so he went down, not trying to hide anything, of course, and before his parole officer was able to reach him, he violated the law in Minnesota and committed another felony. His parole officer called him and said, don't, and it was too late. And so actually he was prosecuted under a gross misdemeanor, 30 days in the county workhouse, a little tiny county that really can't afford to do a lot of extra prosecutions or put people up for a jail term; very expensive problem for the county and for this young man's life.

The legislature actually took that seriously because it turned out many people were not certain about their status, and it is partly because the States around us have different laws. In North Dakota, if you are in prison, you cannot vote. If you are out of prison, you can. That is their law. So when you are on the border of other States, I think we have a number of our citizens not certain. And so in that instance, the legislature passed a law requiring all judges, all correction officials must say affirmatively, you have lost your right to vote, you will not have your right to vote until you are completely off paper; the bill passed, with strong bipartisan support, but it was vetoed. Our Governor felt like the judges had too much to do already.

In the course of that process, we made a very strong case that the expense of prosecuting people who voted inadvertently for felony offenses was so extraordinary, it was worth spending the money to convert the court and corrections data into electronic form so it could be matched with our database, our elections database, so that they could be challenged on the front end, in case they went in, then this information would be there, and you could say, hey, wait a minute, you are challenged here, you are still on paper. If the person said, no, I am off paper now, they would say great, and they would have to sign a separate form. But if they were to say, oh, you mean I can't vote? Well, no, you can't; it is a felony. And so we have found that spending the money on the front end saves a tremendous amount of money on the prosecution side.

Secretary Gessler's approach of trying to identify people and get the word out to people to avoid prosecutions on the other end—in my State, it is mandatory and it is a felony—is a very inexpensive approach to what is going to be a very expensive process on the other side.

I feel like this change with the new electronics and the digital data makes it possible—and in our State, we always have a few prosecutions of felons who have voted and that kind of thing, but we have the tools now to make our databases much cleaner and flagged up front. That can save us a tremendous amount of money in prosecutions, and investigations after the fact.

But we have to learn how to use our databases. We have got to get data, and we have to take the money that we would have spent on prosecutions, and invest it on the front end, so we have made the technological advances so that our computers can talk to each other. Then we can save real money down the road.

Thank you.

Mr. HARPER. I thank you all for your testimony today.

Mr. Carbullido, I will be sending you a request, some questions dealing with your dealings with the EAC. I think that would be helpful to us not only here, but for future matters that we will consider.

I now ask unanimous consent to enter the following documents into the hearing record: Number one will be the report referenced by Secretary of State Gessler in his testimony detailing their State's investigation into possible noncitizen voting.

[The information follows:]

STATE OF COLORADO
Department of State
1700 Broadway
Suite 200
Denver, CO 80290

Scott Gessler
Secretary of State

Judd Choate
Director, Elections Division

COMPARISON OF COLORADO'S VOTER ROLLS WITH DEPARTMENT OF REVENUE NON-CITIZEN RECORDS
MARCH 8, 2011

The Department of State recently compared Colorado's voter registration database with driver's license records to determine whether non-citizens are registered to vote in Colorado. Starting in August, 2006, people seeking a Colorado driver's license have been required to show proof of legal presence. Accordingly, in 2006 the Department of Revenue began recording the type of document that established an applicant's legal presence in Colorado. The Department of State requested these records from the Department of Revenue this January and compared them to the voter rolls.

The comparison identified 11,805 individuals who (1) were non-citizens at the time they obtained a driver's license, and (2) are registered to vote. As discussed below, the Department of State is nearly certain that 106 individuals are improperly registered to vote. And potentially many of the remaining 11,805 individuals are also improperly registered to vote. It is impossible to provide a precise number, however, because voter registration data are inconclusive.

A. The Department of Revenue driver's license database collects and maintains information regarding citizenship status.

Since 2006, Colorado has required an individual to show documentation proving lawful presence when obtaining a driver's license or state identification card. *See §§ 42-2-107 and 42-2-302, C.R.S. and 1 CCR 204-13.* When this policy became law, the Department of Revenue began recording the type of document that established legal residence. For U.S. citizens seeking a Colorado driver's license, required documentation includes a passport, birth certificate, social security card, driver's license from Colorado, or driver's license from another U.S. state or territory that requires legal presence. For non-U.S. citizens, proof of legal residence means a valid immigration document. The following three documents serve as proof of lawful presence for a non-citizen seeking a driver's license in the state of Colorado:

Employment Authorization Document (EAD Form I-766) - Commonly called a work permit, this document authorizes an alien to work legally in the U.S. for a specific period of time, normally ranging from a few months to a few years.

United States Permanent Resident Card (USCIS Form I-551) - Commonly called a green card, this document reflects permanent resident status for non-citizens. Lawful permanent residents may apply for naturalization after five years of residency. This period is shortened to

three years if the non-citizen is married to a U.S. citizen, or four years if permanent residency was received through asylum.

INS Arrival/Departure Record (USCIC Form I-94) - Used by Customs and Border Patrol, this document must be completed at the time of entry to the U.S. by foreign citizens who are not permanent residents and who are being admitted into the U.S. for 90 days or less.

B. The Department of State compared the Department of Revenue's non-citizen records with the voter rolls.

The Department of Revenue driver's license and identification card database contains over 3.7 million active driver's license records and 660,000 identification card records. These numbers include both current and past Colorado residents who have obtained a driver's license or state identification card.

The Department of Revenue provided the Department of State all records indicating the document that a non-citizen presented to prove lawful presence. From August 2006 until mid-February 2011, 245,878 non-citizen documents were used to obtain a driver's license or identification card. But this number contains duplicate records, because some individuals who obtained or updated a license provided more than one type of immigration document. When the Department of State culled the data to remove duplicate records, it determined that the 245,878 records were associated with 211,200 unique driver's licenses.

The 211,200 non-citizens represent only a fraction of all driver's licenses, because the number (1) only includes new or updated licenses or identification cards after August of 2006, and (2) does not include applicants who provided another state driver's license.

The Department of State compared the 245,878 records against the statewide voter registration database and initially matched 16,297 records. But again, this number included duplicates, and the initial analysis produced a separate list of license numbers for each document type. For example, a non-citizen appeared twice if he or she initially provided a work visa and then later showed a green card.

After removing all duplicates, the 16,297 records produced 11,805 unique registrants currently on the voter registration rolls. This represents 5.6% of the 211,200 non-citizens in the Department of Revenue database. As discussed below, the data are incomplete and this number does not prove that all 11,805 non-citizens were registered improperly.

The following is a breakdown by document type of the 11,805 identified records.

Employment Authorization Document - The Department of Revenue provided 33,561 records where the applicant provided an Employment Authorization Document as proof of lawful presence. Based upon a match of the driver's license or identification card number, it appears that 1,338 of the individuals are registered to vote.

United States Permanent Resident Card - The Department of Revenue provided 139,379 records where the applicant provided a Permanent Resident Card as proof of lawful presence. Based upon a match of the driver's license or identification card number, it appears that 10,048 individuals are registered to vote.

INS Arrival/Departure Record - The Department of Revenue provided 69,023 records where the applicant provided an INS Arrival/Departure Record as proof of lawful presence. Based upon a match of the driver's license or identification card number, it appears that 419 individuals are registered to vote.

The above information is summarized in the table below:

Non-citizen applicants for driver's license (or identification card) who are also registered to vote

	Type of Document Provided by Non-Citizens Seeking a Driver's License			
	Employment Authorization Document	INS Arrival / Departure Record	US Permanent Resident Card	**Totals**
Individuals who presented non-citizen credential*	33,561	69,023	139,379	**211,200**
Individuals listed on the voter rolls	1,338	419	10,048	**11,805**
Individuals who voted in 2010 General	603	130	4,214	**4,947**

*The sum of this row is greater than the reported total because some people provided more than one type of non-citizen document and appear in the data more than once. There are 211,200 unique individuals who used a non-citizen credential to obtain or update a driver's license or voter identification card.

C. Some of the 11,805 individuals almost certainly were not citizens at the time they registered to vote.

When reviewing the 11,805 individuals who (1) were non-citizens at the time they obtained driver's licenses and (2) are registered to vote, the Department of State noted the voter registration date and drew certain inferences by comparing the date a person registered to vote with the date the person applied for or updated a driver's license.

First, 106 individuals presented the Department of Revenue with a non-citizen document after the date they registered to vote. It is nearly certain that these 106 non-citizens are improperly registered to vote, because they were registered on or before the day they applied for a license using a non-citizenship document.

Second, 11,699 individuals provided the Department of Revenue with a non-citizen document and later registered to vote. In each case, the voter registration date took place after the

license application date. The Department of State does not currently have the data to determine with certainty the person's citizenship status at the time of registration. That said, two explanations likely cover the vast majority of cases: either (1) the person provided a non-citizen document to apply for a license but later became a citizen and legally registered to vote or (2) the person remained a non-citizen and registered to vote, perhaps through a state agency or voter registration drive. Because the Department of State does not have access to a database that contains the date that non-citizens become naturalized citizens, it cannot determine the exact number of improper registrants.

The Department of State must nonetheless conclude that some of the 11,699 were registered to vote prior to obtaining U.S. citizenship, for three reasons. First, most green card holders must wait three to five years before they may apply for citizenship, and the Department of Revenue data only date back to 2006. Based on this time range, it seems unlikely that all 10,048 green card holders have become citizens since the time they registered.

Second, the other two types of non-citizen residents – the 1,338 holding an employment authorization document and the 419 holding an INS arrival/departure record – were not eligible to become citizens until they first converted to green card status. In short, the individuals who presented an Employment Authorization Document or an INS Arrival/Departure Record still had a long road to citizenship, including at least three years as a green card holder. By contrast, green card holders were much more likely to have become citizens since 2006.

Third, the Department of State's own database shows that over the last two years 154 people initially registered to vote as non-citizens but then voluntarily withdrew their registrations. These instances of self-reporting likely provide a glimpse at a larger problem where non-citizens accidentally become registered through a mistake made by themselves or by someone else.

D. Some of the 4,947 individuals almost certainly were not citizens at the time they voted.

Of the 11,805 people who showed a non-citizen credential when they received their driver's licenses, 4,947 – or 41.9% -- voted in the 2010 general election. By comparison, 55.5% of all registered voters turned out to vote in the 2010 election, as noted in the table below:

2010 turnout of all registered voters compared to voters who showed non-citizen documents to obtain a driver's license

	Registered to Vote	Voted in 2010 General Election	Percentage of Registered
All registered voters	3,293,942	1,828,323	55.5%
Registered voters who presented non-citizen credentials to obtain driver's license	11,805	4,947	41.9%

As noted earlier, The Department of State does not know if a person became a citizen after obtaining a driver's license or identification card. Similarly, a non-citizen may have been improperly registered to vote, but may have later become a citizen and legally voted. For the reasons discussed above, however, it is likely that many of the 4,947 voters were not citizens when they cast their vote in 2010.

E. Additional data will enable the Department of State to better determine the scope of non-citizen voter registrations.

The above analysis draws tentative conclusions based on a small fraction of driver's license records that contain information about a person's citizenship status. There exist, however, other state and federal databases that contain relevant information related to citizenship status. The following databases may provide additional, valuable tools to better understand the citizenship status of persons listed in the voter registration database:

The Department of Homeland Security - The Department of Homeland Security hosts the Systemic Alien Verification for Entitlements (SAVE) program. The Department of State currently uses this tool to research residence and citizenship information provided for notary applications. The Department of State is in the process of determining whether the SAVE program tool may be used for the purposes of verifying citizenship as it relates to the voter rolls.

State and Federal Courts - The state and federal court systems create jury pools using the voter rolls and Department of Revenue records. When a non-citizen receives a juror summons he or she can respond by returning the summons with a statement indicating that he or she is not a citizen. This information is tracked in the court jury database. A comparison of the juror recusal information and the voter rolls would aid with identifying non-citizens on the voter rolls.

