

Flawed from the Start

The Presidential Commission on Election Integrity



September 2017

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Acknowledgements

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Foreword by Karen Hobert Flynn, President of Common Cause

For nearly five decades, Common Cause has been at the forefront of the fight for a democracy that works for everyone. No matter who is in office, of whatever party, we hold them accountable by empowering citizen participation and engagement.

When we first heard President Trump make irresponsible, unfounded claims that “three to five million illegal votes” were cast in his election, we were prepared for the possibility that he would follow up with unjust – and perhaps illegal – action to deprive millions of qualified Americans of their right to vote. Months later, when he created his Presidential Commission on Election Integrity (PCEI), we were not surprised to see him stack it with a number of individuals well-known for crafting policies designed to take voters off the rolls and make voting more difficult for those who remain.

The PCEI has given us every indication, as outlined in this report, that it will engage in phony or flawed investigations to endorse policies that kick eligible voters off of the rolls.

We are also concerned with how the PCEI is compiling its data. That is why we have filed suit against the PCEI and have taken up educational efforts like this one: to hold power accountable, and to keep you informed and aware of your rights. And we’ll be here every step of the way as the PCEI continues to act. Thank you for your continued support – and for your active participation as a citizen. It takes every one of us to make this democracy truly representative of us all.

Introduction

Shortly after he was elected, President Trump tweeted that “in addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.”¹ Meeting with lawmakers on Capitol Hill shortly after his inauguration, he reiterated the claim, stating that three to five million people voted illegally, all in favor of Hillary Clinton, who won the popular vote nationally by more than 2.8 million votes.² “Of those votes cast,” Trump announced, “None of ‘em come to me. They would all be for the other side.”³

Trump alleged that part of the problem is double registrations: “You have people registered in two states. They’re registered in a New York and a New Jersey. They vote twice.”⁴

The president’s claims are deceitful and fabricated, a long list of nonpartisan experts agree.⁵ As The Washington Post reported in January, the “claim [of widespread voter fraud] is not supported by any verifiable facts, and analyses of the election found virtually no confirmed cases of voter fraud, let alone millions.”⁶ Double registrants may be common – Americans move regularly – but double votes are exceedingly rare.⁷

Election administrators, the people with firsthand knowledge of voting systems’ strengths and vulnerabilities, generally agree that their systems do not enable double voting.⁸ “Inquiries [by the New York Times] to all 50 states [all but Kansas responded] found no states that reported indications of widespread fraud.”⁹ And across the country, election officials have voter verification tools - including signature matching and post-election audits - in place to detect and prosecute the rare instances that do occur.

Undeterred by these facts, the president issued an executive order on May 11, 2017, creating the Presidential Advisory Commission on Election Integrity.¹⁰ In a tweet, he dubbed it, “the very distinguished VOTER FRAUD PANEL.”¹¹

This report demonstrates that the commission has been flawed from the start. It was premised on false claims about widespread voter fraud. Its membership lacks the ideological balance of previous, successful presidential commissions that addressed election administration. Its leaders have records of pushing policies that make it harder to vote. And it has failed to adhere to established federal standards for the conduct of such studies, and other federal obligations.

Rather than undertaking a serious and much-needed study of reforms that would protect and strengthen the integrity of our elections, the commission is geared to provide a platform for policies that will roll back voting rights. Its direction flies in the face of state actions to implement commonsense reforms to make our elections more modern and secure, including online voter registration, automatic registration, and early voting.

What the commission aims to do – and what it’s done

To justify his falsehoods about fraudulent votes, the president established the “Presidential Advisory Commission on Election Integrity” by executive order. According to the order, the commission will study, among other things, “vulnerabilities in voting systems used for federal elections that could lead to improper voter registrations, improper voting, fraudulent voter registrations, and fraudulent voting.”¹²

Rather than undertaking a serious study that would protect and strengthen the integrity of our elections, the commission is geared to provide a platform for policies that will roll back voting rights.

