

**Committee on House Administration
Subcommittee on Elections
“Voting in America: Access to the Ballot in New Mexico”
New Mexico State Capitol
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**Written Testimony of
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Introduction

Thank you, Chairman Butterfield, Ranking Member Steil, and distinguished Members of the Committee for holding this important hearing today. And of course, I am also very pleased and honored to be here with Representative Leger Fernandez in her district, and I thank her for her terrific work on this Committee. Thank you also to Representative Stansbury for being here today. My name is Heather Ferguson, and I am the Executive Director of Common Cause New Mexico. We are a state chapter of a national nonpartisan pro-democracy organization with more than 1.5 million supporters and 30 state chapters. For over 50 years, Common Cause has been holding power accountable through lobbying, litigation, and grassroots organizing. Common Cause fights to empower people to participate in our democracy – we are advocates for fair representation for all. We work to reduce the role of big money in politics, enhance voting rights for all eligible Americans, foster an open, free, and accountable media, strengthen ethics laws to make the government more responsive to the people, and stop gerrymandering.

Common Cause was founded in 1970 by John Gardner, a Republican who served in President Lyndon B. Johnson’s Administration, at a time when Republicans and Democrats were able to come together on democracy issues. For years, we have worked together with those who put

country over party to advocate and pass major democracy reforms that sought to correct some of the most egregious abuses of power, including the Federal Election Campaign Act, the presidential public financing system, and the Ethics in Government Act, all timeless laws that are still extremely consequential to this day. We are also proud to have been strong supporters of strengthening participation in voting and elections, including advocating and organizing to pass and ratify the 26th Amendment to lower the voting age, and we have supported efforts to pass, strengthen, and repair the Voting Rights Act. We work at the federal, state, and local level on these reforms, advocating for common-sense solutions to remove barriers to voting so that everyone can participate and be heard.

Before I continue, I would like to express my sincere gratitude and deep appreciation for the hard work that our Secretary of State, Maggie Toulouse Oliver, and her staff put in everyday alongside our poll workers and county clerks who contribute to our successful and secure election process here in New Mexico. Thanks to the tremendous leadership by our Secretary of State and her office, New Mexico stands out as a beacon of light in contrast to the many anti-voter bills we have seen throughout the country.

Although there are a number of ways that we have worked to expand and improve access to the ballot while ensuring election security here in New Mexico, I will focus my observations on several key areas: our election protection program and election administration matters, election innovation and modernization, and the impact of the COVID-19 pandemic in the state. We work closely with many partner organizations both nationally and statewide in collaboration and coordination to ensure access to the ballot box for all voters.

Voting Landscape

For the last decade, Common Cause New Mexico has led a robust, nonpartisan Election Protection program with over 1,000 trained volunteers at polling locations throughout the state. In 2020, we recognized that a major shift in Election Protection was necessary due to the ongoing COVID-19 pandemic. Common Cause New Mexico recalibrated our efforts and resources to focus on key counties that we determined to be most vulnerable to increased voter intimidation, misinformation campaigns, and historical electoral suppression.

With in-person voting potentially putting voters at risk for COVID-19 exposure, we worked with our Secretary of State and state legislators to pass an emergency provision during a special legislative session in June 2020 to expand absentee ballot application deadlines, increase absentee ballot security with intelligent bar codes and tracking, include clear instructions on how voters should return their absentee ballots on time to county clerks, allow county clerks the choice to automatically mail absentee ballot applications to qualified voters, conduct outreach to county clerks to ensure that secure ballot drop-boxes were requested by the state's deadline, and modify our election codes to accommodate the requests made by the members of our 23 Nations, Tribes and Pueblos to ensure that their access to the ballot box was not inhibited by their communities' and our state's public health orders.

To accomplish this, we considered the numerous barriers that many of New Mexico's communities faced due to the consolidation of many polling locations in November of 2020. Many of New Mexico's tribal communities and colonias experienced a significant delay in mail services that complicated voter registration, absentee ballot requests, and mailing of completed absentee ballots. Many of our rural community residents had to commute over an hour from their homes simply to retrieve their mail, and this is especially true for the 23 tribal communities located throughout our state.

Still, we knew that many voters would still choose to participate in-person rather than vote-by-mail. Our Election Protection volunteers serve as poll watchers and poll monitors and are each assigned to a polling location where they are stationed in a visible area with "866-OUR-VOTE" materials and signage.¹ This hotline is a nonpartisan election protection resource for voters to obtain accurate information about the process of voting. The Election Protection poll watchers serve as a non-partisan resource for voters to ask them non-candidate-related questions and report any voting issues they are experiencing. Our volunteers also observe various polling locations to report extensive delays and/or any voter suppression activity throughout the state. Our poll watchers are always given a certified letter from the Secretary of State that authorizes their presence at a polling location.