Out-of-State Driver's License Records - The Department of Revenue accepts out-of-state driver's licenses as proof of lawful presence if the issuing state also requires lawful presence. Forty-three states, including Colorado and the District of Columbia, currently require proof of lawful presence before issuing a driver's license. Currently the Department of Revenue does not record the type of document provided to obtain a license in another state. If this information were shared between states it could increase the Department of State's ability to maintain accurate voter rolls. For example, the number of non-citizens identified in this analysis may have been greater had information from all 43 lawful presence states been available.

F. Absent the ability to administratively resolve citizenship disputes, the Department of State may be required to refer these questions to law enforcement authorities.

The Department of State is responsible for maintaining the statewide voter registration database. To fulfill this responsibility it periodically requests information from other governmental agencies. For example, it obtains information from the Department of Corrections and Department of Public Health in order to cancel or archive felons and deceased electors.

Currently, when the Department of State finds evidence of potential registration or vote fraud during the normal course of business it refers those cases to local district attorneys or to the

Attorney General's office for investigation and possible prosecution. The analysis here has identified 11,805 individuals who may be improperly registered to vote.

Criminal enforcement is not the best way to resolve citizenship issues. First, the large number of potential non-citizens may make investigation and possible prosecution both inefficient and prohibitively expensive. Thus, an administrative remedy will be more efficient and conserve law enforcement resources.

Second, criminal prosecution requires the intent to violate the law, but no intentional violation may exist in many cases. Indeed, non-citizens may appear on the voter rolls for many reasons, which can be grouped into three categories: (1) intentional violation of the law by the registrant; (2) mistake by the registrant; and (3) mistake by a governmental officer or voter registration drive.

A non-citizen might, of course, register to vote knowing that he or she is legally prohibited from doing so. In contrast, a non-citizen may unintentionally and mistakenly register to vote. For example, a green card holder may register to vote after receiving incorrect information that he or she may vote. Although some non-citizens may have intentionally violated the law, the Department of State currently lacks the ability to determine intent or willfulness.

Finally, clerical error, confusion, or some other administrative failure may cause an improper registration. For example, the Department of Revenue may incorrectly identify a citizen as a non-citizen. Or a county official may improperly input a registration form when the non-citizen correctly indicated that he or she was not a citizen. Indeed, the Department of State is aware of one such instance that resulted in deportation proceedings.

In these instances criminal prosecution is not appropriate. More authority to collect and analyze data and to administratively request verification would allow the Department of State to avoid criminal referrals in many -- perhaps most -- instances.

G. Summary

The Department of Revenue shows 211,200 people who used a non-citizen credential to obtain a driver's license or identification card. Comparing these names to the statewide voter database shows that 11,805 are currently registered to vote in Colorado. Of the 11,805 registrants, 4,214 voted in the 2010 election.

The Department of State is virtually certain that 106 of these non-citizens are improperly registered to vote and believes that many of the remaining 11,699 are improperly registered to vote. But it cannot accurately determine the number of non-citizens improperly registered to vote, nor can it determine the reasons for any improper registrations. In light of these uncertainties, additional data and the authority to administratively resolve citizenship questions will avoid expensive and perhaps ill-suited criminal investigations.

Mr. HARPER. And the second is an article that sites a similar study on noncitizen voting that is currently being conducted by the New Mexico Secretary of State.

Without objection to that request, it is so ordered.

[The information follows:]

SANTA FE NEW MEXICAN.com

Secretary of state cites signs of voter fraud

Duran says review of voter rolls and immigrant licenses unearthed evidence

By The Associated Press |

3/15/2011

New Mexico's top elections official told lawmakers Tuesday that she is concerned a review of the state's voter-registration rolls and a list of the thousands of foreign nationals who have been issued driver's licenses under a much debated state law has turned up evidence of fraud.

Secretary of State Dianna Duran's office has spent two days cross-checking the databases. She testified during a hearing on a voter-identification proposal that the work is far from over, and that her office has found some instances in which people without valid Social Security numbers cast votes in past elections.

Duran said she expects the review to be complete later this week.

"It's very concerning to the secretary. We feel it affects the integrity of elections," said Bobbi Shearer, the director of the state Bureau of Elections.

Immigrant- and voter-rights groups have questioned the validity of the review, but a spokesman for Gov. Susana Martinez said the initial report from the Secretary of State's Office should be a concern for New Mexicans.

"Each and every illegally cast vote disenfranchises a New Mexican, and this is yet another reason why the governor strongly supports repealing the law that gives driver's licenses to illegal immigrants," said spokesman Scott Darnell.

The issue of whether New Mexico should issue driver's licenses to foreign nationals, particularly illegal immigrants, has been the focus of much debate during the legislative session.

under a 2003 law, more than 80,000 driver's licenses have gone to foreign nationals. The state says it doesn't know how many of those went to illegal immigrants because it doesn't ask the immigration status of license applicants.

Immigrant applicants for driver's licenses don't need a Social Security number as part of their i ntification. Instead, they can submit a taxpayer identification number issued by the federal government, along with other identification such as a passport and a Matricula Consular card issued by a Mexican consulate.

Two other states — Washington and Utah — also allow illegal immigrants to get licenses because their laws do not require proof of citizenship. However, Utah's driving permits cannot be used as a government identification card.

Shearer described the cross check as fairly difficult. The office is reviewing names, birth dates and Social Security numbers, and more queries are planned.

Of the suspicious instances, Shearer said: "There's evidence that they're in the foreign national database, that their name and date of birth matches, and their Social Security number in our database is not valid, and that they did cast votes."

Marcela Diaz of the immigrant-rights group Somos Un Pueblo Unido said the cross check won't help to identify illegal voting because she contends the list used by the Secretary of State's Office also includes U.S. citizens who did not use their Social Security numbers when obtaining a license and those residents who have since become naturalized.

asically it's an absurd way of trying to ferret out people who are illegally registering. There has been no evidence to show that immigrants who are either legally permanent residents or undocumented are trying to do it," Diaz said.

Most people in the immigrant community would not attempt to vote illegally because it would prevent them from one day becoming a legal permanent resident or citizen, Diaz said.

"That's not a risk people are willing to take," she said.

The executive director of Common Cause New Mexico requested Duran's office forward any evidence of illegal voting to law enforcement officials. "... in recent years, many allegations of election-related felonies have circulated in our state. Time after time, these allegations have been proven to be fictitious," the group's executive director Steve Allen said in a news release. "Sadly, the same pattern has repeated itself over and over again. At this point, the evidence should be forwarded to law enforcement before, or at least at the same time as, such allegations are circulated to the media. We don't need more senseless panic about a problem that time and time again has proven to be largely imaginary."

The Secretary of State's Office also is awaiting more data from the Motor Vehicle Division in response to a 2006 lawsuit filed by the state Republican Party that sought to disclose the names of illegal immigrants who had obtained driver's licenses.

The party wanted the names — along with other information withheld by former Democratic

Gov. Bill Richardson's administration — so it could check them against the voter rolls. Republicans were concerned that immigrants could use their driver's licenses to register to vote.

As part of an agreement to settle the claim, the Motor Vehicle Division is gathering information on foreign national license holders as of July 2006.

Darnell said the agreement ensures federal and state privacy laws are upheld by having the Secretary of State's Office check the names against the voter rolls, rather than releasing the information to the Republican Party.

Whether the rest of the information, some of which pertains to an audit of foreign national license holders, is released depends on the New Mexico Supreme Court. The court heard arguments Monday but has yet to issue a ruling.

Steve Terrell contributed to this report.

Mr. HARPER. I want to thank each of you for being here to testify, for the members, for their participation. I know it is not easy to get here, and you have been very helpful to us today. I now adjourn the subcommittee.

[The information follows:]

[Whereupon, at 11:35 a.m., the subcommittee was adjourned.]

DANIEL E. LUNGREN, CALIFORNIA
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Congress of the United States
House of Representatives
COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
http://cha.house.gov

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JAMIE FLEET, MINORITY STAFF DIRECTOR

July 11, 2011

The Honorable Scott Gessler
Colorado Secretary of State
1700 Broadway, Suite 200
Denver, CO 80290

Dear Mr. Gessler,

Thank you for testifying during the March 31, 2011, Committee on House Administration Subcommittee on Elections Hearing on "The 2010 Election: A Look Back at What Went Right and Wrong." The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee **by April 21, 2011**.

1. Your research has focused on non-citizens in the motor vehicles system after 2006 because that is what the current data provides for, but have you considered ways you may be able to investigate those who were registered to vote prior to 2006?

2. In your experience, have you found that many cases of illegal voting get prosecuted when they are brought to the attention of local law enforcement?

3. Do you think that the some of the non-citizens who were registered to vote, but did not vote, registered unknowingly because of the operations of the Department of Motor Vehicles?

4. How many people in Colorado have been naturalized since 2006? What are the rates of registration and voter participation of newly naturalized citizens?

5. Who developed the methodology used to identify the alleged non-citizen registrants? Who outside your office reviewed or audited the methodological approach to ensure that it was statistically sound? What were their findings?

6. Has anyone audited the accuracy of the DMV or SCORE database? If so, what were the findings? How do you know the dates needed to establish the claims in your office's report are not typos or errors?

7. Do you have any evidence of purposeful intent on the part of any non-citizen to illegally register and vote?

8. Do you have any evidence of an orchestrated effort on the part of non-citizens to register and vote?

9. How many of the 106 people you are "nearly certain" are improperly registered to vote actually voted? Do you have evidence of any intent to commit fraud on the part of those people?

10. Do you have a breakdown of where these purported non-citizen registrants were registered? What kind of training are you providing to the DMV and public assistance workers on how to avoid this problem in a non-discriminatory manner? What kind of training are you providing to voter registration drives to avoid this problem in a non-discriminatory manner?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely Yours,

Gregg Harper

Gregg Harper
Chairman, Subcommittee on Elections

STATE OF COLORADO
Department of State
1700 Broadway
Suite 250
Denver, CO 80290

Scott Gessler
Secretary of State

William A. Hobbs
Deputy Secretary of State

April 19, 2011

The Honorable Gregg Harper
Chairman, Subcommittee on Elections
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Representative Harper,

Thank you for inviting me to testify before the committee on March 31. Below, you will find answers to your follow up questions.

1. **Your research has focused on non-citizens in the motor vehicles system after 2006 because that is what the current data provides for, but have you considered ways you may be able to investigate those who were registered to vote prior to 2006?**

   Colorado began requiring proof of lawful presence to obtain a driver's license or identification card beginning in 2006. These lawful presence documents were the documents my office used to conduct our analysis. Aside from these documents, we are limited in the resources we could use at the state level to expand our analysis beyond 2006. State juror recusal lists could provide one source of assistance in broadening the analysis, but it is not certain the state court system will share these lists under current law.

   We have begun investigating the possible use of federal databases to assist in the analysis. Both the Department of Homeland Security (SAVE program) and the Bureau of Immigration and Customs Enforcement (LESC program) could be tools to allow us to broaden our analysis, as well as tools to help solve the problem of possible non-citizens on the voter rolls. The ability of our office to access either database is not clear at this time. We would appreciate any help the committee can provide in gaining access to federal databases to assist in this effort.

2. **In your experience, have you found that many cases of illegal voting get prosecuted when they are brought to the attention of local law enforcement?**

   Yes, cases of illegal voting are prosecuted in Colorado, though it is rare.

Main Number	(303) 894-2200	TDD/TTY	(303) 869-4867
Administration	(303) 860-6900	Web Site	www.sos.state.co.us
Fax	(303) 869-4860	E-mail	administration@sos.state.co.us

3. **Do you think that some of the non-citizens who were registered to vote, but did not vote, registered unknowingly because of the operations of the Department of Motor Vehicles?**

   It is a strong possibility although we cannot be sure that some of the individuals on the list may not have been aware they were improperly registering to vote. It is even possible that some individuals could have truthfully marked the box on the voter registration form indicating he or she was not a citizen. If such an individual was placed on the voter rolls anyway, this would indicate error at the data entry point.

4. **How many people in Colorado have been naturalized since 2006? What are the rates of registration and voter participation of newly naturalized citizens?**

   According to the Department of Homeland Security, roughly 32,000 people have become naturalized in Colorado from 2006-2009 (the latest year for which there is data available). Because Colorado law does not require citizenship verification to register to vote, and because we lack access to federal databases with naturalization information, there is no way for our office to know the rates of registration or voter participation of newly naturalized citizens. Our office is exploring the possibility of gaining access to this data and we hope to be able to answer these questions.