The White House announced Vice President Mike Pence as chair of the commission, with Kansas Secretary of State Kris Kobach named vice chairman. Pence and Kobach have backed the president’s false claim that “illegal votes” cost him the popular vote majority.

In December, Pence called the president’s “right to express his opinion ... refreshing.”¹³ More recently, Kobach told journalists that Trump was “absolutely correct when he says the number of illegal votes cast exceeds

the popular vote margin between him and Hillary Clinton.”¹⁴ Senior Trump aide Kellyanne Conway, who coined the term “alternative facts” to describe White House falsehoods on other matters, told ABC News that the president based his claims about illegal voting, in part on Kobach’s analysis.¹⁵

In just its first three months, the commission has made errors that threaten voters’ privacy, undermine transparency in government, and could kick eligible voters off the rolls. Its actions have also spawned multiple legal actions.

- .. **The commission met first via telephone without providing notice – let alone access – to the public.¹⁶ Its second meeting was webcast but closed to public participation.** *The ACLU and Lawyers’ Committee for Civil Rights have filed lawsuits alleging the commission has violated the Federal Advisory Committee Act (FACA) for, among other things, failing to provide notice of its first meeting, failing to open its meetings to the public, and failing to make public various documents.*
- .. **The president has stacked the commission with government officials and other advocates who have used their other positions to advocate for laws that make voting more difficult for underrepresented segments of the eligible population.¹⁷** *The ACLU’s lawsuit also alleges that the commission’s membership violates FACA for its inadequate balance in the points of view represented on the panel. The Lawyers’ Committee for Civil Rights Under Law filed a Hatch Act complaint against Vice Chairman Kobach, asserting that he is using his role on the commission to promote and raise money for his 2018 candidacy for governor of Kansas. The Fair Elections Legal Network (FELN) has complained to the Election Assistance Commission’s Office of Inspector General that Christy McCormick, an EAC commissioner, is also part of the Pence-Kobach panel. FELN argues the dual membership violates the Help America Vote Act.*
- .. **Under Vice Chairman Kobach’s signature, the commission sent letters asking all 50 states to provide it with voter roll data, including full first and last names, middle names, addresses, dates of birth, political party, last four digits of Social Security numbers, voter histories from 2006 onward, felony convictions, and military status, among other things.¹⁸ The commission said it was seeking only data that already is legally considered public information, leaving unaddressed the fact that many states place restrictions on how data that they make available can be used. Some of the letters were not addressed to the proper state election officials.¹⁹ Seven states have said that they will not turn over any information, and 11 have imposed certain conditions prior to releasing the data; the remaining states are either providing data they claim isn’t shielded by law or haven’t yet issued a public decision.²⁰** *These letters have prompted numerous lawsuits, including one by Common Cause asserting violations of the Privacy Act. Common Cause argues that the commission’s request*

for personal data such as vote history and political party affiliation violates a federal law prohibiting the federal government from seeking information on Americans' First Amendment activities. The violation is particularly objectionable because the commission has given no sign of how it will maintain and safeguard the information. Another case, filed by the Electronic Privacy Information Center, asserts violations of the Fifth Amendment, the E-Government Act, and the Federal Advisory Committee Act; Public Citizen is the plaintiff in a third suit, asserting violations of the Privacy Act. The Brennan Center for Justice and United to Protect Democracy wrote a letter to the Office of Management of Budget in the wake of the commission's failure to comply with the Paperwork Reduction Act, a statute intended to guard against burdensome requests. Some state affiliates and chapters of national organizations, including the League of Women Voters and ACLU, have filed actions at the state level alleging violations of state law protecting data sought by the commission.

Former President George W. Bush's Secretary for Homeland Security, Michael Chertoff, highlighted risks that the data could be "stolen by hackers or insiders," particularly in the wake of reports that Russian hackers penetrated election-related systems in 39 states during the 2016 election.

