

Election Issues and Trends Continue to Make News

By Doug Lewis

Elections continued to be the focal point of study and attention by federal policymakers after long lines developed in some locations during the 2012 election. The President's Commission on Election Administration looked at election practices and made recommendations in January 2014. Congress continues to focus on military and overseas voters and also introduced voting-related bills in response to the commission. The Supreme Court negated the continued use of preclearance by the U.S. Department of Justice for approval of voting changes, which is likely to lead to new legislation related to voting.

Due to changing needs for elections, state and local governments are facing the need for more funding for elections and new administrative practices to assure that voters can cast their ballot quickly during presidential election years.

Added to those higher expectations of funding and new practices is a potential for voter accessibility issues due to a rapidly aging public. Combined with rapidly changing voting technology applications and voter registration, states and local governments are likely to face greater demands for significantly increased resources for the next several years.

The looming tsunami of costs to replace aging voting equipment will be the next major election-related financial challenge for state and local governments.

Recommendation of the Presidential Commission on Election Administration

President Obama appointed the Presidential Commission on Election Administration in March 2013 to study how best to fix the long lines some voters faced during the 2012 election. Obama appointed the general counsels of both his campaign—Bob Bauer—and that of his challenger, Mitt Romney—Ben Ginsberg—to co-chair the commission, plus representatives of major business organizations as well as current and past election administrators. (See <http://www.supportthevoter.gov/the-commission/>.)

The presidential commission made a number of recommendations to improve elections:¹

- Expanding online voter registration by the states to enhance both accuracy of the voter rolls and efficiency;
- Having all states update and exchange their voter registration lists to create the most accurate lists possible, to increase registration rates, reduce costs and protect against fraud;
- Expanding voting before election day, recognizing the majority of states now provide either mail balloting or in-person early voting and voters are increasingly seeking these options;
- Increasing the use of schools as polling places, since they are the best-equipped facilities in most jurisdictions, with security concerns met by scheduling an in-service training day for students and teachers on election day;
- Recognizing and addressing the impending crisis in voting technology as machines bought 10 years ago with post-2000 federal funds wear out and require replacement with no federal appropriations on the horizon;
- Reforming the standards and certification process to allow innovation and the adoption of widely available and significantly less expensive off-the-shelf technologies and software-only solutions;
- Improving the ability of military and overseas voters to access ballots and other voting materials through the states' websites;
- Increasing the use of electronic pollbooks for greater accuracy and efficiency;
- Assuring that polling places are accessible to all voters, are located close to where voters live and are designed to function smoothly;
- Increasing and enhancing training and recruitment of poll workers in the recognition that volunteer poll workers are voters' primary source of contact during the actual voting process;
- Having jurisdictions form advisory groups to address the needs of voters with disabilities and those with limited English proficiency; and
- Collecting election data on a uniform basis to enable enhanced analysis to improve the voter experience.

While the full report of the Presidential Commission on Election Administration, released in January 2014, is recommended reading for state administrative and legislative policymakers as a guidepost for issues that will need resolution in the coming years, a few major policy decisions are likely to affect state political and budgetary concerns.

Online Voter Registration

In early 2014, 16 states had full online voter registration, six states had a more limited online process and four had passed legislation to create online voter registration but had not yet implemented it. The trend caught on quickly after the first two states implemented online voter registration, beginning with Arizona in 2002 and Washington state in 2007. The rapid expansion indicates states are quickly discovering online registration saves money and, if implemented with recommended procedures, assures necessary verification to appropriately qualify voters.

Congress introduced legislation in 2013 to require online registration within all the states, but then it set conditions state policymakers resisted as either too restrictive in terms of how it can be implemented or without the appropriate safeguards most states want as conditions of verification. The pace of states' adoption of electronic registration indicates a majority of states are likely to have online voter registration capabilities in the near future, with or without Congressional action.

A chart of states that have online voter registration, and those that are considering it, can be found on the website of the National Conference of State Legislatures and in Table 6.6 of *The Book of the States*.²

Comparing Lists Among States

Projects to compare voter registration information give states an opportunity to better manage voter registration rolls. The Interstate Voter Registration Crosscheck Program consortium of 29 states joined together to verify after federal elections whether voters who have the same name, birthdate and other information voted in the same election in different states.³

The Electronic Registration Information Center, started by the Pew Charitable Trusts and now managed by member states, is a consortium of seven states—Colorado, Delaware, Maryland, Nevada, Utah, Virginia and Washington, in addition to the District of Columbia.

Similar projects have been conducted by other groups of states, including Georgia, North Carolina, South Carolina and Tennessee. Another early stage consortium involved the District of Columbia, Maryland and Virginia.