5. **Who developed the methodology used to identify the alleged non-citizen registrants? Who outside your office reviewed or audited the methodological approach to ensure that it was statistically sound? What were their findings?**

   Dr. Judd Choate, the Elections Director for the state of Colorado, coordinated the study of non-citizen registrants. Dr. Choate holds a Ph.D. in political science, with a minor in advanced statistics. But, it should be noted that this project did not require a sophisticated statistical methodology. Rather, the analysis was a straightforward bivariate binomial distribution, wherein the Colorado Division of Elections examined the relationship between data captured in the state voter database against citizenship data collected by the Colorado Department of Revenue. Specifically, we analyzed the population of records in the Department of Revenue database for which an individual showed a non-citizen document. Those driver's license numbers were then compared to the voter registration database and all duplicate records were removed, where a person produced two or more forms of non-citizen credentials. What was left was a pool of 11,805 electors who at some point in the past showed a non-citizen credential and are currently registered to vote in the state of Colorado.

6. **Has anyone audited the accuracy of the DMV or SCORE database? If so, what were the findings? How do you know the dates needed to establish the claims in your office's report are not typos or errors?**

   The SCORE database is constantly audited for some pieces of information. For example, every time our office, or the county clerk and recorders send a piece of mail (including absentee ballots), we audit the validity of that address. But we have not audited the

database for information regarding citizenship. We need access to federal databases with citizenship information in order to audit dates regarding citizenship documents. We do not, at this time, have access to these databases. There is no doubt human error could lead to faulty data in either system. This is part of the reason we have first sought legislation on the state level to grant us access to more databases and to resolve this problem administratively, with a letter asking for citizenship verification, rather than through law enforcement. The validity of the data in either system and the inability to access verifiable data regarding citizenship should be of concern to both state election officials and federal policymakers.

7. **Do you have any evidence of purposeful intent on the part of any non-citizen to illegally register and vote?**

   We did not, as part of this analysis, discover any evidence of purposeful intent by any non-citizen to illegally register and vote. Again, the analysis we conducted was simply a statistical analysis and is very preliminary. I have anecdotal evidence of such an individual willfully registering and voting, but we currently lack the tools to be able to confront this issue. My hope is to obtain clear authority from the Colorado legislature on a plan to move forward to administratively resolve this issue. But as I have testified before the General Assembly here in Colorado, if my office cannot obtain such clear authority, we may need to hand over the results of our analysis to the attorney general or district attorneys for investigation and possible prosecution.

8. **Do you have any evidence of an orchestrated effort on the part of non-citizens to register and vote?**

   We have no direct knowledge of a coordinated effort by non-citizens to register to vote improperly. But Colorado, like other states, has seen voter registration drives from groups like ACORN that sometimes lack controls to verify important information. Circumstantially, I think this lack of controls also applies to citizenship status.

9. **How many of the 106 people you are "nearly certain" are improperly registered to vote actually voted? Do you have evidence of any intent to commit fraud on the part of those people?**

   The analysis we conducted for the study did include a query for 2010 vote activity for the entire 11,805 individuals (of which the 106 are a subset). For the purposes of the study, we did not review vote credit for any individuals and we did not review vote credit for any subset of the 11,805. Because I have attempted to approach this problem administratively, we have not yet actively sought evidence of intent or fraud. Further analysis of the data may lead to such evidence, or any investigation undertaken by the attorney general or district attorneys could find such evidence.

10. **Do you have a breakdown of where these purported non-citizen registrants were registered? What kind of training are you providing to the DMV and public assistance workers on how to avoid this problem in a non-discriminatory manner?**

What kind of training are you providing to voter registration drives to avoid this problem in a non-discriminatory manner?

Our voter registration database identifies the method by which an individual was registered (e.g. through a voter drive submitted to our office or at a local DMV office). Our initial analysis did not include this data point, though it will be helpful in moving forward to determine if human error or a lack of training are contributing to the problem of non-citizens on the voter rolls.

On the one hand, our office currently does not provide training to DMV workers regarding voter registration. On the other hand, our office does provide training via an online training module to public assistance workers who register individuals to vote through an online training module. Additionally, as you may know, federal law requires all individuals applying for public assistance be offered a voter registration application. The worker providing the service cannot differentiate between a citizen and non-citizen in this regard. It is up to the individual to accurately fill out the form, including a question regarding citizenship and to sign an affirmation attesting to being a U.S. citizen. The online training module provided by this office to public assistance workers contains this question and answer in accordance with federal law:

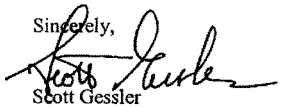
> Q: What if the client is not a citizen? Do I still offer the Voter Application?
>
> A: Yes, you should offer the Application and the client should decline registration by using the Declination Form.

In addition, our office does require training for groups that conduct voter registration drives, also through an online module. This training includes the list of criteria required for an individual to be eligible to register to vote, including the requirement to be a U.S. citizen at the time of completing the registration. Because there is no state requirement for proof of citizenship, individuals conducting voter registration drives are not required to verify this information.

In the absence of a state level proof of citizenship requirement at the time of registration, perhaps additional training is necessary to help address the potential of non-citizens on the voter rolls.

Thank you again for inviting me to testify before the committee and for providing me the opportunity to further inform the committee members with these questions. Please do not hesitate to contact my office if you have any additional questions or would like any more information about this issue.

Sincerely,



Scott Gessler
Colorado Secretary of State

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COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
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JAMIE FLEET, MINORITY STAFF DIRECTOR

July 11, 2011

The Honorable Mark Ritchie
Secretary of State
180 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155

Dear Mr. Ritchie,

Thank you for testifying during the March 31, 2011, Committee on House Administration Subcommittee on Elections Hearing on "The 2010 Election: A Look Back at What Went Right and Wrong." The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee **by April 21, 2011**.

1. In the hearing you stated that North Dakota is the only state that "in a sense automatically" registers its voters. Does North Dakota register voters? If not, can you clarify your statement in the hearing?

2. You indicated in your testimony that you check the Minnesota driver's license records again the voter registration records to identify non-citizens on the voter registration records and put them into the challenge process before election day or check whether they voted after election day. Is this correct? If so, how many non-citizen driver's license applicants were put on the voter registration rolls and then removed through the challenge process?

3. How is the process you use similar to Secretary Gessler's investigation? And how is it different?

4. Minnesota allows for same day voter registration and according to the Secretary of State's website, a voter registered in the same precinct may vouch for an individual instead of requiring that person to show an ID. When people get registered and vote via this system of vouching, does the state ever investigate after the fact to ensure that the individual who registered really was a valid resident?

5. During the 2010 election, what steps did you take to ensure that absentee ballots were counted and rejected using the same standards in every county, to avoid the inconsistent treatment that led to an election contest in 2008?

6. The federal and Minnesota voter registration forms include as their first question whether the applicant is a citizen of the United States of America. If an applicant fails to answer this question and does not correct the failure when given the opportunity, would the State of Minnesota register this person as a voter?

7. The State of Florida was sued to force the state to accept registration forms when the applicant did not check the citizenship box at the top of the form. Other states chose to accept the forms even if the box is not checked. Regardless of Minnesota's rules, do you think the correct policy is to require that an applicant check the "yes" box stating they are a citizen or to register them even if that box is not checked?

8. Some states have overly burdensome restrictions on mobile populations. What do you recommend states do to assist those citizens who may be highly mobile? How does Minnesota handle this?

9. Do voters need a private right of action? What are the benefits and drawbacks?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely Yours,

Gregg Harper

Gregg Harper
Chairman, Subcommittee on Elections

STATE OF MINNESOTA
Office of the Minnesota Secretary of State
Mark Ritchie

April 18, 2011

The Honorable Gregg Harper
Chairman, Subcommittee on Elections
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Dear Representative Harper:

Thank you for your letter. I have enclosed the answers to your questions that will be made part of the hearing record.

If you need any further information please do not hesitate to contact me at (651) 201-1324.

Sincerely,

MARK RITCHIE
Minnesota Secretary of State

Enclosures

Thank you!

180 State Office Building | 100 Rev. Dr. Martin Luther King, Jr. Blvd. | Saint Paul, MN 55155-1299
Phone: 651-201-1324 or 1-877-600-8683 | Fax: 651-215-0682 | MN Relay Service: 711
E-mail: secretary.state@state.mn.us | Web site: www.sos.state.mn.us

1. **In the hearing you stated that North Dakota is the only state that "in a sense automatically" registers its voters. Does North Dakota register voters? If not, can you clarify your statement in the hearing?**

   North Dakota does not require its residents to register to vote for federal or state elections. However, the State takes it upon itself to compile a list of eligible voters, in what I believe should serve as a model for other states. Under North Dakota law the Secretary of State, in cooperation with the Department of Transportation, Department of Health and the County Auditors compiles a list of all eligible voters in the state called the Central Voter File. This unique approach to creating the voter list makes North Dakota one of the most advanced and successful states in terms of election administration.

2. **You indicated in your testimony that you check the Minnesota driver's license records against the voter registration records to identify non-citizens on the voter registration records and put them into the challenge process before Election Day or check whether they voted after Election Day. Is this correct? If so, how many non-citizen drivers' license applicants were put on the voter registration rolls and then removed through the challenge process?**

   In 2010, the Minnesota Office of the Secretary of State sought and received authorization from the Minnesota Legislature to compare our voter lists to non-citizen data provided by the Department of Public Safety both before and after elections. In September 2010, we identified 4 non-citizens who had registered and voted since I took office in 2007, 3 in 2008 and 1 in 2009. We compared updated files again twice after the election and found that one non-citizen had registered to vote since the last data match and none had voted. As is our normal procedure, this person's name was both marked as challenged on the voter roll and turned over to the proper authority, which in Minnesota is the County Attorney's Office, for investigation and potential prosecution.

3. **How is the process you use similar to Secretary Gessler's investigation? And how is this different?**

   I am not familiar enough with Colorado's approach to identifying non-citizens on the voter roll to comment on how their process differs from Minnesota's.

4. **Minnesota allows for same day voter registration and according to the Secretary of State's website, a voter registered in the same precinct may vouch for an individual instead of requiring that person to show an ID. When people get registered and vote via this system of vouching, does the state ever investigate after the fact to ensure that the individual who registered was a valid resident?**

   In Minnesota, individuals who register to vote on Election Day must provide proof of residence. This may be accomplished in a variety of ways, including a driver's license with the individual's name and current address, a driver's license with an old address along with a utility bill with the individual's current address, or the sworn statement of another voter who is registered to vote in the precinct

that they have personal knowledge that the individual lives in the precinct. This last method is commonly referred to as "vouching." After the election all election day registrants are sent non-forwardable postcards to verify their addresses. If any postcards sent to election day registrants are returned as non-deliverable, the county auditor is required to determine whether the voter was eligible to vote. If the county auditor cannot obtain proof of the voter's eligibility, they are required to turn the information over to the County Attorney for further investigation and possible prosecution. In the case of an election day registrant who had been vouched for, the voucher's name may also be forwarded to the County Attorney for potential prosecution.

5. **During the 2010 election, what steps did you take to ensure that absentee ballots were counted and rejected using the same standards in every county, to avoid the inconsistent treatment that led to an election contest in 2008?**

   In 2010 my office worked with state legislators to enact changes to the way that absentee ballots are processed in Minnesota. They are now processed within days of arrival by specially trained boards, not by poll workers on Election Night. In addition, Minnesota took the advice of Congress and lengthened our absentee voting period to 46 days before elections instead of 30. Both of these changes resulted in reducing voter error and streamlining the processing of absentee ballots by local election officials. Absentee ballots were not an issue in any of the 4 major recounts that were conducted in 2010, including the statewide recount in the Governor's race.