- .. **The commission initially pledged to make data received from states - including party affiliation, the last four digits of Social Security numbers, and addresses - public.²¹ In a follow-up letter to states, Kobach renewed his request for the data but promised it would be kept "confidential and secure." No details on how that would be accomplished were provided.²² In addition to the lawsuits discussed above, cybersecurity experts have warned that the commission's plans to make voter information public would create a "gold mine for hackers."²³ Former President George W. Bush's Secretary for Homeland Security, Michael Chertoff, highlighted risks that the data could be "stolen by hackers or insiders," particularly in the wake of reports that Russian hackers penetrated election-related systems in 39 states during the 2016 election.²⁴ The Brennan Center for Justice also authored and distributed to state officials an analysis describing legal risks to states that provide voter data to the commission.²⁵**
- .. **The Vice President's office confirmed that the commission "intends to run the state voter rolls it has requested against federal databases to check for potential fraudulent registration."²⁶ This is likely to lead to false matches, and inappropriately target individuals for removal from the rolls who are lawfully registered to vote. Commission Vice Chair Kobach is the main force behind the "Interstate Voter Registration Crosscheck Program," an agreement between some states to share voter registration lists. It is extremely error-prone; its own guidelines acknowledge that "experience in the crosscheck program indicates that a significant number of apparent double votes are false positives."²⁷**
- .. **Thousands of eligible Americans have de-registered, concerned about how the commission might use the data it collects. In Colorado, for example, more than 5,000 voters cancelled their registrations after the commission requested information about its citizens. Colorado's Republican Secretary of State confirmed that there was no evidence that any of those now-cancelled voters were ineligible to participate in Colorado elections.²⁸**
- .. **Maine Secretary of State Dunlap has aired concerns over the commission's aims. One commission member, Maine Secretary of State Matt Dunlap, said he would reject a request in Kobach's second letter regarding submission of voter registration data to the commission. He told the press that "he's concerned the commission hasn't made its aims clear and that he's worried about voters' privacy."²⁹**
- .. **The commission's next meeting is scheduled for September 12, 2017 in New Hampshire. On August 25, the commission posted a notice in the Federal Register announcing that a public hearing would be held on September 12 in Manchester, NH so that it can "receive information relevant to its advisory function ... including information from individuals with experience and knowledge of the public's perception of election integrity**

and related issues, the effects of such public perception on voter turnout and willingness to participate in the electoral process, and current issues related to election integrity that affect the public's perception of the nation's elections systems and processes."³⁰ Individuals in attendance may not make public comments but may submit written testimony or comments by September 8.³¹

.. **U.S. Sen. Chuck Schumer, D-NY, has called for the commission to shut down.** In light of the neo-Nazi activity at Charlottesville, VA in mid-August, Sen. Schumer said Republicans and Democrats need to come together

to tackle issues affecting Americans. "I have been encouraged to see a good number of my Republican colleagues in the Congress speak so strongly against the hateful agenda of the white supremacist, neo-Nazi movement" following the rally in Charlottesville. "But we need more than just words – we also need action," he wrote in a blog. "And I believe that one important way that Congress can begin to heal this painful divide in our country when we return in September is by showing that we can come together to stop the systemic disenfranchisement of American voters."³²

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The Commissioners

In creating the commission, Trump named Vice President Mike Pence (R) as its chair, and allowed for up to 15 additional members. The commission now has seven Republicans, including Pence, and five Democrats. The members are:

.. **Kansas Secretary of State Kris Kobach** (Republican, vice chairman). Kobach, Kansas' top election official, has a long history of attempting to lengthen and complicate voter registration processes and identifying cases of "vote fraud" that prove unfounded.³³ As developer of the Interstate Voter Registration Crosscheck program, he has helped nearly half the states remove registered voters from the rolls based on purported - but ultimately false - "matches." The process used in Crosscheck singles out Black, Hispanic, and Asian surnames over white ones, given the relatively fewer number of surnames used by members of those three ethnic groups. For example, "86,020 people in the United States have the name John Jackson. And according to the 2000 U.S. Census, which is the most recent data set, 53 percent of Jacksons are African-American."³⁴ The ACLU and others have sued Kobach repeatedly for attempting to tack documentary proof of citizenship requirements onto Kansas' registration procedures. His proposal has been struck down repeatedly under the National Voter Registration Act.³⁵

