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

“The 2008 Election: A Look Back on What Went Right and Wrong”

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Chairwoman Lofgren and Members of the Subcommittee:

Thank you for the opportunity to testify today on behalf of the Pew Charitable Trusts. I am the Director of Election Initiatives at the Pew Center on the States (PCS), a division of the Pew Charitable Trusts that conducts research, brings together a wide variety of partners, and analyzes states' experiences to identify what works and what does not and to advance nonpartisan, pragmatic state policy solutions to the most pressing problems affecting Americans.

Introduction

Since 2001, Pew has invested more than \$20 million in the field of election administration, beginning with the launch of *electionline.org* and continuing through the 2007 creation of PCS' Make Voting Work, an ambitious initiative to study election reform in a real-world environment and to identify efficient, cost-effective solutions to the problems we face and to eliminate barriers to innovation. Beginning with the 2008 election cycle, we have focused our efforts on developing and evaluating pilot projects and offering innovative approaches to improve the election process.

PCS' work in the field of election administration—just like our work in other policy areas—is defined by several principles:

- First, PCS takes a performance-based approach to election administration questions. Is this the best election system government can design and offer? Does it meet the legitimate expectations of voters? As with other core functions of government, the American public demands an election system that offers optimal performance, administrative efficiency and cost-effective use of public funds. This approach is likely to be even more important in our current constrained fiscal environment.
- Second, we consider it a central part of our mission to reach out to, and solicit the involvement of, election officials who are seeking to identify and rigorously test solutions in real-world pilot projects that provide a solid evidence base of what works, what doesn't and why. Since they have an intimate understanding of what works and what does not in their own jurisdictions and a responsibility for implementing enacted reforms, state and local election officials have a unique and critical role in improving our system of voting nationwide. In 2008, Pew partnered with election

officials in more than 20 states undertaking intensive studies of our election system and testing changes to the status quo.

- Finally, we consider it essential to involve leaders from the private sector, respected research teams and elsewhere—many of whom have confronted the same issues that face election officials—as a source of ideas and support for the most far-reaching and innovative approaches to reform.

With that as background, let me now turn to observations about the performance of the American election system in 2008.

Election Day 2008: Better than Expected, But Some Problems Persist

The biggest storyline coming out of the 2008 election was that by and large, the system worked better than anticipated. As voter interest—and thus voter turnout—grew steadily throughout the year, there were fears that the American election system would be unable to handle the crush on Election Day. Consequently, many observers were watching closely to see if the system would fail in one or more places and were ready to analyze what happened if and when it did. Even those of us who adamantly refused to predict a meltdown were holding our breath as the polls opened on November 4 because of the combination of a system in flux and a potentially record turnout.

The good news is that the meltdown didn't happen. By and large, our election system appeared to have handled the historic turnout of voters. Pew had on-site teams in several states observing the voting process on Election Day and each of them noted the same pattern: an early crush of voters followed by an extremely uneventful day starting in mid-afternoon.

According to a new national survey of election administration conducted by the Massachusetts Institute of Technology (MIT) and funded by the Pew Center on the States with support from AARP and the JEHT Foundation, most Americans who voted on Election Day had an overall positive experience. For example, 98% of voters said that it was 'very easy' or 'fairly easy' to find their polling place in November; 98% said that their polling place was run 'very well' or 'OK, with only minor problems'; fewer than 2% of voters experienced registration problems, most of whom resolved the problem at their polling place and voted a regular rather than a provisional ballot; and fewer than 2% had any problem with the voting equipment—regardless of what type of voting equipment they used.

The bad news is that many of the findings of this new research raise concerns. While 2% of voters experiencing a problem at the polls may seem to be a small number, it is certainly enough to affect the outcome of a close race in any election.

The biggest story, however, is the experience of those who did not cast a ballot because of difficulty navigating our election system. MIT's Survey of the Performance of American Elections found that 38% of registered nonvoters—or the equivalent of more than 8 million people—said that problems with our election system were a major factor in why they did not vote in this election. I would like to submit a copy of the Executive Summary of that report, which is being released today, for the record of this hearing.

Applying the survey findings to the Center for the Study of the American Electorate's estimated 23.2 million registered voters who did not cast a ballot, the MIT study suggests:

- Approximately three million voters (13% of registered nonvoters surveyed) did not cast a ballot because of a problem with their voter registration;
- Between two and three million voters (11%) did not vote because the lines were too long;
- More than two million voters (9%) could not find where to vote;
- Approximately two million voters (8%) requested but did not receive an absentee ballot;
- Almost two million voters (7%) did not vote because they did not have the proper ID.

These numbers are not cumulative; most voters cited a combination of reasons for not voting. In many cases, voters gave a variety of reasons that have nothing to do with how we administer our elections, such as that they did not like the candidates, were too busy or were ill. However, 13%—or the equivalent of three million people—cited reasons solely related to navigating our election system as major factors in why they did not vote.