   Even prior to these changes, however, please note that absentee balloting did not cause the election contest in the US Senate race in 2008. One of the conclusions of law of the three judge panel that oversaw the election contest was, "The Minnesota legislature enacted clear, uniform standards regulating absentee voting in this state... Election officials exercised reasonable discretion within the confines of Minnesota election law and under a comprehensive, state-wide training program in determining whether a voter met the statutory requirements of absentee voting." *In the Matter of the Contest of General Election held on November 4, 2008,* Second Judicial District Case 62-CV-09-56, Findings of Fact, Conclusions of Law and Order for Judgment, page 25 at paragraph 154.

6. **The federal and Minnesota voter registration forms include as their first question whether the applicant is a citizen of the United States of America. If an applicant fails to answer this question and does not correct the failure when given the opportunity, would the State of Minnesota register this person as a voter?**

   Voter registration applications in Minnesota include the question "Are you a U.S. citizen?" Voters are also required to sign the oath on the application in which they swear that they are U.S. citizens. The legislature has decided, as a matter of policy, that this attestation is sufficient, even in cases in which voters fail to check the box indicating that they are citizens. If a voter fails to sign the oath, of course, the voter registration application cannot be processed and the voter will not be registered until they do.

7. **The State of Florida was sued to force the state to accept registration forms when the applicant did not check the citizenship box at the top of the form. Other states chose to accept the forms even if the box is not checked. Regardless of Minnesota's rules, do you think the correct policy is to require that an applicant check the "yes" box stating they are a citizen or to register them even if that box is not checked?**

   Unfortunately, government forms are often designed by those without expertise in "usability," and as a result the format of the form leads those filling it out to overlook certain areas or to make certain mistakes. This was true of Minnesota's first voter registration application that included the question about citizenship. The question was in tiny print and was printed in red, a color that often denotes a section of a form that is for office use only. Many voters overlooked answering this question. Since I have taken office, my staff has redesigned Minnesota's voter registration application to make it more user-friendly and redesigned the absentee balloting materials, in this case using the assistance of usability experts. I do not believe that voters should be harmed by a design flaw in the form, if they still indicate on the same form that they do fulfill the eligibility criteria.

8. **Some states have overly burdensome restrictions on mobile populations. What do you recommend states do to assist those citizens who may be highly mobile? How does Minnesota handle this?**

   Minnesota election law requires everyone who moves from one address in the state to another, even across the hallway in his or her apartment building, to re-register at their new address. This requirement is necessary to ensure that eligible voters receive the correct ballots in local elections and vote in the correct precinct. Minnesota has made some progress on reducing the burden that this imposes on voters by using data from the U.S. Postal Service National Change of Address program to automatically update voter registrations. Voters are sent a notice to let them know that their registration has been updated and where to find their new polling place. They are instructed to notify their local county auditor if they have not actually changed their residence and their voter registration should not have been updated. This new program has dramatically improved the quality of our list and reduced the number of Election Day registrations, since most same-day registrations are simple in-state address changes. Other states may want to consider using National Change of Address data in a similar way, although I would urge them to pair automatic updates to voters' registrations with a "safety net," such as Election Day registration, to ensure that voters are not harmed in cases in which they do not receive or fail to respond to the mailed notice.

9. **Do voters need a private right of action? What are the benefits and drawbacks?**

   Voters in Minnesota have the right to petition the Minnesota Supreme Court on any error, omission or wrongful act relating to elections. I am not sure how to make this any easier.

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
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Congress of the United States
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COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
http://cha.house.gov

ROBERT A. BRADY, PENNSYLVANIA
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ZOE LOFGREN, CALIFORNIA
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ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

July 11, 2011

The Honorable Susan Gill
Supervisor of Elections
Citrus County
120 N. Apopka Avenue
Inverness, Florida 34450

Dear Ms. Gill,

Thank you for testifying during the March 31, 2011, Committee on House Administration Subcommittee on Elections Hearing on "The 2010 Election: A Look Back at What Went Right and Wrong." The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee **by April 21, 2011**.

1. In response to a question posed by Chairman Lungren concerning voter identification, you testified that stricter ID requirements would do more to disenfranchise more eligible voters than it would address the perceived issue of willfully ineligible voters who are illegally registered to vote. Please outline your concerns on this issue.

2. In your estimation, how pervasive is the problem of ineligible voters registering to vote? Are there issues that you feel are more important for congress to focus on in terms of election reform?

3. Non-partisan election monitoring certainly plays a role in making sure elections run smoothly. At the same time, given the growing need for educated and experienced poll workers, what should done to recruit and send volunteers to work with local election offices to assist in the administration of elections?

4. What kind of poll worker recruitment, training, and retention programs have you implemented?

5. From your experiences, what can you tell us about challenges faced in transferring and matching information between databases both intrastate and interstate?

6. Please elaborate on the impact to your office when the state requires a change of voting machine type, including the steps you have to take to adapt and the cost in dollars and personnel time.

7. Did changes in voting machine type affect the operations of the 2010 election in your county?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely Yours,

Gregg Harper

Gregg Harper
Chairman, Subcommittee on Elections

COMMITTEE
HOUSE ADMINISTRATION
2011 MAY -2 PM 2:21

Susan Gill
SUPERVISOR OF ELECTIONS
CITRUS COUNTY

120 N. Apopka Avenue
Inverness, FL 34450-4238

(352) 341-6740
Fax: (352) 341-6749
e-mail: vote@elections.citrus.fl.us

April 20, 2011

The Honorable Gregg Harper
Chairman, Subcommittee on Elections
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Dear Chairman Harper,

Enclosed are the answers to the follow-up questions to my March 31, 2011 testimony before the Committee on House Administration Subcommittee on Elections on "The 2010 Elections: A Look at What Went Right and Wrong."

If you have any further questions please do not hesitate to contact me. It was very nice to meet you and an honor to testify before the committee.

Sincerely,

Susan Gill
Supervisor of Elections

MAKE A
NOTE TO
VOTE!

A Supplement to the Testimony of Susan Gill,
Citrus County, Florida Supervisor of Elections on March 31, 2011 -
"The 2010 Election: A Look Back At What Went Right and Wrong."
Requested by the Committee on House Administration
Subcommittee on Elections

1. **In response to a question posed by Chairman Lungren concerning voter identification, you testified that stricter ID requirements would do more to disenfranchise more eligible voters than it would to address the perceived issue of willfully ineligible voters who are illegally registered to vote. Please outline your concerns on this issue.**

My concern stems from the 2000 felon identification experience in Florida. A flawed database was used to identify felons. The database filter was too broad which incorrectly identified individuals who were not convicted felons by virtue of a wrong match, a felony remanded down to a misdemeanor, or charges dropped. As a result there were individuals who were removed from the voter rolls in error. The lists were delivered to supervisors close to the election resulting in harsh criticism and accusations of intent to remove voters prior to an election.

Since then the felon matching process has greatly improved. The Division of Elections now identifies potential matches as credible before sending the file to the supervisors of elections to follow through with the removal process. This is a much more cautious and accurate approach with proper notification before any voter's name is removed from the voter registration rolls.

When asked about the verifying process for citizenship, I must say that the flawed felon process came to mind alarming me that we could again experience a process similar to the 2000 felon matching debacle. Caution must be exercised in utilizing any database and a strong, credible match must be made to avoid the problems we encountered in 2000.

2. In your estimation, how pervasive is the problem of ineligible voters registering to vote? Are there issues that you feel are more important for congress to focus on in terms of election reform?

I surveyed my fellow Florida supervisors to see how pervasive they thought the problem of ineligible voters registering to vote was. Most supervisors reported that although they may have had a few instances of ineligible voters either registering or registering and voting, they did not think that the problem was pervasive.

We currently have no methodology in place to factually know how pervasive this problem may be. We are not verifying the voter roll or applicants for citizenship as we do with the Department of Highway Safety and Motor Vehicles or the Social Security Administration to verify an applicant's identity and the Florida Department of Law Enforcement (FDLE) database is used to identify voters who have been convicted of a felony.

As a follow-up I spoke with a representative from the US Citizen and Immigration Services (USCIS) department in Tampa to ask specifically if non-citizens registering and voting was pervasive. She said that in her jurisdiction it was not and further that most situations were not willful.

The Florida Secretary of State is in the initial stages of discussions with the Florida Department of Highway Safety and Motor Vehicles on a possible use of the HSMV database to identify non-citizens. Non-citizens must produce documents to prove legal presence in the State before being issued a driver's license. This may prove to be a tool to verifying a voter's citizenship. If a person is undocumented, it seems unlikely that they would try to register to vote. The costs of a matching database would probably differ by state.

3. Non-partisan election monitoring certainly plays a role in making sure elections run smoothly. At the same time, given the growing need for educated and experience poll workers, what should be done to recruit and send volunteers to work with local elections officials to assist in the administration of elections?

In Florida, we do not have non-partisan monitoring at the polls. Poll watchers from the parties and for candidates are allowed into the polling room in addition to inspectors, election clerks, the supervisor of elections or his or her deputy, persons there to vote, persons in the care of a voter, or persons caring for such voter also law enforcement officers or emergency service personnel there with permission of the clerk or a majority of the inspectors or a person whether or not a registered voter, who is assisting with or participating in a simulated election for minors, as approved by the supervisor of elections are allowed as well.

Again checking with the Florida supervisors of elections, they are able to handle the administration of elections with the resources available in their individual counties.

4. What kind of poll worker recruitment, training, and retention programs have you implemented?

Recruiting tools used by Florida supervisors include asking their current poll workers to recruit their friends, running ads, having poll worker orientation programs, reaching out to community organizations such as the Rotary and Kiwanis in Adopt a Precinct Programs. A very effective way is a check box on the voter registration application form with the question, "Would you like to be a poll worker?"

Training of poll workers includes on-line training as a supplement to hands-on training in small group learning environments. Florida law mandates a minimum of 3 hours training for clerks and a minimum of 2 hours training for inspectors. In Citrus County our clerks receive approximately 10 hours training which includes their clerk's, inspector, and equipment training. This includes sensitivity training with respect to voters with disabilities and etiquette of interacting with voters in various situations. Off-year training workshops are used as well as on-line newsletters to keep the poll workers connected to the elections office.

We have had friendly contests between the precincts with an "award" for completing all the paperwork without error. The poll workers appreciate this gesture and the award consisted on a star pin and a low cost coffee and donut reception for them as well as recognition in the newsletter. We also provide an election official pin for the poll workers with the election years they worked on a bar attached. They wear their pins proudly. Poll workers appreciate the recognition because they take their election jobs very seriously.

The general comment is that it is harder to get the young workers because they do not want to make the commitment needed for the training and the 14 hour day on Election Day. Those supervisors in college towns may have better luck with a larger pool of young people. Orange County, Florida received an EAC grant for the recruitment of college poll workers.

Reasons for not having a critical need for poll workers include the popularity of early voting and mail balloting resulting in less poll workers needed on Election Day. The downturn in the economy results in more people being available to work on a short term election work.

5. From your experiences, what can you tell us about challenges faced in transferring and matching information between databases both intrastate and interstate?

The biggest problem we experienced with databases or matching information was the 2000 felon list I described in question number one (1). The process is much improved because the Division of Elections examines every possible felon file to insure the evidence is credible before sending the file to the county supervisor of elections for handling.

The local voter registration software transfers matching information with the Florida Voter Registration System (FVRS) and transfers voters from county to county. Matching function allow the identification of duplicates between counties. The Department of Vital Statistics provides lists of deceased persons to be matched with the database. Registrations are matched with the Social Security Administration database as well as the Department of Florida Highway Safety database. Soon we will match for voters who have died out of state through the SSA database. Currently we are only able to identify the voters who die in Florida. This is a problem because we have a large number of voters who are seasonal residents.

6. Please elaborate on the impact to your office when the state requires a change of voting machine type, including the steps you have to take to adapt and the cost in dollars and personnel time.

Since the 2000 election, 15 Florida counties have moved from the punch card system to touch screens and in 2007 to an optical scan system. The fifteen counties comprise approximately fifty percent of the Florida voters. My county has utilized the same optical scan system since 1998. To answer this question, I asked Jennifer Edwards of Collier County to provide information. Collier County's main city is Naples and considered a medium sized county with approximately 177,000 registered voters.