.. **Indiana Secretary of State Connie Lawson** (Republican). Lawson is behind one of the strictest photo ID laws in the country; it requires some types of identification that many would-be voters lack, disproportionately in communities of color and among students and elderly Americans. Still, she has helped push reforms such as vote centers and online voter registration for Hoosier citizens. In response to Kobach's letter requesting voter data, her office provided only information about Indiana voters that is permitted under state law. She notes that it's unclear what Kobach can accomplish through these requests, given that in "41 states the [information sought is] not publicly available."³⁶ What check, if any, she'll provide on the commission is unclear.

.. **New Hampshire Secretary of State Bill Gardner** (Democrat). A Democrat who repeatedly wins reelection with wide bipartisan support, Gardner seems to split the baby on the issue of fraud: he's a photo ID proponent who claims to have witnessed voter fraud "with his own eyes," but concedes that any fraud is rare, and has countered Trump's claims about millions voting illegally.³⁷

- .. **Maine Secretary of State Matthew Dunlap**, (Democrat). Dunlap, as secretary of state, has refused to supply the commission with the personal data on Maine voters requested in two letters from Kobach. He also has urged that the commission “refine” its search; his and Lawson’s comments suggest that Kobach acted without the backing of his fellow commissioners in seeking the data. There doesn’t seem to be a concerted group effort to obtain this information. Dunlap, moreover, seems to want to address issues other than fraud: “One of the things that’s been discussed is the accusation that millions of votes were cast illegally,” Dunlap said. “Now, I’ve said right along that we probably wouldn’t find an awful lot to back that claim up, but nonetheless, I believe that sunshine is the greatest disinfectant and I thought participation in this commission would help further that cause, that we should be talking about what makes elections work well, as well as some of the barriers that could be put before voters that would discourage them from participating in the election process.”³⁸
- .. **Ken Blackwell, former Ohio secretary of state** (Republican). As secretary of state and a candidate for governor, Blackwell mistakenly posted the full Social Security numbers of 1.2 million Ohioans; a month later, his office inadvertently distributed voter registration lists including information on 5.7 million voters in the state.³⁹ Blackwell also instructed clerks to refuse voter registration applications submitted on forms of less than 80-pound stock paper, the thickness of a postcard; clerks later convinced him to undo the decree as unnecessary.⁴⁰ Blackwell was also the chief elections official when Ohio was accused, in 2006, of violating the federal National Voter Registration Act; the state entered into a settlement to remedy those wrongs in 2009.
- .. **Christy McCormick, commissioner, Election Assistance Commission** (Republican). One of two Republican commissioners at the EAC, the federal entity assigned to give states information and guidance on election administration, McCormick was nominated by President Obama and confirmed by the Senate in 2014.⁴¹ She worked in the Voting Rights Section of the Justice Department during the George W. Bush and Obama administrations, filing suits to enforce the Voting Rights Act, the National Voter Registration Act, and other federal laws.⁴²
- .. **David Dunn, former Arkansas State Representative** (Democrat). Dunn, a state legislator turned lobbyist, has little elections experience and expressed shock at being appointed to the commission: “I don’t know why this has fallen on my shoulders,” he told HuffPost, adding that he was concerned about voters’ access to the polls, particularly in rural areas. “I’m just a very small old country boy from Arkansas in this bigger commission with Vice President Pence, and I’m just going to do the best I can, to be honest.”⁴³
- .. **Mark Rhodes, clerk of Wood County, West Virginia** (Democrat). Rhodes “oversees elections for 56,000 registered voters in a county with a population of 82,000 people, and said his office went through death certificates and obituaries every day to make sure its voter rolls were accurate and up to date.” He has acknowledged that he hasn’t seen evidence of voter fraud but says he is open to investigating it.^{44 45}
- .. **Hans von Spakovsky, senior legal fellow, Heritage Foundation** (Republican). As an attorney in the Justice Department’s Voting Rights Section during the George W. Bush administration, von Spakovsky focused primarily on photo ID laws and purges. He permitted a strict ID law in Georgia over career attorneys’ objections and backed voter purges, leading an unsuccessful case against Missouri to remove registration records from their rolls, without ever suing states for failure to abide by requirements to offer voter registration at public assistance agencies, despite several state violations.⁴⁶ Von Spakovsky also has been a key figure in drumming up unsubstantiated fears about voter fraud. Prof. Rick Hasen, an elections law expert, puts von Spakovsky “at the top of the list” of “people who have been active in promoting false and exaggerated claims of voter fraud and using that as a pretext to argue for stricter voting and registration rules.”⁴⁷
- .. **J. Christian Adams, President, Public Interest Legal Foundation** (Republican). Adams’ reputation is comparable to von Spakovsky’s. At the Department of Justice, the activist group Judicial Watch, and from his own foundation, Adams has instigated cases against jurisdictions seeking mass voter registration purges.⁴⁸ The impetus for such suits is his claim that huge numbers of “aliens” are voting in U.S. elections. Recently, he published a report claiming that 5,500 noncitizens are registered to vote in Virginia, and thousands cast ballots.⁴⁹ The data behind those claims is flawed, however. “Not just incredibly inflated; designed - and specifically designed - to get inaccurate information,” according to Justin Levitt, an election law expert at the Loyola Law School and a former deputy assistant attorney general in the Obama administration who reviewed the reports and underlying data.⁵⁰