¹ Gould, Jens, "Poll watchers have eyes out for infractions at New Mexico voting sites," Santa Fe New Mexican, October 29, 2020, https://www.santafenewmexican.com/news/elections/poll-watchers-have-eyes-out-for-infractions-at-new-mexico-voting-sites/article_d00f85dc-1890-11eb-8323-8ba9cb82661a.html.

With false information and voter intimidation tactics spread by social media and biased “news” sources regarding the security of absentee or mail-in voting, Common Cause New Mexico leveraged support from community allies and partners to inform voters about the truth: that vote-by-mail is secure and improves access to the ballot. We provided accurate information about our state’s process in using vote-by-mail, identified high-traffic polling places and/or polling places that experienced an increase in in-person voting, and developed joint messaging toolkits to share with our coalition partners. We identified twelve counties that our data showed would likely encounter high voter turnout, high absentee ballot turnout, and could be likely targets of voter suppression and intimidation tactics. We prioritized the following counties for our Election Protection program: Bernalillo, Chavez, Cibola, Dona Ana, Grant, Lincoln, McKinley, Otero, Rio Arriba, Sandoval, San Juan, and Santa Fe.

A key factor in our program is that we work with upwards of 25 civic engagement organizations in New Mexico who collaborate to provide New Mexico residents with the proper information needed to register to vote and cast their ballot. These organizations include national, state, and grassroots organizations dedicated to ensuring that all eligible New Mexicans have their voices heard on election day. Some of our election protection coalition members include Equality NM, Center for Civic Policy, New Mexico Black Voters Collaborative, Organizers in the Land of Enchantment (OLÉ), Native American Voting Alliance, New Mexico Asian Families Center, Somos Un Pueblo Unido, and the Native American Voting Rights Taskforce. Using digital media and paid advertising campaigns, we are crafting and leading a state-wide nonpartisan messaging campaign for absentee voting and voting security for both the June 2022 Primary and November 2022 General Elections.

Legal Community Outreach

Engaging the legal community is essential to free and fair elections. In 2020, we offered a Continuing Legal Education course with our State Bar Association to engage practicing attorneys and educate them on both federal and state election laws prior to the election. Twenty attorneys worked with our Election Protection team to answer hotline calls from voters with questions that ranged from requesting information regarding their polling place location to reports of voter intimidation, including the state-wide activity of caravans of vehicles that were attempting to block public access to our polling site locations. In at least

one of these voter intimidation incidents, arrests of the individuals were made on-site, and access points to these locations re-established.²

Within our group of legal volunteers, we partner with the ACLU of New Mexico³ to recruit litigators who stay in constant contact with us during all early-voting hours and on Election Day. They are prepared to pursue court intervention to protect every eligible voter's right to cast their ballot if necessary. This team of Election Protection litigation attorneys is especially unique not only for their specific expertise in election law but also because their work is entirely non-partisan, separating it from the partisan legal teams.

In addition to our team of legal and paralegal volunteers, we also worked with the Office of the New Mexico Attorney General's office through their established voter protection hotline and District Attorney's Offices' dedicated voter protection staff and hotline. To prevent voter intimidation by the presence of law enforcement, we worked with local officials to ensure that plain-clothed investigators responded to polling sites in unmarked vehicles to investigate voter intimidation complaints.

Election Security

Trust and confidence in elections is essential to the integrity of our democracy. As we advocate for additional funding from our state legislature and federal government to protect our election infrastructure, we work to effectively engage with election administrators to ensure best practices are deployed to protect our current infrastructure. We work with election administrators to ensure they are following proper security protocols regarding processing and counting ballots, ballot machines, and conducting election canvasses. We also educate voters about steps they can take as individuals to counter election security failures and to provide litigation resources when someone's rights have been violated.

During the 2020 election, administrators from the Secretary of State to county clerks and election board members experienced harassment and threats of physical harm. With

² Davis, Bella, "Concerns about voter intimidation loom in election run-up," The Daily Lobo, October 26, 2020, <https://www.dailylobo.com/article/2020/10/concerns-about-voter-intimidation-loom-in-election-run-up>.

³ Associated Press, "Voting rights hotline to be set-up" Albuquerque Journal, October 3, 2020, <https://www.abqjournal.com/1503498/voting-rights-hotline-to-be-set-up.html>.

disinformation, falsehoods, and election propaganda not showing any sign of stopping, the safety of election officials as well as voters at the polling place is of concern. This voter suppression tactic needs to be scrutinized and laws enforced to prohibit threatening tactics that disenfranchise voters.