Ms. Edwards reported that in the 2000/2001 budget cycle, Election Services and Software iVotronics touch screens were purchased at a cost of $4,200,000. In the 2008-2009 budget cycle, DS200 were purchased at a cost of $1,200,000. The county will be making the final loan payment $623,113.40 on the purchase of the optical scan system on 10/01/2011. The loan was amortized over ten years. This was a very costly change for the 15 counties purchasing new equipment.

The changes in the voting machine type requires training for staff to become proficient in use of the equipment in order to train election workers and educate the public as well as learning the software to ensure accurate election creation, ballots, etc.

7. Did the changes in voting machine type affect the operations of the 2010 election cycle in your county?

Since Citrus County did not have a voting system change, I again asked the Collier County supervisor of elections to answer.

The change from iVotronics to DS200's to provide a paper trail greatly affected operations in Collier County. They experienced longer lines, paper jams and increased leased storage. Anytime an equipment change occurs there are a number of unplanned issues that arise.

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

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Congress of the United States
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COMMITTEE ON HOUSE ADMINISTRATION
1309 Longworth House Office Building
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(202) 225-8281
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CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

July 11, 2011

Mr. Ken Carbullido
Senior Vice-Preisdent of Voting Systems
Election Systems & Software, Inc.
11208 John Galt Blvd.
Omaha, NE 68137

Dear Mr. Carbullido,

Thank you for testifying during the March 31, 2011, Committee on House Administration Subcommittee on Elections Hearing on "The 2010 Election: A Look Back at What Went Right and Wrong." The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee **by April 21, 2011**.

1. In a recent letter to the Committee (attached), the EAC has challenged ES&S's assertion that all the problems on the Unity 3.2.0.0 have been fixed. Please respond to the EAC's claims in their attached April 4, 2011, letter. In addition, please specifically address the following questions:
    a) Does the certification of the Unity 3.2.1.0 mean that those still using the Unity 3.2.0.0 no longer will encounter the documented problems?
    b) Has updated software to cure the identified problems with the Unity 3.2.0.0 been submitted to the EAC for testing? If not, why not?
    c) Are there jurisdictions that will continue to encounter the same problems with the DS 200 when using Unity 3.2.1.0 in the next election cycle?

2. Looking forward to the 2012 election, what steps are you taking to prevent problems like the ones the DS200 encountered in 2010?

3. How many states currently use the ES&S DS200?

4. Have jurisdictions other than Cuyahoga County reported problems with the DS 200 when used in elections?

5. Larry Norden of the Brennan Center has suggested that the federal government create a national database of voting system problems and make a federal agency responsible for housing the database. That agency also would have investigatory powers as well as the

power to impose penalties on voting machine manufacturers who don't report problems. How would a system like this affect the market for voting machines in this country?

6. Can you comment on how you think the ES&S 3.2.1.0 certification will affect the investigation into the ES&S 3.2.0.0?

7. A few weeks ago, this committee held a hearing on the MOVE Act. Testimony was given from the Indiana director of elections, which implied that the vendors didn't know that the MOVE Act was enacted, which, among other changes, required states to send ballots overseas at least 45 days before an election. This caused some confusion within the states that could have easily been avoided. How does your company work with states and other customers to know changes in the law which could have an impact on voting?

8. Based on your company's experience, do you have any suggestions for improvements to the EAC's testing and certification program?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely Yours,

Gregg Harper

Gregg Harper
Chairman, Subcommittee on Elections

April 20, 2011

MAY 04 2011

Gregg Harper
Chairman, Subcommittee on Elections
Congress of the United States
House of Representatives
Committee on House Administration
1309 Longworth House Office Building
Washington, D.C. 20515-6157

Dear Chairman Harper:

Thank you for the opportunity to testify during the Committee on House Administration Subcommittee on Elections Hearing on March 31, 2011. In response to your letter of April 7, 2011, I offer the following answers to the questions you raised.

1. In a recent letter to the Committee (attached), the EAC has challenged ES&S's assertion that all the problems on the Unity 3.2.0.0 have been fixed. Please respond to the EAC's claims in their attached April 4, 2011, letter. In addition, please specifically address the following questions:

   a) Does the certification of the Unity 3.2.1.0 mean that those still using the Unity 3.2.0.0 no longer will encounter the documented problems?

   First we would like to address the comment made by Mr. Tom Wilkey, Executive Director of the EAC in the letter dated April 4, 2011. Specifically Mr. Wilkey stated that *"ES&S recently testified before Congress that all issues identified in the Notice of Formal Investigation have been resolved. That is not accurate. Voters in several jurisdictions will use the Unity 3.2.0.0 voting system in upcoming elections. It is important to note that the issues identified in the Election Assistance Commission (EAC) System Advisory notices (attached) still exist on the voting system".*

   Mr. Wilkey was correct in his statement. At the same time, ES&S' testimony was also correct, and we apologize if our testimony was misunderstood or misconstrued. When we stated that the issues were resolved our reference was to the fact that all of the known issues (that are under investigation) had effectively been addressed in the newly certified version of Unity known as 3.2.1.0. The certification of Unity 3.2.1.0 concluded the issues identified in the EAC's Notice of Formal Investigation were *all resolved* in the updated version of DS200 software tested with the Unity 3.2.1.0 release. We agree that this does not mean that these issues are automatically addressed in Unity 3.2.0.0, however we have been in contact with each of the three states who use version 3.2.0.0 and have made arrangements to have the corrected version of 3.2.1.0 state certified and installed as expeditiously as possible. For that reason we stated that the issues had been resolved.

In addition, on April 6, 2011, ES&S submitted an application for certification for Unity 3.2.0.0 Rev 2, to serve as a modification to the Unity 3.2.0.0 and Unity 3.2.0.0 Rev 1 systems previously certified by the EAC. Unity 3.2.0.0 Rev 2 provides the "cure" for these systems, as outlined within the EAC's formal investigation policy and procedures. So in essence we have provided dual paths for any election jurisdiction to take to ensure that the identified issues are corrected. One path would be to install the recently EAC approved Unity 3.2.1.0 system or the second path would be to install the modified version of 3.2.0.0, Unity 3.2.0.0 Rev 2. At this time we expect that all of our customers will proceed with installing 3.2.1.0 because it contains a number of other enhancements as well as the aforementioned corrections; however we are likewise proceeding with a cure for 3.2.0.0.

To specifically address your question in item (a), the response is no. Any jurisdiction using Unity 3.2.0.0 in any spring Primary elections will need to continue to follow the technical bulletin product advisories that have been provided to each, instructing them of how to either a) avoid the anomaly altogether or b) recognize when an anomaly may have occurred with the appropriate steps to be taken to safely and accurately complete their election. The EAC has been extremely diligent in assisting us in ensuring that all affected jurisdictions are aware of this fact and prepare accordingly.

b) Has updated software to cure the identified problems with the Unity 3.2.0.0 been submitted to the EAC for testing? If not, why not?

Yes. As previously stated above, ES&S submitted the application for certification for Unity 3.2.0.0 Rev 2 on April 6, 2011. The application was approved by the EAC on April 15, 2011 and testing is underway with Wyle Laboratories. All testing is expected to be completed and a Test Report submitted to the EAC prior to May 6, 2011 for review and final approval.

c) Are there jurisdictions that will continue to encounter the same problems with the DS200 when using Unity 3.2.1.0 in the next election cycle?

No. Unity 3.2.1.0 corrected all of the issues identified in the EAC's Notice of Formal Investigation. As noted above in the first response, we are already underway in scheduling State certification events in the affected states to ensure that the new version of 3.2.1.0 will be installed well in advance of the next round of elections (post May 2011).

2. Looking forward to the 2012 election, what steps are you taking to prevent problems like the ones the DS200 encountered in 2010?

ES&S has upgraded operating system software components that our DS200 is built upon to the latest versions. The newer version continues to take advantage of the latest technologies and will be more robust and error-free.

ES&S has and will continue to enhance the regression testing steps taken as part of our internal quality assurance process before our products are released to the independent testing

authorities and to our customers for use. ES&S has and will continue to increase communications with our customers about their use of our products. We will remain diligent, monitoring usage and responding as quickly as possible to any issues that may arise.

ES&S will also work with the voting system test laboratories and federal and state authorities to streamline the testing and approval processes, so that when issues arise and corrections or upgrades are created to solve such issues, those fixes and upgrades can be made available for customer usage as quickly as possible.

3. How many states currently use the ES&S DS200?

   Five states currently use the ES&S DS200. Various customers in Indiana, Ohio, and Wisconsin have an implementation of the EAC certified Unity 3.2.0.0 system. Customers in Florida and New York are using different versions of DS200 software.

4. Have jurisdictions other than Cuyahoga County reported problems with the DS200 when used in elections?

   Other than Cuyahoga County, ES&S has received confirmed report from one Wisconsin jurisdiction of an incident occurring in each of the 2010 September Primary and November General elections. Both of those incidents were reported to the EAC in accordance with Section 2.3.2.7 of the *EAC Voting System Testing and Certification Program Manual, Version 1.0*. In addition, ES&S received unconfirmed reports of the freeze/lockup issue at a recent Florida county user conference.

5. Larry Norden of the Brennan Center has suggested that the federal government create a national database of voting system problems and make a federal agency responsible for housing the database. That agency also would have investigatory powers as well as the power to impose penalties on voting machine manufacturers who don't report problems. How would a system like this affect the market for voting machines in this country?

   ES&S fully supports the best practice of providing users with information related to any known voting system issues. To that end, for several years now, ES&S has provided our customers with access to a central portal that includes a complete central database of any known issues. ES&S customers (as well as State Election Officials) are provided access to this system which will "alert" them when a new technical bulletin has been posted for their particular system. This customer portal is provided free of charge and allows our customers the ability to search for issues from across the nationwide usage of our products for particular items that may have an effect on the usage of our products in their jurisdiction. We believe creating such a database as Larry Norden suggests would be redundant to what ES&S already provides.

   In addition to the above database, we also report any known issues to the EAC as part of their quality monitoring program which requires us to report certain anomalies to the EAC for any federally certified voting system. We believe in over reporting rather than under reporting and as such we are fully supportive of the EAC quality monitoring program. Poor quality

products are not viable, short and long term, and companies that cannot field high quality innovative and valuable products do not survive in this very small industry and economy. The marketplace and competitive forces have filtered out the poor quality products and voting system companies that cannot provide high quality products and services. ES&S is very proud of our long history of providing high quality products in this marketplace. We take very seriously our role in the industry, as we strive to meet our company objective of enhancing the voting system experience for all participants.

The potential for penalties on voting system manufacturers can actually have a negative effect. Penalties can force manufacturers to avoid risks associated with new products or product upgrades. This can lead to a slow down or void of system innovation and improvements. It could result in the exit of suppliers and competition, reducing the choices available for states and counties. We believe in responsible reporting and we fully support the EAC quality monitoring program which we believe, in combination with our customer portal, are more than adequate to address the concerns raised by Mr. Norden.

6. Can you comment on how you think the ES&S 3.2.1.0 certification will affect the investigation into the ES&S 3.2.0.0?

   Since the initial discovery of each of the items identified in the EAC's Notice of Formal Investigation, ES&S has worked openly with the EAC to share our root cause analysis, findings, modifications, and validation test results for each of the issues though the certification approval of Unity 3.2.1.0 in April 2011. ES&S has fully cooperated with the EAC to inform all DS200 users of the issues and workarounds for them. During that approximate 11-month period, testing performed by ES&S, iBeta Quality Assurance and Wyle Laboratories was intense and thorough. We believe the recent certification approval of Unity 3.2.1.0 is testimony that the issues are resolved. In addition, once Wyle Laboratories has completed testing of Unity 3.2.0.0 Rev 2, we are confident that the issues identified will have all been addressed in both new and former versions.

   ES&S is fully committed to providing the EAC the necessary support to bring this matter to closure.

7. A few weeks ago, this committee held a hearing on the MOVE Act. Testimony was given from the Indiana director of elections, which implied that the vendors didn't know that the MOVE Act was enacted, which, among other changes, required states to send ballots overseas at least 45 days before an election. This caused some confusion within the states that could have easily been avoided. How does your company work with states and other customers to know changes in the law which could have an impact on voting?