Overall, these numbers are consistent with those cited by Harvard Professor Stephen Ansolabehere before the Senate Rules Committee earlier this month indicating that between four to six million voters may not have cast a ballot because they encountered a problem in navigating our election system.

I think it is important to examine both the factors that contributed to our overall smooth experience on Election Day and the factors that contributed to problems for voters and nonvoters alike.

What Worked

- **Better voting information.** Clearly, better voting information was one of the successes of the 2008 election. More voters than ever had access to information sources that answered the key questions “*Am I registered or how do I register?*”, “*Where do I vote?*” and “*What’s on the ballot?*” However, the MIT study suggests that 2% of voters, or roughly 2.6 million people, still had difficulty finding their polling place and another 2.1 million did not vote at least in part because they did not know where to vote. Moreover, a PCS report released in October 2008 entitled *Being Online is Not Enough* revealed that many states have significant work to do in making election information available online. At the Pew Center on the States, we were pleased to provide a solution and assist with the availability of official voting information online by partnering with state and local election officials, the League of Women Voters and Google on the Voting Information Project (<http://votinginfoproject.org>). Our vision is to take advantage of the power of the Internet to get accurate and up-to-date information to voters through whatever portal they turn to and trust, whether that is a political campaign or a voter advocacy group or their favorite blog or search engine. Ten states (Iowa, Kansas, Maryland, Minnesota, Missouri, Montana, North Carolina, North Dakota, Ohio and Virginia) and the nation’s largest county (Los Angeles County, California) adopted the VIP “format” in 2008 and we are working toward wider adoption in 2009 and beyond.
- **Early and out-of-precinct voting.** Early voting was another key factor in the success of Election Day 2008. Election officials were very successful, with support from the political campaigns, voter advocacy organizations and institutions such as the Election Assistance Commission, in urging voters to vote early or by mail to ease the pressure and get voters out of line on Election Day and into their election office early so that problems could be resolved. In fact, early voting was so successful that according to the new MIT survey, 8% of those who cast ballots during early voting reported lines of more than an hour - twice as many as on Election Day.

However, early and other “non-precinct place” voting is not currently available nationwide nor is there a consensus on whether it is a long-term remedy for some of the issues confronting our election system. Consequently, at the Pew Center on the States, we are focusing not on whether states should implement

early voting or vote by mail, but on how jurisdictions do so, examining why some experiments in expanding access for voters to cast a ballot outside of their traditional polling place have succeeded while others have failed and how some jurisdictions have implemented reforms in a cost-effective manner or even reduced spending while at the same time improving service to their voters, while others have struggled with rising costs. Our research—much of which we will be releasing in the near future—is studying what factors have led to success and what factors have led to failure so that election officials can learn from the example of others who have innovated in this area.

What Needs Work

The biggest problems that emerged in the 2008 election were the result of a combination of high voter demand and aspects of our election system that have changed very little in decades.

- **Voter registration.** Problems with voter registration rightfully captured the most attention in the 2008 election. Our current voter registration rolls are rife with errors, including duplicate and invalid registrations primarily resulting from voters who recently relocated or are deceased. Despite technological advances in other aspects of the election system, voter registration data is most often handwritten, collected on paper forms and manually keyed into databases. As a result of these outdated practices, the system is highly susceptible to human error. Compounding the problem, election offices are frequently flooded with registration forms at the end of an election cycle—including from outside “third-party groups” whose activities were controversial during the 2008 campaign—when resources are already strained.

Results of the MIT survey suggest that roughly three million registered voters did not cast a ballot at least in part because of a problem with their voter registration. In addition, two million registered voters who went to the polls also encountered a problem with their registration. The problems were largely concentrated among younger voters and people who have recently moved. Among those who had lived in their current residence less than a year, one in four cited a problem with their voter registration as a major factor in why they did not vote.

These challenges stem from a registration system that is badly in need of modernization. Part of this is the unfinished business of the National Voter Registration Act and the Help America Vote Act, as we find that statewide voter registration systems have not fully lived up to their federally mandated

requirements and information from other government agencies is not being adequately tapped to update voter files in many states. Our voter registration system should not only be accurate but efficient and cost-effective.

But we can and should do more than simply comply with existing federal law. States are taking the lead in identifying opportunities for reform, as Secretaries of State Robin Carnahan of Missouri and Trey Grayson of Kentucky—a Democrat and a Republican—highlighted in a recent editorial in *Roll Call*, a copy of which I would like to submit for the hearing record. Many of your staff witnessed this energy firsthand last year, when Pew hosted a nationwide conference where one election official after another highlighted their ideas for reform and expressed frustration with the barriers that prevent them from automating and improving their voter registration process. Doing so will require a coordinated effort among states to identify tools and best practices and may benefit from assistance from the federal government. At the Pew Center on the States, we are studying cutting-edge efforts to innovate by commissioning a range of rigorous case studies on initiatives underway, such as Minnesota’s new portable registration program using the National Change of Address information from the U.S. Postal Service and online voter registration opportunities in Arizona and Washington. Our goal is to field test reforms in a real-world environment to answer technical questions and develop a structured process of dialogue among states to plan and design a more modern registration system.

