

Congress of the United States
Washington, DC 20515

February 7, 2017

Chairman Greg Harper
House Administration Committee
Washington, DC 20515

Ranking Member Robert Brady
House Administration Committee
Washington, DC 2051

Dear Chairman Harper and Ranking Member Brady:

We write today to express our strong opposition to H.R. 133, Eliminating the Presidential Election Campaign Fund and H.R. 634, Election Assistance Commission Termination Act, which are both due for consideration by your Committee today. We ask that you instead consider pragmatic reforms to update and improve the Presidential public financing system and that you reauthorize the Election Assistance Commission.

Americans of all political stripes are deeply concerned by the state of our democracy. Three-quarters of the American people believe that powerful interests have used campaign and lobbying money to rig the system for themselves and seventy-eight percent agree that both political parties are too beholden to special interests to create any meaningful change.¹ At the same time, the integrity and efficient operation of our election system remain of paramount interest.

Against this backdrop, it is hard to understand why the Republican Majority of the House Administration Committee is moving forward with the mark-up of H.R. 133 and H.R. 634 – two pieces of legislation that will likely further degrade the public's confidence in our democracy, in effect making it harder to vote and easier for big money donors to influence our politics.

H.R. 133, Eliminating the Presidential Election Campaign Fund: H.R. 133 would begin the process of eliminating the Presidential public financing system, which is regarded as one of the most successful campaign finance measures in the history of our country.

For decades, the Presidential public financing system has successfully operated, allowing candidates from both parties to run and win election without having to rely on big money contributions from the wealthy and well-connected.² Candidates using the system are unencumbered by the demands of political fundraising and are instead able to focus on communicating their message to the people. What is more, once elected, Presidents are less at risk of being beholden – or being perceived to be beholden – to big money campaign contributors. The system was so successful that from 1976 to 2004 every Democratic presidential nominee and every Republican presidential nominee used the system to finance their general

¹ Patrick Caddell, et al., *What Happened in Iowa*, HUFFINGTON POST (February 6, 2016), http://www.huffingtonpost.com/patrick-caddell/what-happened-in-iowa_b_9157958.html

² Enacted following the Watergate scandal, the system allows candidates for President who are able to build broad based public support from everyday citizens to access public funds to run their election. *Fact Sheet on the Presidential Public Financing System, DEMOCRACY 21 (Jan. 21, 2011)*, <http://www.democracy21.org/archives/whats-n>

election campaigns. Famously, Ronald Reagan is reported to have attended zero fundraisers when using the Presidential public financing system in his 1984 reelection bid.³

Unfortunately, the system has buckled under the weight of the troubling Supreme Court decision in *Citizen United*, which unleashed unlimited outside political spending. This new world has forced candidates to rely exclusively on private campaign contributions from individuals and special interests. Without question, this new wild west of campaign spending has contributed to the public's cynicism about the role of money in our politics.

In the face of this reality, we urge the Committee to reject H.R. 133 and to instead study ways in which the Presidential public financing system can be updated to better account for the political realities of our current campaign finance system. Reforms could include indexing the public resources provided by the system, adopting a more robust match formula and providing participating candidates novel ways to account for the unlimited outside spending, as well as other important reforms. The fact that Congress has to-date failed to update the system is no reason to eliminate the system altogether.

H.R. 634, Election Assistance Commission Termination Act: H.R. 634 would terminate the Election Administration Commission (EAC), a federal body charged with helping state and local election administrators across the country improve the administration of our elections.

With more than 8,000 independently operating election jurisdictions in the United States, promoting the efficient and effective operation of our election system is no small task. Recognizing this challenge, Congress created the EAC following the 2000 election to help state and local election administrators by providing a central clearinghouse for information and promoting the transmission of best practices between jurisdictions. The EAC also plays the critical role of holding voting machine vendors accountable and ensuring certification standards remain high.