   The example given in Indiana is reflective of a county choosing a partner that is not a full-time voting system manufacturer and supplier. ES&S is a 100% dedicated voting system company. ES&S provides products and services that support the entire voting process, from Voter Registration, Early Voting, Election Day and Election Reporting and everything in between.

ES&S is the leader in providing end-to-end integrated election solutions. For more than three decades we have had a successful track record of producing quality results. We support thousands of elections every year and are proven experts our customers can rely on every day. To fulfill our role and responsibility to ES&S' state and local jurisdiction customers, ES&S has a Government Relations company officer whose primary role is to maintain full awareness of all election requirements such as FVAP's MOVE, and assure that ES&S understands and appreciates how we must adapt to support all of our customer's needs. In fact in many cases ES&S has earlier knowledge of changes such as MOVE's requirements prior to our local jurisdiction customers, and we are able to inform and advise them on meeting these requirements.

The Indiana example of a local county supplier not being aware of MOVE's 45 day ballot delivery requirement is not reflective of our mission at ES&S which is to "Maintain Voter Confidence and improve the Voting Experience.". Ensuring that we are fully aware of all legislative requirements is an area we take very seriously. Our Government Relations staff is present at all NASED and NASS meetings, as well as Election Center legislatives meetings and certain Congressional Hearings. We also subscribe to the NASS email distribution list ensuring that we receive timely updates on all Congressional hearings and other activities. To this end we were well informed on the requirements of the MOVE Act as well as other proposed and passed legislation. We make certain that we closely track not only federal mandates but we also strive to do the same for State level requirements as well.

8. Based on your company's experience, do you have any suggestions for improvements to the EAC's testing and certification program?

Our first and foremost comment would be to identify ways to reduce the time and cost for testing without, of course impacting the quality of the testing. This would allow for system improvements and new technology to move at a more expeditious pace while at the same time helping maintain a lower product cost to the user.

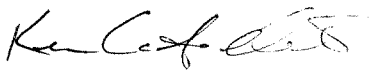
As a starting point, we would recommend re-examing the voting system standards with an eye toward this goal. Not all standards are equal. Some are cosmetic and receive a disproportionate amount of attention, cost, and unnecessary time (e.g., voting system source code reviews for perfection in comments and style; perfection in documentation). Other standards truly are more valuable and mission critical (e.g., voting system accuracy and security). These standards should be receiving the industries' and the EAC attention, and yet today it is disproportionately out of balance.

Like many areas of Federal and State Government, now is the time to look toward finding more direct paths to less costly and more meaningful impacts. Each process or step outlined in the EAC program manual should be reviewed and held up to the litmus test of value to time, cost and ultimate impact on election administration and operations. A few other suggestions, which we have shared with the EAC in the past, are to allow for a level of component testing instead of requiring full end to end system testing. We are also supportive of a program that would allow (at least for the near future) the use of the previous 2002

Voting System Standards. There are many jurisdictions that find they are unable to purchase the newer 2005 VVSG compliant systems and would prefer instead to continue to apply upgrades to their existing technology. For much of the technology in the field today it is simply not possible to meet some of the requirements of the 2005 standards which have the unintended consequence of prohibiting future upgrades to many of the 2002 systems in the field today.

Thank you again for allowing ES&S the opportunity to be heard by the Committee on House Administration Subcommittee on Elections. Please don't hesitate to contact me if you need clarification of the information provided or other questions may arise.

Sincerely,



Ken Carbullido
Senior Vice President, Systems
Election Systems & Software, Inc.
11208 John Galt Blvd
Omaha, NE 68137
ph. (402) 970-1215
fax (402) 970-1276
kdcarbullido@essvote.com
www.essvote.com

DANIEL E. LUNGREN, CALIFORNIA
CHAIRMAN

GREGG HARPER, MISSISSIPPI
PHIL GINGREY, GEORGIA
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1309 Longworth House Office Building
Washington, D.C. 20515-6157
(202) 225-8281
http://cha.house.gov

ROBERT A. BRADY, PENNSYLVANIA
RANKING MINORITY MEMBER

ZOE LOFGREN, CALIFORNIA
CHARLES A. GONZALEZ, TEXAS

ONE HUNDRED TWELFTH
CONGRESS

JAMIE FLEET, MINORITY STAFF DIRECTOR

July 11, 2011

Mr. Lawrence Norden
Deputy Director, Democracy Program
Brennan Center for Justice at NYU School of Law
161 Avenue of the Americas, 12th Floor
New York, NY 10013

Dear Mr. Norden,

Thank you for testifying during the March 31, 2011, Committee on House Administration Subcommittee on Elections Hearing on "The 2010 Election: A Look Back at What Went Right and Wrong." The Committee requests you respond to additional questions that will be made part of the hearing record. Please provide your responses to the following questions to the Committee **by April 21, 2011**.

1. Is there any state currently using or currently considering a state initiated registration system like your written testimony proposes?

2. Should a voter be registered via the federal mail-in voter registration form if they fail to check the box required by the Help America Vote Act stating that they are a citizen of the United States of America?

3. Many believe that the current method of voter registration is outdated, akin to sending messages via telegraph in the digital age. What are your thoughts on improving voter registration and civic engagement?

4. What role has the EAC played in the administration of federal elections? Should their role be expanded with the Department of Justice (DOJ), the Federal Voting Assistance Project (FVAP) or others?

5. One method of improving the administration of elections is national hotlines to identify and address problems before they become unmanageable. What are your thoughts on expanding national hotlines and who should monitor them?

If you have any questions concerning this matter, please feel free to contact Joe Wallace on the Committee staff at (202) 225-8281. Thank you again for your testimony, we look forward to hearing from you.

Sincerely Yours,

Gregg Harper

Gregg Harper
Chairman, Subcommittee on Elections

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FOR JUSTICE

United States House of Representatives
Committee on House Administration
Subcommittee on Elections

Statement of
Lawrence D. Norden
Deputy Director, Democracy Program
Brennan Center for Justice at NYU School of Law
April 21, 2011

"The 2010 Election: A Look Back At What Went Right and Wrong"
Answers to Post-Hearing Questions Posed by Subcommittee Chairman Gregg Harper and Additional Response to Secretary of State Scott Gessler's Testimony

1. **Is there any state currently using or currently considering a state initiated registration system like your written testimony proposes?**

To clarify, we are not proposing a state-initiated registration system. Rather, we are proposing a state-*facilitated* registration system in which voter registration is automated using existing technologies.

I noted in my testimony that as a result of the Help America Vote Act of 2002 (HAVA), every state now has (or soon will have) a statewide voter registration database that can be leveraged to modernize our antiquated registration system. Building on these lists, several states have been working to automate the registration process, and provide adequate safeguards to correct errors or omissions on the voter rolls through online tools.

Under an automated registration system, when eligible citizens who consent to voter registration interact with a participating government agency, their information is automatically and electronically sent by that agency to election officials for voter registration (or to update their registration record), without the need for additional paperwork. Election official retain their traditional authority to determine voter eligibility.

In addition to automated registration, the key components of a fully modernized voter registration system are:

- *Permanent or Portable Registration.* Under permanent registration, once a voter is on a state's voter rolls, she will remain registered and able to vote at the polling place associated with her address so long as she continues to reside in that state.

- *Election Day Correction.* Under an Election Day correction process, citizens can correct errors and omissions on the voter rolls before and on Election Day.

- *Online Registration.* Online registration provides another critical safeguard to ensure accurate voter rolls.

At least seventeen states—Arizona, Arkansas, California, Delaware, Florida, Georgia, Kansas, Kentucky, Michigan, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas and Washington—have fully or substantially automated the voter registration process at DMVs. Other states are currently in the process of doing so. Eight states, plus an additional eight states that offer Election Day registration, have voter registration systems that are portable statewide.[1]

Many other states have also taken steps to modernize their voter registration system. Current voter registration modernization bills are pending in Nevada and Massachusetts, and Maryland has recently stated it will automate at motor vehicle agencies. Beyond automation at motor vehicle agencies, Delaware is set to automate at public service agencies. Georgia, too, has taken steps to do the same. We believe this Committee should take notice of these successes in the states and work to bring the benefits of modernization across the country.

Ultimately, these improvements will save state and local governments significant money, ease burdens on election officials, and make our voting system less susceptible to fraud, and greatly increase the ability of eligible citizens to register and vote.

2. Should a voter be registered via the federal mail-in voter registration form if they fail to check the box required by the Help America Vote Act stating that they are a citizen of the United States of America?

While the Brennan Center believes that applicants for voter registration should have to affirm their citizenship, the Center does not believe that failure to check the "citizenship" box on the Federal Voter Registration Mail-in Application[2] alone should operate to prevent a voter from becoming registered. The reasons for this are two-fold. First, the instructions above the "citizenship" box are confusing, and could easily lead a citizen to skip the box without understanding that doing so would result in a rejection of their registration application. Second, the applicant is already required to verify her

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[1] Brennan Center for Justice, *Voter Registration Modernization in the States* (last visited Thursday, Apr. 21, 2011), http://www.brennancenter.org/content/pages/voter_registration_modernization_states.

[2] The form under consideration is found at: http://www.eac.gov/assets/1/Documents/national%20mail%20voter%20registration%20form%20english%20February%2015%202011.pdf. This may be found directly on the Election Assistance Commission website or an applicant is referred to this site from the Federal Election Commission website.

citizenship at the bottom of the form (Box 9), along with her signature under penalty of perjury. The citizenship box at the top is therefore at best duplicative.

Confusion Created by the Form

On the top right of the form, there are two questions and a statement:

- *Are you a citizen of the United States of America?*
- *Will you be 18 years old on or before election day?*
- *If you checked "No" in response to either of these questions, do not complete form.*

The instructions for these questions state as follows:

> *Before filling out the body of the form, please answer the questions on the top of the form as to whether you are a United States citizen and whether you will be 18 years old on or before Election Day.* ***If you answer no to either of these questions,*** *you may not use this form to register to vote. (emphasis added)*

Nowhere in the form or the instruction does it say that one is compelled to fill in the boxes with a written answer in order for the form to be complete. Unlike other questions on the form that must be answered, there is no number or letter before the questions. An applicant could reasonably read the questions, determine they are not applicable to her (because she would not answer "no" to either), and proceed with the application while never checking a box. Moreover, there is no reason for an applicant to assume that failure to answer the questions in written form will void the application as there are places on the form that can be left blank without affecting the validity of the application. If an applicant is filling out the form online, then there is a drop-down menu permitting the applicant to answer the question yes or no. If an applicant prints out the form, the printed copy of the form does not contain check boxes. The form states, "if you checked "no" in response to either of these questions, do not complete the form," however, there is no place on the form to "check the box" if the application is printed rather than completed online.

Citizenship Verification

After the box check an applicant affirms her or his citizenship on the Voter Registration Application at Box 9. There the applicant signs her or his name to complete the application. Box 9 contains the following statements:

I have reviewed my state's instructions and I swear/affirm that:

- *I am a United States citizen*
- *I meet the eligibility requirements of my state and subscribe to any oath required.*
- *The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, I may be fined, imprisoned, or (if not a U.S. citizen) deported from or refused entry to the United States.*

More than a simple "box check," by signing the application, the applicant confirms that she is a citizen, meets the state requirements and understands the penalties for misrepresenting any information on the form and puts her or his mark or signature to that information.[3]

Given how unclear the instructions for the "citizenship" box are, and how easy it is for applicants to miss the box altogether, we do not believe a registration should be rejected for failing to fill it out, so long as the applicant has affirmed with her signature, under penalty of perjury, that she is a citizen of the United States.