- **Military and Overseas Voters.** Many state and local election officials go above and beyond to serve their military and overseas voters, including sending ballots by FedEx, e-mail and fax and using creative means to get in touch with overseas voters to update their address information.

Extraordinary efforts are required to serve military and overseas voters because state laws are stacked against them. *No Time to Vote*, a PCS report released in January, found that one-half of states do not provide enough time in their process for military personnel stationed overseas to cast a ballot by mail. A recent survey from the Overseas Vote Foundation, which receives funding from the Pew Charitable Trusts, found that 22 percent of overseas voters did not receive their ballots for the 2008 general election, and nearly 40 percent of those who did received them after the middle of October, making it very difficult for them to return their ballot in time to be counted. The problems facing military and overseas voters are not dissimilar from the challenges we face at home, where voter registration rolls are not able to keep up with a highly mobile population and citizens too often struggle to find the

information they need to navigate the system.

At the Pew Center on the States, we are supporting both short- and long-term solutions to serving military and overseas voters. In the short term, we funded the Overseas Vote Foundation's development of a software tool for putting Federal Write-in Absentee Ballots (FWABs) into the hands of military and overseas voters, which resulted in a substantial number of voters being able to cast their ballot at least for federal offices in this election. However, research suggests that less than half of voters are aware that they have the right to use an FWAB and neither are some election officials. Even if used properly, it cannot be used in most states to register to vote or to cast a ballot in any but federal races.

To properly address some of the long-term structural problems facing military and overseas voters, we have initiated and are supporting an effort by the Uniform Law Commission to study the feasibility of a uniform state law for the handling of military and overseas ballots. A model law is currently being considered by a drafting committee and will come before the Uniform Law Commission for a first reading this July. This law is likely to include provisions for standardizing dates for delivery of absentee ballots and to allow states to use new technology to transmit ballots and other election materials to voters abroad so they have time to return them.

We are also supporting the Alliance for Military and Overseas Voting Rights, a new group of more than 20 military and veterans service organizations, overseas citizen groups and international business associations that have joined forces to improve the military and overseas voting experience.

With that look back and update on our activities looking forward, I would like to leave you with three observations:

1. **We have no meaningful way to assess election performance.** Our election system, by and large, rose to the challenge of the presidential election in 2008 in the sense that many of the dire predictions of failure did not come to pass. However, while we know there were problems, we continue to lack a meaningful way to assess the performance of our election system. Without consistent data collection and established performance measures, this field is driven by anecdotes that can be too easily manipulated for impassioned arguments and partisan self-interest. How do we judge success and failure? Is it simply by whether the problems are widespread enough to affect the outcome, or can we develop a

more reliable metric that state and local officials can use to benchmark their own efforts? Yale Law Professor Heather Gerken's new book, *The Democracy Index*, proposes using data about elections to compare the performance of state and local election systems and thus provide an evidence base for reform. We have been approached by state and local election officials with ideas for how to apply the idea of the Democracy Index in their own jurisdictions, and we look forward to developing that concept further in the months ahead. We were pleased to see Congress make \$10 million available for state-based pilots in data collection and analysis in the field of election administration, and we are hopeful that the results of that effort—and similar efforts under consideration across the nation—will begin to make available sorely-needed data for ongoing assessments of our election system.

2. **Creativity loves constraint.** In this fiscal environment, every corner of the private and the public sector is asking itself how to do more with less. We are constrained by budget, we are constrained by personnel, we are constrained by time and we are constrained by the technology and other tools that are available to us in election administration. However, if every problem is an opportunity, a tighter fiscal environment enables states to address inefficiencies in their systems. I would expect to see more states in the next few years experiment with ways to wring the inefficiencies out of their election systems—sometimes by doing old things a new way (such as experiments with early voting and election day vote centers) or by reclaiming resources by halting costly and ineffective practices (such as by modernizing aspects of the voter registration system or reducing the expense of calls to election offices by more widely disseminating voting information online). We will be monitoring these developments and working with jurisdictions to learn from their successes and failures along the way.

3. **Partnership with election officials, among federal, state and local governments and with the private sector is critical.** Too often, election reforms have failed to achieve their goals because we have viewed state and local officials as an obstacle to be overcome rather than as professionals to work with to improve the process. And since effective reform happens from the ground up, not from the federal government down, it is important for any dialogue on federal legislation to work through a partnership with state and local governments in contemplating the proper federal role in reform. Similarly, it is important to work with the private sector as much of systems innovation will require partnership with companies who have encountered—and in some cases overcome—the problems facing election officials today.

In conclusion, my colleagues and I at the Pew Center on the States stand prepared to work with you to chart the path forward on election administration. Our agenda is government effectiveness and evidence-based policy based on sound, empirical data. Americans deserve an election system that is accurate, secure and convenient and that is efficient and cost-effective as well.

We look forward to working with the subcommittee on all of these issues. Thank you and I look forward to answering any of your questions.