“ **Alan King, Probate Judge, Jefferson County, Alabama** (Democrat). King, an “experienced election official,” says he’s overseen local, state, and federal elections. He has asserted that “there was not any voter fraud in Jefferson County and there has not been any voter fraud for 30 years or more than that.”⁵¹

Maryland Deputy Secretary of State Luis E. Borunda, a Democrat, earlier resigned his position. He has no responsibility for elections matters in the secretary’s office; they fall within the duties of the Maryland State Board of Elections.

Election commissions past

The Pence-Kobach Commission is an aberration from other high-profile commissions that have studied election administration over the past 15 years.

Those commissions were genuinely bipartisan and addressed actual problems in our election administration systems, including a lack of adequate access for impaired voters, long lines at voting locations, outdated machinery, antiquated registration practices, and many others.

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The National Commission on Federal Election Reform – Ford-Carter (2001)

Following the election administration debacle of 2000, when recount disputes over “hanging chads” and butterfly ballots in Florida led to the Supreme Court decision in *Bush v. Gore*,

former Presidents Gerald Ford and Jimmy Carter were named honorary co-chairs of the National Commission on Federal Election Reform.⁵² The “Ford-Carter Commission,” as it was known, agreed that all levels of government should encourage citizen participation.

Staffed by the Miller Center of Public Affairs at the University of Virginia and the Century Foundation, the Ford-Carter Commission was made up of a bipartisan group of distinguished Americans - Republican and Democrat. The commission conducted four public hearings in the spring and summer of 2001, with testimony from 48 witnesses representing a wide array of civic life, including election administrators, academics, civic leaders, and elected officials. All transcripts of the commission’s hearing were made public.

Ford-Carter Recommendations.