Communications

A critical piece of our work is our communications plan. We work with our coalition partners to conduct a targeted, multi-lingual, earned media outreach campaign to promote voting resources and voter-question hotlines. Additionally, we ensure that media outlets throughout New Mexico share this information with communities whose members have been historically targeted by voter suppression practices to discourage their participation. Lastly, we conduct outreach to all of the media outlets in the state to prepare their journalist teams to inoculate against propagating election misinformation.

We are identifying key counties that may require rapid response to large-scale issues with election administration, problems, or crises that arise during the 2022 election. These issues or problems include but are not limited to: deceptive practices (misleading or intimidating billboards, fliers, robocalls that provide false information about the time, place, and manner of voting), widespread problems at the polls (long lines, voter suppression, poll worker misinformation), court decisions (such as major decisions on challenges to restrictive laws), emergencies (climate and man-made) that impact election administration, absentee voting misinformation, in-person monitoring of absentee boards in key New Mexico counties ensuring voters are not disenfranchised, reporting incidents of threats or harassment to poll workers, coordinating nonpartisan digital messaging strategies for the November 2022 election, and identifying opportunities where we can educate voters and provide voting information through the election cycle. To accomplish this, we develop and share digital, print, and social media Election Protection campaign materials for our coalition partners. We also provide public awareness through op-eds and letters to the editor in print publications throughout New Mexico, conduct radio interviews to provide its listeners accurate election information, and disseminate the Lawyers' Committee hotline information.

Opportunities to Expand Ballot Access in New Mexico: Legislative Model for Other States and the Nation

Common Cause and many other pro-democracy groups have continued to advocate that their lawmakers pass significant pro-democracy reforms at the state and local levels that help empower the voices of New Mexicans. Voting should not be an endurance sport. Working with our community coalition partners in 2019, New Mexico successfully passed same-day (also known as “election day”) voter registration and front-end automatic voter registration. New Mexicans now can register to vote for the first time immediately prior to voting and in some cases update their voter information to reflect their current residence. These reforms make voting more convenient and lower unnecessary barriers to participation.

For over a decade, New Mexico has allowed for an early voting process that commences 28 days prior to Election Day, and subsequently, we have worked with our community-based coalition and the Secretary of State’s office to pass legislation to allow for state-wide Voting Convenience Centers, no-excuse absentee voting since 1993, voter registration portability, and pre-registration for 17-year-olds since 2017. We are also proud that New Mexico voters use voter-verified paper ballots, including ballot marking devices to ensure accessibility.

Recognizing New Mexico’s diverse cultures and community needs, the legislature implemented laws that allow voters to use a variety of methods to identify themselves. Photo identification is not required to vote, nor to register to vote in New Mexico. A physical form of identification is only required for first-time New Mexico voters who registered by mail and did not include identification with their voter registration application form. For all New Mexicans, voters may provide physical, written or a verbal (voter confirmation of their name, current address and year of birth) type of identification which also extends to identification provided to a voter by their Indigenous Nation, Tribe, or Pueblo.

When it comes to fair maps and fair representation, in 2021, we worked with the League of Women Voters NM to create our state’s first Citizens Redistricting Commission which took public comment in hearings conducted throughout the state last year and submitted recommended fair maps to the legislature for consideration. In a history-making move, all 23 Nations, Tribes and Pueblos also created our state’s first tribal consensus map for House, Senate and Congressional districts which was incorporated and adopted by the legislature in their special legislative session in December 2021.

In our recent 30-day legislative session, SB 8, the New Mexico Voting Rights Act, and SB 144, a bill addressing the intimidation of election workers, were both introduced and failed to pass both chambers in time to become law. These bills would address the following issues that still inhibit ballot access to eligible New Mexico voters:

- Restoration of rights of people convicted of a felony to enable them to regain their constitutional right to vote and participate in the democratic process upon release from incarceration.
 - New Mexico currently prohibits over 17,000 community members from voting even though they're home, working, paying taxes, and raising families. This change will restore democracy and full citizenship, advance racial justice by automatically restoring the right to vote for all community members, improve public safety, and reduce recidivism with a stronger democracy.
- Improve our automatic voter registration system through “back-end” AVR, an upgrade to this system that will automatically register people to vote when they present documents confirming their citizenship at the MVD or another state agency.
 - People who are already registered to vote will have their information automatically updated to reflect any address or name change provided to the agency. New or updated registrants will then be mailed a postcard offering the opportunity to decline their new registration, choose their political party, or registration change—this option to opt-out of registration after the interaction at state agencies is what makes back-end AVR different.
- Online voter registration should be open to all eligible voters, and that means expanding access to those without a driver’s license or state ID card.
 - By allowing eligible voters to use the last four digits of their social security number as identification when registering to vote online, we can expand access while maintaining rigorous security standards.
- Improving the Native American Voting Rights Act
 - It is essential that Tribal leaders have a fair say in our state’s democracy processes.
 - No one knows how to best enfranchise tribal communities better than their own leaders. By improving the Native American Voting Rights Act, those leaders can