Expansion of Voting Prior to Election Day

While the presidential commission recommended continued expansion of allowing voters to cast ballots prior to election day, it did not recommend only one method, leaving that decision to state governments.

Pre-election day voting is popular with voters, if not always with policymakers and candidates. Early voting is usually defined as being in-person and at a location different than the regular election day polling places. States differ on how they implement early voting, with some allowing only one location—usually the local election office—while others establish remote locations under state laws.

Traditional absentee voting is usually conducted by mail and many states over the years limited absentee voting to those who had some valid excuse to be absent or unable to vote on election day. The trend to expand the use of absentee voting to allow “no excuse absentee” grew significantly in the past 15 years; some states have even moved to have all their voting done by mail. Oregon began the process of all mail balloting, followed by Washington and Colorado. California implemented a process to allow its voters to choose to permanently receive their ballots by mail or to continue to vote in-person. Mail-in voting in California has grown at a geometric progression, with many of the local jurisdictions reporting 60 to 70 percent of their voters choosing to vote by mail.

The future growth of voting by mail is directly related to whether the U.S. Postal Service can remedy both the cost and quality of its services; the agency has had multibillion dollar losses during the past few years. Election officials like and want to utilize mail for key election functions, but the uncertainty of delivery and significantly increased mailing costs will be factors determining whether mail continues to be an option for election administration.

The challenges for many election administrators is how to blend three distinct elections into their operations and to conduct essentially all three elections during the period leading into election day. Additionally, early voting has added to the cost for most local jurisdictions and staffing issues are challenges when policies require all three election methods during major election cycles.

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A state can resolve this concern for cost and management issues when it chooses one method over the others. States that have moved to vote by mail indicate they no longer have to worry about staffing polling places and no longer need as much voting equipment since the ballots are processed in a central counting location. In-person, early voting states indicate the numbers of voters choosing pre-election day voting continue to grow, with many now reporting numbers of 35 percent or more of their voters choosing early voting. Clearly, the trend relieves pressures on election day voting and has helped some jurisdictions reduce the numbers of polling places, number of poll workers and volume of voting machines to be utilized on election day.

Voting Equipment Modernization and Utilization

The Presidential Commission on Election Administration's report referred to the "impending crisis" of voting technology. This is not a new subject and state and local budget leaders have been warned repeatedly that the nation's voting equipment needs to be replaced, and soon. National nonprofit organizations have attempted to show budget makers and policymakers there soon will be a potential crisis in the ability of the current generation of voting equipment to function past its expected or intended life cycle. Seminars and articles from the National Association of State Election Directors, the Election Center, the National Conference of State Legislatures, The Council of State Governments, the National Association of Counties and the National Association of Secretaries of State, have all tried to inform and build a sense of urgency for policymakers at state and local levels related to voting equipment concerns.

The presidential commission likely was not overstating the critical nature of both the ability to update and/or replace the current voting equipment. Commissioners also were referring to states' inability to get newer technologies approved through a broken federal process that necessitates relying on the U.S. Election Assistance Commission to update voting systems standards and then to establish testing programs to assure the voting equipment can and does meet or exceed those standards. Much of this has been wrapped up in an ongoing political battle between the Republican-controlled House and the Democratic-controlled Senate as to whether there is even need for a federal elections agency such as the Election Assistance Commission. With no appointed and

confirmed commissioners, no new voting systems standards have been developed and vendors are still designing systems that meet the previous standards, last developed more than 10 years ago.

Adding to the problem is the passage of the Help America Vote Act by Congress in 2002, which forced virtually every election jurisdiction in America to replace its equipment at the same time. Now, that equipment has aged and some of the hardware is no longer being manufactured. The forced change to newer technologies created by the Help America Vote Act meant shorter life cycles for voting equipment than at any other period in voting history. Lever machines have been around for more than 100 years; it was not unusual for local jurisdictions to maintain and utilize the equipment for 50 to 60 years. Punch card voting machines originated in the 1970s and easily lasted 30 years or more in some situations. The 2002 act discouraged the continued use of those devices and provided incentives for state and local governments to replace that generation of voting equipment.

The warnings to state and local leaders by the Presidential Commission on Election Administration and others is that elections will be at serious risk if election administrators cannot update and replace voting equipment soon. While replacing voting equipment will be expensive, its cost is minimal if a state or a local jurisdiction encounters a failed election due to out-of-date voting equipment. Even in situations where the technology may not be changed significantly, the problems of being able to maintain the equipment when some parts or pieces cannot be sourced is the real culprit that can lead to a voting disaster.