The Ford-Carter Commission’s major achievements include the Help America Vote Act, which was passed by Congress with bipartisan approval and signed into law by President George W. Bush. While some of the commission’s recommendations could have been stronger, the package was a strong, bipartisan step forward. Among its proposals:

1. Every state should adopt a system of statewide voter registration.
2. Every state should permit provisional voting by any voter who claims to be qualified to vote in that state.
3. Congress should enact legislation to hold presidential and congressional elections on a national holiday.
4. Congress should adopt legislation that simplifies and facilitates absentee voting by uniformed and overseas citizens.
5. Each state should allow for restoration of voting rights to otherwise eligible citizens who have been convicted of a felony once they have fully served their sentences, including any term of probation or parole.
6. The state and federal governments should take additional steps to assure the voting rights of all citizens and enforce the principle of one person, one vote.
7. Each state should set a benchmark for voting system performance, uniform in each locality that conducts

elections. The benchmark should be expressed as a percentage of residual vote (the combination of overvotes, spoiled votes, and undervotes) in the contest at the top of the ballot and should take account of deliberate decisions of voters not to make a choice.

8. The federal government should develop a comprehensive set of voting equipment system standards for the benefit of state and local election administration.
9. Each state should adopt uniform statewide standards defining what will constitute a vote on each category of voting equipment certified for use in that state. Statewide recount, election certification, and contest procedures should take account of the timelines for selection of presidential electors.
10. News organizations should not project any presidential election results in any state so long as polls remain open elsewhere in the 48 contiguous states. If necessary, Congress and the states should consider legislation, within First Amendment limits, to protect the integrity of the electoral process.
11. The federal government, on a matching basis with the governments of the 50 states, should provide funds that will add \$300-400 million to the level of annual spending on election administration in the United States. The federal share will require a federal contribution totaling \$1-2 billion spread out over two or three years to help capitalize state revolving funds that will provide long-term assistance.
12. The federal responsibilities envisioned in [the] report should be assigned to a new agency, an Election Administration Commission (EAC).
13. Congress should enact legislation that includes federal assistance for election administration, setting forth policy objectives for the states while leaving the choice of strategies to the discretion of the states.

The Commission on Federal Election Reform - Carter-Baker (2005)

Formed in 2005, the Commission on Federal Election Reform, co-chaired by former President Jimmy Carter (D) and former Secretary of State James Baker III (R), examined a broad list of elections-related issues: voter registration and ID; voting technology; expanding access; improving ballot integrity; election administration; responsible media coverage; election observation; and presidential primaries and post-election schedules.⁵³ In its report, titled “Building Confidence in U.S. Elections,” the commission made 87 recommendations, with a focus on five general proposals:

1. a “universal voter registration system in which the states ... are responsible for the accuracy and quality of the voter lists;
2. issuance of and use of “REAL ID cards” for those without driver’s licenses, plus the use of additional offices to provide registration and IDs;
3. affirmative offers of voter registration, use of vote centers, and expansion of voter and civic educational programs, plus public issuance of reports on prosecutions of voter fraud;
4. auditable voting machines, including use of paper ballots; and
5. a requirement that the EAC and state-election management bodies be nonpartisan.⁵⁴

The commission said its aim was to “increase voter participation and assure the integrity of the electoral system.” To that end, it advocated “an accurate list of registered voters, adequate voter identification, voting technology that precisely records and tabulates votes and is subject to verification, and capable, fair, and nonpartisan election administration.”⁵⁵

Several of the commission’s proposals – implementation of vote centers, affirmative offers of voter registration, use of auditable machines with paper ballots, and others – were commonsense, practical measures to ensure greater access and participation. Common Cause supports most of those.

But the commission’s recommendations on voter identification are unsupported by data and research. As to the commission’s proposal that states provide REAL ID to voters who don’t have driver’s licenses, research conducted both then and now demonstrates that in-person voter fraud – the kind that ID requirements purportedly would prevent – simply does not occur on a significant level, and certainly not at the level to justify requiring IDs that many people simply don’t have and can’t obtain. Moreover, as experience in Wisconsin demonstrated last year, states can’t be relied on to ensure that every eligible voter receives an approved ID. As former Senator Tom Daschle noted in a separate statement, joined by Spencer Overton and Raul Yzaguirre, “the documents required by REAL ID to secure a driver’s license... include a birth certificate, passport or naturalization papers, a photo identity document, and proof of social security number ... For some, the commission’s ID proposal constitutes nothing short of a modern-day poll tax.”⁵⁶

While Common Cause disagrees with the commission's recommendation that states require photo ID (a driver's license or REAL ID) in federal elections, we recognize that the commission had a bipartisan team, including ac-

ademics, scientists, lawyers, former elected officials, and organizational heads from both sides of the aisle. Its leaders were former President Carter, a Democrat, and former Secretary of State Baker, a Republican. Their dual authority ensured that the team examined issues of concern to both parties.