3. **Many believe that the current method of voter registration is outdated, akin to sending messages via telegraph in the digital age. What are your thoughts on improving voter registration and civic engagement?**

As I noted in my testimony, the current, paper-based voter registration system creates a range of problems for election officials and voters alike. Each election year, millions of Americans must submit new or updated voter registration forms, generating a mountain of paperwork that must be processed by an army of election clerks. A substantial portion of voters submit their paperwork at the last minute before an election, and so election offices are typically inundated with paper to process at the eleventh hour of the election cycle—the very time their attention should be focused on ensuring that Election Day operations run smoothly. Such a labor-intensive system in such a compressed time frame is costly and inefficient. It also multiplies the possibilities for error. Inaccuracies on the voter rolls result from difficulties deciphering voter handwriting, typographical and data entry errors, voters' failure to update their registration information, lost or incomplete registrations, and inability to process registrations on time, among other things. Inaccurate voter rolls create a range of election administration and voter list maintenance headaches, including increased numbers of provisional ballots to process and confusion at the polls.

Fortunately, modernizing the voter registration system offers incredible opportunities to make voting registration easier, faster, and more reliable for voters, all while saving time, money, and resources for election officials and making the voting system more secure. The Brennan Center applauds Representative Zoe Lofgren's efforts to modernize the voter registration system through the Internet with H.R. 1719, introduced in the last Congress, and hope the Committee will consider opportunities to build upon her online registration bill.

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[3] Some have argued that *Diaz v. Cobb*, 435 F.Supp.2d 1206 (S.D. Fla. 2006), compels rejection of Federal Voter Registration Applications where the citizenship application is not filled-out. We disagree and believe that *Diaz* is inapposite. Among the many facts distinguishing *Diaz*, which upheld rejection of state voter registration applications for failure to check the felon and mental capacity check boxes, is that in contrast to the Federal Application, the "information conveyed by the check-boxes and the oath" were "not the same." *Diaz* at 1213.

Experts, election officials, and policymakers across the country are recognizing the need to modernize our outdated, paper-based voter registration systems. Those systems are overly costly, inefficient, error-prone, and can unnecessarily exclude eligible voters at the polls. Fortunately, new technologies point the way to an improved Twenty-First Century voter registration system. As more and more states are discovering, a modern voter registration system boosts registration rates, increases the accuracy of the voter rolls, and reduces the opportunity for fraud, while saving millions of dollars a year.

Many states have implemented elements of a modernized voter registration system, as detailed in my answer to question number one. These reforms lead to many benefits. A Brennan Center report, *Voter Registration in a Digital Age*, provides detailed information about the steps states across the country have taken toward a more modern voter registration system.[4] The report finds three main benefits of modernization:

- *Increased Registration Rates.* Registration rates at DMVs doubled in Washington and Kansas, increased even more in Rhode Island, and increased seven-fold in South Dakota after the states automated the voter registration system at DMVs. After Arizona introduced online and automated registration, registration rates for 18-24 year-old citizens rose from 28 to 53 percent.

- *More Accurate and Secure Rolls.* Officials in every state to have automated the voter registration process reported increased accuracy of their voter rolls. A 2009 survey of incomplete and incorrect registrations in Maricopa County, Arizona found that electronic voter registrations are as much as five times less error-prone than their paper-based counterparts.

- *Substantial Savings for States.* Upgrades to the voter registration system are surprisingly inexpensive to implement, ranging from no additional cost to several hundred thousand dollars. This is immediately offset by enormous savings. It cost Arizona less than $130,000 and Washington just $279,000 to implement both online voter registration and automated voter registration at DMVs. Online and automated DMV registrations saved Maricopa County, Arizona over $450,000 in 2008. The county spends 33¢ to manually process an electronic application, and an average of 3¢ using a partially automated review process, compared to 83¢ for a paper registration form. Delaware's paperless voter registration at DMVs saves election officials more than $200,000 annually on personnel costs, above the savings they reaped by partially automating the process in the mid-1990s. Officials anticipate further savings. Washington saved over $120,000 in 2008 in Secretary of State's office alone, and far more in each of its counties.

By improving the integrity of our voter registration system, we increase civic participation by restoring the confidence in voters that their registration applications will

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[4] CHRISTOPHER PONOROFF, BRENNAN CENTER FOR JUSTICE, VOTER REGISTRATION IN A DIGITAL AGE (Wendy Weiser, ed.) (2010), *available at* http://www.brennancenter.org/content/resource/voter_registration_in_a_digital_age/.

be processed and their votes will count.

4. **What role has the EAC played in the administration of federal elections? Should their role be expanded with the Department of Justice (DOJ), the Federal Voting Assistance Project (FVAP) or others?**

Among its many important roles, the Election Assistance Commission ("EAC") is responsible for proposing standards for voting machines through its Voluntary Voting System Guidelines, overseeing the testing and certification of voting systems, and conducting and compiling research on better election administration.

Voting Systems Oversight

Foremost among the vital functions the EAC provides is proposing standards for voting machines through its Voluntary Voting System Guidelines and overseeing the testing and certification of voting systems.

The EAC's certification program not only facilitates better election administration by finding potential voting machine problems before machines are sold and used, it also helps state and local governments save money in the long term by using its oversight role to ensure that existing equipment meets its durability and longevity potential. Despite the EAC's limited federal mandate, it has recently made impressive strides in increasing quality control for voting systems.

Prior to the 2010 election, the EAC took some important steps toward addressing voting machine problems, and making information about voting system issues more readily available to election officials and the general public. In particular, the EAC adopted a number of important reporting requirements for both voting system manufacturers and testing labs that participate in its newly established Voting System Testing and Certification Program.[5] Pursuant to the Quality Monitoring Program established in the Voting System Testing and Certification Program Manual (the "VSTCPM") the EAC now posts on its website "test reports" for all systems tested for EAC certification, regardless of whether or not they are ultimately certified. These test reports include a list of "discrepancies" identified during the testing.[6] It also posts information related to site audits that it conducts on manufacturers who participate in its program.[7] All of this is potentially valuable information for the public and election officials as they consider purchasing new machines.

Under the VSTCPM, election officials and the public get more data about certain voting system failures in EAC *certified* systems. Vendors must report to the EAC

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[5] U.S. ELECTION ASSISTANCE COMMISSION, TESTING AND CERTIFICATION PROGRAM MANUAL VERSION 1.0 (2007), *available at* http://www.eac.gov/assets/1/workflow_staging/Page/117.PDF [hereinafter VSTCPM].
[6] E-mail from Jeannie Layson, Director of Communications and Congressional Affairs, U.S. Election Assistance Commission, to Lawrence Norden, Senior Counsel, Brennan Center for Justice (May 14, 2010, 17:09 EST) (on file with the Brennan Center).
[7] *Id.*

"malfunctions" of EAC certified systems. The VSTCPM defines "malfunction" as "a failure of a voting system, not caused solely by operator or administrative error, which causes the system to cease operation during a Federal election or otherwise results in data loss."[8] The EAC posts this information on its website.

As a result of this new system, election officials and the public learned of two important voting system problems ahead of the 2010 election.[9] The discovery and publicity of these failures provided election officials with valuable information and allowed them to ensure that their voters' choices were accurately recorded on Election Day.

The EAC's unique expertise and familiarity with the nation's voting systems together with its federal clearinghouse mandate[10] make it a logical choice to host the kind of database voting system failure I discussed in my testimony on March 31.[11] Such a database would make our electoral system stronger. It would be easier for election officials and others to ensure that their equipment is as user-friendly and accurate as possible. It would also make voting machine vendors more accountable to public officials and taxpayers, incentivizing manufacturers to enhance internal controls. Given the billions of dollars spent by federal and local governments to purchase and maintain new voting equipment over the last several years, this is no small thing.

Election Administration Research

In addition to its work with voting systems, the EAC maintains a crucial, central role in collecting accurate and comparable election data, and promoting the sharing of data and best practices among the complex patchwork of state election administration systems via the Election Administration & Voting Survey. Election officials, academics, and election administration experts rely upon EAC data. The EAC's research into provisional balloting, voter list maintenance, and citizen access to registration, has resulted in several best practices reports that provide state and local election officials with invaluable guidance.[12] Minnesota used EAC financial support to examine and improve its election

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[8] VSTCPM, *supra* note 5 at 2.3.2.7.

[9] LAWRENCE NORDEN, VOTING SYSTEM FAILURES: A DATABASE SOLUTION, BRENNAN CTR. FOR JUST. (2010) at 8-9, *available at* http://www.brennancenter.org/content/resource/voting_system_failures_a_database_solution/.

[10] 42 U.S.C. §§ 15322 (2009). Section 202 of HAVA gives the EAC the responsibility of serving as a "national clearinghouse and resource for the compilation and review of information" related to the administration of elections.

[11] *The 2010 Election: A Look Back At What Went Right and Wrong: Hearing Before the Subcomm. on Elections of the H. Comm. on Admin,* 112th Cong. (2011), (statement of Lawrence Norden, Senior Counsel at the Brennan Center for Justice at 7, *available at* http://cha.house.gov/images/stories/documents/03312011norden_testimony.pdf).

[12] *See* U.S. ELECTION ADMINISTRATION COMMISSION, EFFECTIVE DESIGN FOR THE ADMINISTRATION OF FEDERAL ELECTIONS (June 2007), *available at* http://www.eac.gov/assets/1/Page/EAC_Effective_Election_Design.pdf. EAC best practices report for the design of ballots and polling place materials. The EAC'S best practices reports, Election Management Guidelines and Quick Start Guides complement the technical standards established by the VVSG for voting equipment. To further assist state and local officials in effective election administration, the EAC also offers translations of Voter Guides in 11 languages, *available at* http://www.eac.gov/resource_library/default.aspx?CategoryId=12.

data collection at the precinct level, culminating in its own 2009 Best Practices Report, which benefits not only Minnesota, but also serves as a resource for other states looking to improve their election software systems. With our nation's complex and diversified election administration system, data collection and information sharing is invaluable. Without the EAC to compile data across the states and develop and facilitate election administrator training, each state—indeed possibly each municipality—would expend considerable resources in duplicative research, at great taxpayer waste. Moreover, EAC data about state election administration practices and election results is invaluable to organizations like the Brennan Center, which works to ensure government accountability.

5. One method of improving the administration of elections is national hotlines to identify and address problems before they become unmanageable. What are your thoughts on expanding national hotlines and who should monitor them?

Voter services hotlines have provided crucial support for voters and helped address breakdowns in the election system before they have led to mass disenfranchising events. The most successful example is the national non-partisan Election Protection hotline, 1-866-OUR-VOTE, administered by the Lawyers' Committee for Civil Rights Under Law. In full disclosure, the Brennan Center for Justice is a member of Election Protection. For the past decade, 1-866-OUR-VOTE has provided important support to over half a million voters who have needed answers to their questions or experienced problems voting. Election Protection also has a partnership with the National Latino and Elected Appointed Officials Educational Fund's (NALEO) Spanish-language voter hotline, 1-888-VE-Y-VOTA.

Election Protection leaders have established strong relationships with election officials across the country. When problems are reported to the hotline—both on and before Election Day—coalition leaders quickly relay the issues to the appropriate election officials and work with them to resolve the problem before they become unmanageable. Additionally, Election Protection deploys fully trained legal volunteers to polling places where the need is great. These "eyes and ears" on the ground provide yet additional support for voters and election officials alike.

Several states and counties have been successful at employing their own hotlines—Pennsylvania and Los Angeles County for example. Despite their success, state and local election officials' budgets are strained and their workload is great, making it difficult to handle the high demand of voter inquiries on Election Day. The U.S. Department of Justice also has a voter hotline but, in the past, the hotline has not been very well publicized.[13] As a result, it is crucial for non-partisan third parties like Election Protection to fill the void.

[13] Since 2002, the Department of Justice (DOJ) has had a voter hotline that has not been consistently well-publicized and does not always garner the trust of voters and others calling in with complaints. During the 2010 Elections, the DOJ seemed to be more proactive by better publicizing the hotline and notifying voters of the Department's goal of protecting the rights of all citizens.

Because the need is great, we support the expansion of national hotlines. As early voting becomes more popular these hotlines will have to further expand their usage to meet the need of voters casting ballots well before the traditional Election Day.

There is a lot that goes into running successful national voter services hotlines. While we greatly support the expansion of these hotlines, it's important that any hotline include the functionality listed below and more. Otherwise, it could create problems for voters as opposed to solving them. In our experience with Election Protection, voter services hotlines must:

- *Have significant capacity.* In 2008, the 1-866-OUR-VOTE hotline had 750 phone lines in 32 call centers across the country. Even with such high capacity, Election Protection still was unable to keep pace with great demand during peak voting hours and many voters had to wait on hold or call back at a later time. Organizing a voter hotline brings with it the responsibility to be responsive to all voters in need. National hotlines must have significant capacity to fulfill this responsibility.