Critics of the EAC suggest its mission could be better carried out by the Federal Election Commission (FEC). This is wrongheaded. The FEC is an enforcement agency charged with administering and enforcing federal campaign finance laws. Expanding the FEC's mandate to include the testing and verification of our nation's voting procedures confuses the mission of the FEC and may lead to troubling conflicts of interest. It is also important to note that the FEC has for years been hobbled by its partisan construction. Recognizing this, it seems foolish – or worse, cynical – to layer even more responsibilities on the already strained FEC. Instead, we encourage the reauthorization of the EAC and ask that you reject H.R. 634.

The vast majority of Americans want to improve our institutions of democracy. Eliminating the Presidential public financing system and terminating the Election Administration Commission would represent an enormous step in the wrong direction. For these reasons, we urge your rejection of H.R. 133 and H.R. 634.

Thank you for your attention to these important issues.

³ Josh Israel, *Why Ronald Reagan Didn't Have To Hold A Single Reelection Fundraiser*, THINK PROGRESS (May 3, 2012, 6:30 PM), <http://thinkprogress.org/election/2012/05/03/476210/rnc-attacks-obama-fundraisers> [<http://perma.cc/KF4Z-VFEK>].

Sincerely,

John P. Cook

Aed Denton

Elizabeth T. Tomany

Jamie Raskin

Dominic A. Cilline

MRG

Thomas M. Ryan

Principle Jeph

John

JK

Ann M. Jane Foster

Deborah I. Dinyeo

Katherine Clark

David Price

Jon Schkowsky

Paula Lee

Ballydoon

BRENNAN
CENTER
FOR JUSTICE
TWENTY
YEARS

Brennan Center for Justice
at New York University School of Law

120 Broadway
Suite 1750
New York, New York 10271
646.292.8310 Fax 212.463.7308
www.brennancenter.org

February 6, 2017

The Honorable Gregg Harper
Chair
House Administration Committee
Washington, DC 20510

The Honorable Robert Brady
Ranking Member
House Administration Committee
Washington DC 20510

Re: Brennan Center Opposition to H.R. 634 (Election Assistance Commission Termination Act) and H.R. 133 (terminating the Presidential Election Campaign Fund)

Dear Chairman Harper and Ranking Member Brady:

On behalf of the Brennan Center for Justice at New York University School of Law, we strongly urge you to reject H.R. 634, the Election Assistance Commission (“EAC”) Termination Act, and H.R. 133, which would dissolve the Presidential Election Campaign Fund (“PECF”). H.R. 634 would eliminate the only federal agency charged with improving our voting systems and helping states with other critical functions of election administration. At a time when the vast majority of our country’s voting machines are outdated and in need of replacement, and after an election in which international criminals already attempted to hack our state voter registration systems, eliminating the EAC would pose a risky and irresponsible threat to our election infrastructure. H.R. 133 would destroy a presidential public financing system that is one of the few remaining tools to increase the voice of everyday Americans vis-à-vis the rising tide of special interest money that has flooded the political system since the Supreme Court’s controversial decision in *Citizens United*.

Do Not Eliminate the Election Assistance Commission

The EAC is the only federal agency which has as its central mission the improvement of election administration, and it undertakes essential activities that no other institution is equipped to address. It sets national standards for new voting machines and systems through its certification program, tracks and corrects problems with those systems through its quality monitoring program, conducts research into election management and improvement, collects and disseminates critical election administration data, provides a clearinghouse of information for local election officials, and promotes accessible voting for Americans with disabilities.

A functioning EAC is especially important at this time. In 2014, the bipartisan Presidential Commission on Election Administration (“PCEA”) identified an “impending crisis” in voting technology. A 2015 Brennan Center report detailed this crisis.¹ Among that report’s key findings were that the vast majority of voting machines in use today are either perilously close to or exceed their expected lifespans; that policymakers have not been responsive to election officials’ calls for new equipment; and that more problems may arise the longer we delay purchasing new equipment. Those problems include increased machine failures, and security and reliability flaws. When these vulnerabilities are coupled with credible reports that Russian cybercriminals already attempted to access state voter registration systems, insecure voting machines can place our democracy at serious risk, at the very least of a loss of public faith in our elections.