work with state government officials and election clerks to bring much-needed upgrades to democracy on tribal lands.

- Improving the Native American Voting Rights Act means increasing collaboration between tribal leaders and election clerks, standardizing early voting on tribal lands, and guaranteeing much-needed resources for polling places and secure ballot drop boxes. If we're serious about building a stronger democracy in New Mexico, it's time we build a stronger democracy for Native voters.
- Permanent Absentee List
 - 65 million Americans decided to vote by mail in 2020 because it's safe, secure and accessible, just like a fair and free democracy should be.
 - Allowing eligible voters to mark their preference for a mail ballot is a tried and tested way to ensure all eligible New Mexicans have the opportunity to participate in our state's elections.
 - By signing up to receive a mail ballot for each statewide election, eligible voters don't need to worry about navigating state websites or visiting a local government office to request every election cycle. For those without regular internet access or transportation, this simple upgrade will make a significant difference.
 - By improving current, successful programs like automatic voter registration and mail voting, we can maintain our voter rolls and make sure any eligible voter who wants a mail ballot gets one each and every election.
 - Election clerks can maintain an accurate list of the eligible voters who prefer to vote by mail and will enable clerks to plan to make the voting process smooth and more cost-effective.
- Extending the Ballot Deadline
 - New Mexico currently requires mail ballots to be received by election officials by 7:00 p.m. on Election Day to be counted. For voters putting their ballot in the mail just a few days before Election Day—or even on Election Day itself—that hard deadline creates uncertainty around whether the Postal Service will deliver their ballot in time for it to be counted.
 - By extending the deadline for when ballots shall be received to the Friday after Election Day will increase voter confidence that their ballot will be counted.

- Election Day as a holiday
 - With most modern-day lifestyles always being on-the-go, enacting Election Day as a holiday will help the many who are unable to cast a ballot during early voting a chance to have their voices heard on Election Day, provided there are also opportunities for those who instead choose to vote early or by-mail. It is important to maintain options for those who might still need to work on Election Day even if it is a holiday.
- Poll Worker Protections
 - Amending the crime of intimidation to include acts against employees or agents of the Secretary of State, County, and Municipal clerks would add protections for our many poll workers throughout the state from the intimidation, harassment, and stalking that they endured in the November 2020 election.

Common Cause New Mexico Strongly Supports National Voting Standards

Although New Mexico has set an example nationally for protecting and expanding the freedom to vote, we are not immune from efforts by certain self-interested politicians who want to make it harder to vote here.

New Mexico has seen its share of legislation attempting to suppress the vote of qualified voters. This is especially true for Black, Brown, and Native New Mexicans who want their voices heard. Common Cause continues its efforts to fight back against bad legislation that will silence voters and harm the democratic process.

We support strong national standards to protect the freedom to vote and applaud this Committee for the leadership role it plays in this effort. While we are fortunate to have so many strong pro-voter reforms in New Mexico, Congress has the power to close the gap and disparity in states where voting access is more restricted and discriminatory, and ensure all of our fellow Americans have free and fair access to the ballot.

We are very appreciative of our home state Representatives Leger Fernandez and Stansbury and Senators Heinrich and Luján for their strong support of the For the People Act, Freedom to Vote Act, and John R. Lewis Voting Rights Advancement Act to guarantee strong national voting standards, no matter one's race, age, or zip code. Of course, we are also grateful for

Chairman Butterfield and the work of the Majority of this Committee for their leadership in crafting, voting, and speaking out publicly to pass these critical bills. You have been central to the House's work to pass these bills this Congress and in the 116th Congress. The work that this Subcommittee is doing to bolster the Congressional record, and protect free and fair elections, is incredibly important.

We hope that this Congress and future Congresses can continue its work to reform the filibuster to pass these overwhelmingly popular bills because protecting our sacred right to vote far outweighs any Senate procedure. Democracy is resilient, but it takes work to protect it.

Thank you again for the opportunity to testify this morning. I look forward to your questions.