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Where it additionally failed, though, was in its level of transparency and failure to vet proposals with experts such as elections administrators, who oversee the process daily. As the Brennan Center notes, "a lack of

transparency and a reluctance to conduct thorough research or consult with a full range of recognized experts,"⁵⁷ made this fall short, especially when compared to its predecessor.

The Presidential Commission on Election Administration – Bauer-Ginsberg (2013–14)

When President Barack Obama thanked his supporters on the night of his re-election in 2012, he paid tribute to the endurance that too many voters had to show when they stood in line for upwards of seven hours to cast their ballots.

"Whether you voted for the very first time or waited in line for a very long time – by the way, we have to fix that - ... you made a difference," he said.⁵⁸

As Common Cause documented in its 2014 report, *Did We Fix That?* "some of the longest lines were in precincts located in African-American and Latino neighborhoods, with major shortages of voting machines and trained poll workers."⁵⁹

President Obama took decisive action, appointing a new commission chaired by Robert Bauer and Benjamin Ginsberg, the two top attorneys from the Obama and Romney campaigns. This bipartisan commission was different from the Ford-Carter and Baker-Carter studies. Commissioners included not only a diverse set of leaders who worked in election administration, but also people with strong customer service backgrounds in line management.

The commission's charge was narrow: to identify best practices that election administrators should adopt to improve the voting experience. The commission had four public hearings throughout the U.S., hearing from many local officials, advocates, civic organizations, and others.

Ultimately, the commission adopted 19 commonsense recommendations to the more than 8,000 local jurisdictions that play a role in election administration.⁶⁰

1. States should adopt online voter registration.
2. Interstate exchanges of information should be expanded.
3. States should seamlessly integrate voter data acquired through Departments of Motor Vehicles with their statewide voter registration lists.
4. Schools should be used as polling place; to address any related security concerns, Election Day should be an in-service day.
5. States should consider establishing vote centers to achieve economies of scale in polling-place management while also facilitating voting at convenient locations.
6. Jurisdictions should develop models and tools to assist them in effectively allocating resources across polling places.
7. Jurisdictions should transition to electronic pollbooks.

8. Jurisdictions should recruit public and private sector employees, as well as high school and college students, to become poll workers.
9. States should institute poll worker training standards.
10. Election authorities should establish advisory groups for voters with disabilities and for those with limited English proficiency.
11. States and localities must adopt comprehensive management practices to assure accessible polling places.
12. States should survey and audit polling places to determine their accessibility.
13. Jurisdictions should provide bilingual poll workers at any polling place with a significant number of voters who do not speak English.
14. Jurisdictions should test all election materials for plain language and usability.
15. States should expand opportunities to vote before Election Day.
16. States should provide ballots and registration materials to military and overseas voters via their websites.
17. The standard-setting and certification process for voting machines must be reformed.
18. Audits of voting equipment must be conducted after each election as part of a comprehensive audit program, and data concerning machine performance must be publicly disclosed in a common data format.
19. Local jurisdictions should gather and report voting-related transaction data to improve the voter experience.