The EAC has a vital role to play in responding to these challenges. The agency sets standards for voting systems on criteria like performance, accessibility and security; and certifies testing laboratories that ensure that equipment actually meet those standards. Forty-seven states rely on the EAC’s standards and testing program in some way.² Now, the agency is developing new standards, which are badly needed so that states can begin purchasing new equipment with the latest security features. And the EAC helps in other ways, including by acting as a clearinghouse for voting system problems and their solutions. Eliminating the EAC would badly damage this work at a moment when it is most necessary.

No other federal agency has the capacity, willingness, or expertise to absorb its responsibilities, and these responsibilities can only be effectively or efficiently performed at the national level.

Given the pending threats to our election systems, and the critical role the EAC plays in responding to those threats, Congress must reject H.R. 634 and resist all efforts to weaken the EAC.

Do Not Eliminate Presidential Public Financing

H.R. 133 would eliminate public financing of presidential elections—an unacceptable response to last year’s election, in which voters made clear they are unhappy with the influence of big money over our politics, and desire a more responsive government. Instead of eliminating the only federal public financing program, Congress should work to modernize the PECF so that it is still a viable program for major party candidates in the age of Super PACs.

For decades, nearly every major party candidate—from Jimmy Carter and John Kerry to Ronald Reagan and George W. Bush—used the presidential public financing system. The program was

¹LAWRENCE NORDEN & CHRISTOPHER FAMIGHETTI, BRENNAN CTR. FOR JUSTICE, AMERICA’S VOTING MACHINES AT RISK (2015), available at <https://www.brennancenter.org/publication/americas-voting-machines-risk>.

² Press Release, U.S. ELECTION ASSISTANCE COMM’N, EAC Updates Federal Voting System Guidelines (Mar. 31, 2015), available at <http://www.eac.gov/assets/1/Documents/EAC%20Updates%20Federal%20Voting%20System%20Guidelines-NewsRelease-FINAL-3-31-15-website.pdf>

successful at reducing candidates' reliance on large private contributions and high-dollar fundraisers. Unfortunately, the program has not been modernized in the face of greatly increased costs. In the years since the Supreme Court's 2010 decision in *Citizens United*, spending by outside groups has skyrocketed, totaling well over \$1 billion in the 2012 and 2016 elections.³

Instead of eliminating the Presidential Election Campaign Fund, Congress should respond to voters' frustration with the dominance of large and often secret spending in our elections by amending the system so it gives everyday citizens a chance to increase their voice and influence. There is already a proven method for improving citizen funded campaign finance systems. New York City's public financing program, which provides matching funds for small contributions to candidates who agree to abide by certain restrictions, has proven remarkably resilient in the post-*Citizen United* era. A 2012 report, jointly issued by the Brennan Center and Democracy 21, explains how a similar system could successfully replace the current presidential public financing program.⁴

* * *

Thank you for your attention to this important matter. If you have any questions, or are in need of additional information, please contact us at (646) 292-8310 or nicole.austin-hillery@nyu.edu or wendy.weiser@nyu.edu.