- *Have expanded hours.* On Election Day, the 1-866-OUR-VOTE hotline is answered live from 30 minutes before the first polls open until 30 minutes after the last poll closes. Additionally, the hotline is open in advance of Election Day, including weekends, to provide crucial support to voters during the registration, absentee, and early voting periods. In 2008, the Election Protection hotline became live in August and expanded its hours as the election approached.

- *Be able to address problems at the polling place.* Telephone support is limited. Many issues that arise on Election Day need to be addressed at the polling place. To be most effective, a national hotline must be connected to physical polling place resources and volunteers to provide holistic support to all voters.

- *Have resources and knowledge of election laws and rules.* Our nation's systems of elections are highly decentralized. As a result, election laws and rules can vary greatly between states and even counties. To provide real nationwide support, any voter services hotline must make available to their operators a suite of materials for all 50 states. Additionally, operators should be trained on the laws, rules, and frequent problems for the state or states that they will be fielding calls from.

- *Be non-partisan and serve the interests of voters only.* Hotlines must be available to everyone and should only be used to assist voters and solve problems before they lead to mass disenfranchising events. Voter privacy must be secured and the information relayed to the hotline should not be used for purposes other than to assist that voter or to address the issue that caused the voter's problem.

- *Provide support for voters in multiple languages.* Through a partnership with the National Latino and Elected Appointed Officials Educational Fund, the Election

The Election Protection hotline has a decade's long track record of success. Any government entity, such as the Election Assistance Commission, that is looking to provide this service should look at the Election Protection model as a guide to effectively protect the rights of voters.

6. Additional Comments

Much of the March 31 hearing focused on alleged non-citizen voter fraud, and in particular, the report of Colorado Secretary of State Scott Gessler on potential non-citizen voting in his state. Unfortunately, I did not have an opportunity to comment on this subject during the hearing. The Brennan Center has conducted extensive research on this subject, and I hope the Committee will accept the following additional testimony into the record.

The Brennan Center urges the Committee to exercise extreme caution before drawing any conclusions from the information provided by Secretary Gessler related to non-citizen voting. Most importantly, we do not believe that the information that Secretary Gessler provided can or should be the basis for any policy changes until the details of his study, including the underlying methodology and information collected, have been made public and subject to rigorous, independent analysis.

The Secretary of State's study compared Colorado's voter registration database with driver's license records from the Department of Revenue to determine whether non-citizens are registered to vote in Colorado. Though we have been unable to analyze Secretary Gessler's underlying data, we have serious doubts about the conclusions he draws based on the limited information he has made public. In particular, we note that in the last decade, we have seen numerous claims of voter fraud and/or attempts to purge voter rolls that relied on flawed "matching" techniques. When these methods were made public, it became clear that the flawed methods led to flawed and inaccurate conclusions about who was improperly registered. When acted upon, these flawed conclusions improperly disenfranchised thousands of voters.

Perhaps more importantly, we note that—even assuming that Secretary Gessler's study avoided the mistakes of so many before him (something impossible to know until the details of this methodology and underlying data are made public)—his conclusions are based on a number of unsupported inferences, and even he has conceded that the data collected does not prove that the 11,805 persons his March 8, 2011 report identified were actually improperly registered. More to the point, the Secretary has noted that even if there were some improper registrations, they could have been due to unintentional registration, clerical or other administrative failure, without any intention of the registrants to vote or commit voter or registration fraud.

In sum, it is impossible to verify the Secretary's (upon close examination) quite limited claims, because he has not made the underlying data or methodology public and subject to independent scrutiny. At the same time, his qualified conclusions and unsupported inferences leave us deeply skeptical that there is a problem of non-citizen registration, let alone non-citizen voter fraud, in Colorado.

A History of Poor Matching Techniques

Flawed database "matching" techniques have repeatedly purged misidentified and otherwise eligible voters.[14] Voter eligibility must not be tied to such flawed "matches" because the process routinely fails for reasons that have nothing to do with qualifications for voting.[15] As Citrus County, Florida, Supervisor of Elections Susan Gill mentioned during the hearing, attempts to sweep the rolls of people based on less than perfect matching methods can lead to massive disenfranchisement. This indeed happened in Florida in 2000. There, it was revealed that a list of purged Florida voters that was gathered from a flawed database matching process captured eligible voters with names similar to—but decidedly different from—the names of persons with felony convictions.

New Jersey also conducted flawed database matching. An analysis conducted by the Brennan Center for Justice and Dr. Michael McDonald, an elections expert at George Mason University, found factual and methodological errors in a voter fraud report submitted to the New Jersey Attorney General in September 2005. The report claimed to have uncovered deep problems of voter fraud in New Jersey. The analysis found serious methodological problems with the report, echoing the problems with the notoriously flawed suspected felon purge lists in Florida in 2000 and 2004.[16]

Until Secretary Gessler's method for matching registered voters to the Department of Revenue Database, and the underlying data, is made public and subject to rigorous and independent analysis, it is impossible to know if his study suffers from similar problems.

Equivocal Statements and Unsupported Inferences in Gessler's Report

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[14] For example, using just a couple of data points (name and birthday) and/or failing to require exact matches for those data points (there could be two John Smiths, one with a birthday on August 2, 1971, and one with a birthday of August 2, 1941) can lead officials to assume that two different people are actually the same. By contrast, requiring "multiple field" matching (name, birthday, social security number, address) and exact matches before concluding that a person is improperly registered or registered more than once, makes such erroneous conclusions much less likely. *See generally,* BRENNAN CENTER FOR JUSTICE, MAKING THE LIST: DATABASE MATCHING AND VERIFICATION PROCESSES FOR VOTER REGISTRATION (2006), *available at* http://www.brennancenter.org/content/resource/making_the_list_database_matching_and_verification_processes_for_voter_regi.

[15] BRENNAN CENTER FOR JUSTICE, MAKING THE LIST: DATABASE MATCHING AND VERIFICATION PROCESSES FOR VOTER REGISTRATION (2006), *available at* http://www.brennancenter.org/content/resource/making_the_list_database_matching_and_verification_processes_for_voter_regi.

[16] BRENNAN CENTER FOR JUSTICE AND MICHAEL MCDONALD, ANALYSIS OF FLAWED NEW JERSEY FRAUD REPORT (2005), *available at* http://www.brennancenter.org/content/resource/analysis_of_flawed_new_jersey_fraud_report/.

In any event, the blanket conclusion that there are over 11,805 improperly registered voters and of those 4,214 people improperly voted in the 2010 elections should be called into question by the qualifying language Secretary Gessler has attached to them in his report, and the unsupported inferences he uses to get to those conclusions.

The report admits that the inconclusive voter registration data does not prove that the 11,805 persons it identified were registered improperly. Perhaps most importantly, Secretary Gessler identified these 11,805 persons because they had, at some point since 2006, submitted non-citizen papers to the Department of Revenue. However, since 2006, 32,140 individuals became citizens in Colorado.[17] This fact is critical, because the Department of State did not check to see if the persons listed in the report as potential non-citizen registrants had become citizens before they were registered.[18]

Secretary Gessler admits that even if there were some improper registrations, they could have been due to unintentional registration, clerical or other administrative failure without any intention of the registrants to vote or commit voter fraud. The report is utterly silent on how it arrived at the conclusion that 4,214 of the "improper registrants" voted in the 2010 election. There is simply a barely-supported conclusory statement that "it is likely" that many of the 4,214 registrants in question were not citizens when they cast their vote in 2010. Compare the 106 registered voters that the report alleges it is "virtually certain" are not citizens, with no attempt to suggest that any of those 106 persons actually voted in 2010 or intended to commit fraud.[19]

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[17] DEPARTMENT OF HOMELAND SECURITY OFFICE OF IMMIGRATION STATISTICS, 2009 YEARBOOK OF IMMIGRATION STATISTICS (Aug. 2009), *available at* http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/ois_yb_2009.pdf.

[18] OFFICE OF THE COLORADO SECRETARY OF STATE SCOTT GESSLER, COMPARISON OF COLORADO'S VOTER ROLLS WITH DEPARTMENT OF REVENUE NON-CITIZENS RECORDS at 4 (Mar. 8, 2011), *available at* http://cha.house.gov/images/stories/documents/co_non_citizen_report.pdf.

[19] While the only claim Secretary Gessler makes in his report with "virtual certainty" is that he has found–d—out of 3.3 millions citizens registered to vote and over 4 million citizens and non-citizens listed in the state's Department of Revenue database—106 individuals who are improperly registered, *even this claim is suspect.* His basis for the claim is that these persons registered on or before the day they applied for a state license or identification card using a non-citizen document. Even if we assume that none of the flawed matching techniques we discussed above were employed here and that inaccurate data in the database did not yield false positives (an assumption we would not make, given the history of flawed matching processes and error-riddled databases throughout the country), there are numerous other reasons to doubt that these 106 voters committed registration fraud, let alone voter fraud. Given that green card holders are required to carry that identification on their persons at all times in the United States until they become citizens, it is not unimaginable that even after becoming citizens, some small number might continue to keep that ID in their wallets or purses and use it for ID purposes after becoming citizens. Additionally, motorists could have been improperly and accidentally registered by a representative at the driver's licensing agency, as Secretary Gessler himself noted in his testimony and report. *See* UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES (USCIS), WELCOME TO THE UNITED STATES: A GUIDE FOR NEW IMMIGRANTS (ENGLISH VERSION) at 8 (Sept. 2007), *available at* http://www.uscis.gov/files/nativedocuments/M-618.pdf; *The 2010 Election: A Look Back At What Went Right and Wrong: Hearing Before the Subcomm. on Elections of the H. Comm. on Admin,* 112th Cong. (2011), (statement of Colorado Secretary of State Scott Gessler, *available at* http://cha.house.gov/images/stories/documents/03312011gessler_testimony.pdf); COMPARISON OF COLORADO'S VOTER ROLLS, *supra* note 18.

Policy Decisions Should Be Based on Evidence, And Should Not Disenfranchise Voters

While we are aware of rare cases where a non-citizen voted by mistake, we are not aware of any instances of non-citizen voter fraud (cases in which individual noncitizens have intentionally voted while knowing that they were ineligible).[20] This should not be surprising. The penalties for non-citizen voter fraud are even more severe than other types of voter fraud, and include—in addition to potential prison and civil penalties—deportation. Given the extremely small benefit associated with illegally casting a ballot (adding a single vote) compared to the great penalties for such action (deportation, prison, civil fines) one would be hard pressed to imagine what could motivate a non-citizen resident to fraudulently cast a ballot.

Rather than seeking to remedy a non-issue that could bar eligible voters,[21] taxpayer dollars would be better spent modernizing our registration system and educating the public and local administrators about who is and is not entitled to vote. It is particularly noteworthy that none of the panelists, including officials who have spent years in election administration, were aware of instances of non-citizen voter fraud. Supervisor Gil noted that in the two instances in her entire career in which a non-citizen voted in her jurisdiction, the non-citizen voters were not aware that they were not entitled to vote, and immediately notified the county when they became aware of their ineligibility.

We agree with fellow panelists Minnesota Secretary of State Mark Ritchie and Supervisor Gill, who both said that to address the issues of voting fraud, we must first strengthen and modernize our voter registration system rather than implementing stricter proof of citizenship requirements or flawed database matching procedures. We must be extremely cautious about implementing supposed "solutions" that would only create more barriers to voting.

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[20] JUSTIN LEVITT, BRENNAN CENTER FOR JUSTICE, THE TRUTH ABOUT VOTER FRAUD (2007), *available at* http://www.brennancenter.org/content/resource/truthaboutvoterfraud.

[21] BRENNAN CENTER FOR JUSTICE, CITIZENS WITHOUT PROOF (2006), *available at* http://www.brennancenter.org/content/resource/citizens_without_proof_a_survey_of_americans_possession_of_documentary_proo/.