Accessibility Issues Loom and Costs to Rise

For many years, groups working on behalf of voters with disabilities have sought to provide a method that allows all voters to vote privately and independently. The Help America Vote Act of 2002 established this concept in federal law as a compliance requirement for elections within the U.S.

According to information provided by the Research Alliance for Accessible Voting,⁴ approximately 54 million voters in the U.S. have disabilities. The requirement of many states to have all voters use paper ballots has hampered states' abilities to achieve the Help America Vote Act mandate to allow voters to vote privately and independently. A survey of 3,022 voters in 2012—2,000 voters with

disabilities and 1,022 voters with no disabilities—conducted for the Research Alliance for Accessible Voting by Rutgers School of Management and Labor Relations⁵ showed 49 percent of voters with disabilities voted on paper, while 52 percent of voters with no disabilities voted on paper.⁶ But the wide disparity of problems for voters with accessibility needs is that 36 percent of voters with disabilities had difficulty voting on paper—while only 2.6 percent of those with no disability had trouble using paper ballots, according to the survey.

The problem of voting accessibility is likely to grow as the nation's voters age. The baby boomer generation, whose oldest members started turning 65 in 2011, is becoming the voters who participate in much higher numbers than any other age group. Older voters are now living longer than any previous generation and their higher participation rate as voters means election administration will change for the next two to three decades. Data from the Census Bureau showed this group growing by more than 50 percent from 1998 to 2012.⁷ Those numbers are expected to continue to increase for the foreseeable future as the wave of baby boomers swells the numbers of voters with accessibility needs during the next 25 to 35 years.

What this means for elections in America is that more voters will have mobility issues, more will have sight or limited vision problems, more will have difficulty standing in lines waiting to vote, more will have some cognitive difficulties and a higher percentage will have hearing difficulties. Election jurisdictions will need to rethink how to process voters, how to provide seating for those with difficulty standing and how to provide voting assistance. The Rutgers survey indicated 29.5 percent of voters with disabilities need assistance in voting, compared to 10.7 percent of voters with no disabilities.⁸

What this means for policymakers and for election administrators is that the cost of serving voters will increase to cover the variety of methods and equipment and personnel to serve an increasing segment of voters with accessibility needs. Significant shifts in services, such as curbside voting and greater use of facilities that can accommodate a variety of disabilities, will be necessary. States will need to make a greater investment in voting equipment that can handle a wide spectrum of disability needs. Since voters with disabilities need almost three times as much assistance as voters with no disabilities, it also means a greater investment of polling place personnel and more time spent with each voter. Ultimately, states will need to invest

more resources in voting equipment, accessible polling places and tools that can assist voters. The explosion of the accessibility needs likely to accompany the aging baby boomers means that rather than providing accessibility accommodations to roughly 15 percent of the voters, states will need to provide that service to 35 percent or more of the voting public.

Policy and Resource Issues Face States

States are likely to continue seeing increased pressure from the federal government to provide solutions to voting concerns. The Presidential Commission on Election Administration offered a substantive look at some of the nation's concerns about the conduct of elections in America. While Congress continues to be very active in proposing legislation, more often, it will be states that find and present the solutions—unless the states cannot, or are unwilling to, resolve the issues for themselves. The problem for states and their local election jurisdictions is that greater resources will be required and finding both the political will and the budgets necessary to fund the solutions will continue to be a major challenge. If states are unable to act in time, courts or Congress are likely to mandate changes—and in ways that provide little latitude for state-specific adjustments.

Notes

¹ PCEA News Release, 1-22-2014. <http://www.supportthevoter.gov/2014/01/22/presidential-commission-on-election-administration-presents-recommendations-to-president-obama>.

² <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx#table>.

³ Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, Washington and West Virginia.

⁴ www.accessiblevoting.org, the website of the Research Alliance for Accessible Voting, and the Survey of Income and Program Participation (2005).

⁵ Part of a grant from the U.S. Election Assistance Commission on Accessible Voting and conducted by Lisa Schur and Doug Kruse of Rutgers and Meera Adya at the Burlington Blatt Institute at Syracuse University.

⁶ Table 9 of the Rutgers/RAAV Survey.

⁷ U.S. Census Bureau, 2012 Statistical Study Table 399 of Voting Age Population. Voters age 45 or older in 1998 were 80 million and had grown to 120 million voters in 2012.

⁸ Table 15 of the Rutgers/RAAV Survey. Available at www.accessiblevoting.org or at www.electioncenter.org websites.

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About the Author

Doug Lewis, a certified elections/registration administrator (CERA), is executive director of The Election Center, a nonpartisan, nonprofit organization representing the nation's election officials. He has been called on by Congress, federal agencies, state legislatures, and national and worldwide news media for solutions to voting issues.