Comparisons – and lessons learned

Commissions on elections should be truly bipartisan and ideologically balanced

This Pence-Kobach commission has billed itself as bipartisan but is led by two Republicans, rather than one chair representing each party, and has a 7-5 Republican majority. Those facts alone make it aberrant from the previous three federal panels examining our elections processes. As the New York Times noted, “The Trump commission is the fourth blue-ribbon inquiry in the last 17 years into what went wrong in a general election and how to remedy those problems. But beyond that, it bears no resemblance to its predecessors.”⁶¹

The partisan nature of this commission comes through in its aim and agenda. Had the president truly wanted to identify current elections problems and issue broad remedies, he would have created a truly bipartisan team with a wide range of elections experience. Such a group would include academics and practicing elections administrators who could provide current data, experience with election procedures, and modern-day solutions, with appropriate funding. As this report documents, none of those elements are present in the Pence-Kobach commission.

Commission member Hans von Spakovsky, a former Department of Justice attorney in the George W. Bush administration, built a career on suing states for failing to remove voters’ names from the registration rolls; he has shown no interest in enforcing requirements that state agencies provide voter registration services to eligible voters. Ken Blackwell, the former Ohio secretary of state, oversaw elections processes while Ohio agencies failed to abide by federal registration requirements. And Kris Kobach, in his capacity as Kansas secretary of state, has repeatedly attempted to require

documentary proof of citizenship for voter registration applications, a move that would impact thousands of citizens who don’t have access to certain ID documents. Kobach has persisted despite court rulings striking down this practice. Other commissioners have little in the way of pro-voter reform experience. Almost none have advanced reform that makes registration and voting more accessible for eligible citizens.

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Commissions should be open and transparent

Any voting commission should abide by basic guidelines of transparency and sunshine in government.

Pursuant to the Federal Advisory Commission Act (FACA), all committee meetings must be open to the public, and all records publicly disclosed in advance, or at its meetings.⁶²

The Pence-Kobach commission did not provide the public with any notice – let alone an opportunity to attend – of its initial meeting on June 28. Its second meeting, on July 19, was available only by webcast, denying the public an opportunity to attend in-person. The commission has also been slow to release its documents, doing so only after litigation. And when releasing certain public records, including comments from the public, it has not redacted personally-identifiable information such as postal addresses and email addresses.

Commissions should focus on real issues – and modern solutions

Any study of elections administration should accurately identify problems voters experience today and propose solutions that are modern, feasible, and can be implemented in any state - red, blue or purple. The Ford-Carter and PCEA commissions, with the help of independent experts, identified practices and reforms – such as facilitated registration processes for overseas military voters (Ford-Carter) and the use of students as poll workers (PCEA) – that later were adopted by states across the political spectrum. Although Common Cause disagrees with some of the Carter-Baker Commission's methodologies and recommendations – notably the imposition of a REAL ID requirement discussed in this report – the commission nonetheless identified issues both parties considered to be key obstacles to enhancing our elections processes.

To date, the Pence-Kobach commission has identified little that requires fixing in the elections system. Its focus is a hyped-up fear of illegal voting, despite an abundance of studies demonstrating the lack of a widespread problem. A couple of commissioners mentioned at their first meeting that they wanted to address issues of engagement and confidence in the system, but there has been no movement to obtain information from the states that would help the commission assess current problems and propose sensible solutions. Issues requiring attention include: how to ensure access for all eligible voters; enhancing enthusiasm for and participation in our electoral processes; and modernizing voting machines and systems to ensure their safety from external interference. A commission reviewing and addressing items on that list would serve the country well.

Conclusion

The state of American elections requires thoughtful consideration and concerted action. America is lucky to record a 60% turnout in any given presidential election, a statistic that would be considered laughable in many other democracies. We can do better. To clearly identify what holds us back and implement modern, common-sense reforms to remedy those problems, regular evaluations are encouraged and welcome. But reviews must be fair if they're to be effective.

Previous bipartisan commissions have helped strengthen our democracy. The Obama-era Presidential Commission on Election Administration, for example, identified strong reforms that red and blue states alike could implement. Many have done so. We can achieve such a model again. But this commission, to date, has failed to do so. Common Cause is committed to monitoring this commission's work. And we call on citizens to join us.

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