Sincerely,



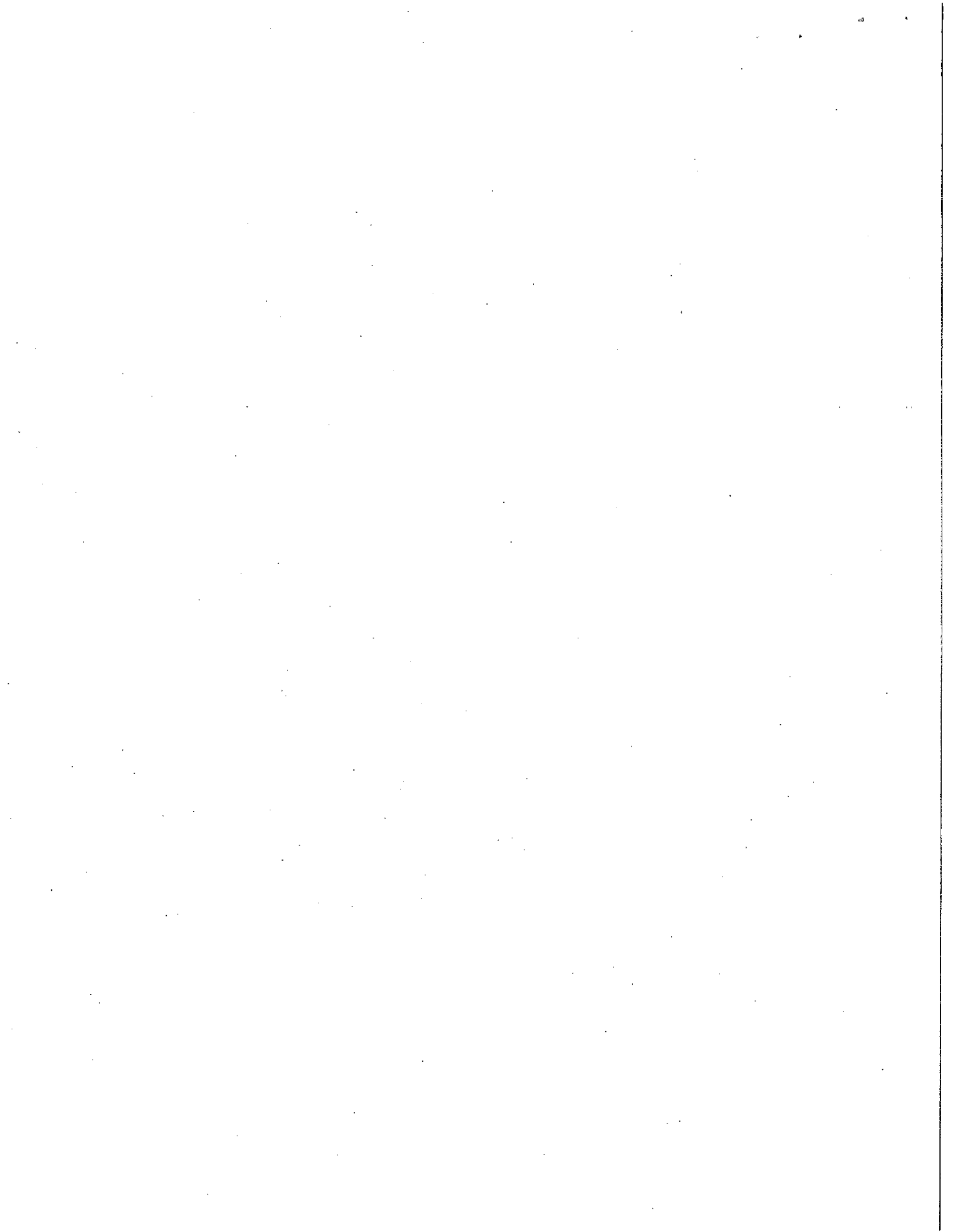
Wendy Weiser
Director, Democracy Program
Brennan Center for Justice
at NYU School of Law



Nicole Austin-Hillery
Director and Counsel, Washington Office

³ *Outside Spending by Cycle, Excluding Party Committees*, CTR. FOR RESPONSIVE POLITICS, https://www.opensecrets.org/outsidespending/fes_summ.php (last visited Feb. 6, 2017).

⁴ ADAM SKAGGS & FRED WERTHEIMER, BRENNAN CTR. FOR JUSTICE & DEMOCRACY 21, EMPOWERING SMALL DONORS IN FEDERAL ELECTIONS (2012), available at http://www.brennancenter.org/sites/default/files/legacy/publications/Small_donor_report_FINAL.pdf.



February 6, 2017

Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

Dear Chairman Harper, Ranking Member Brady, and Members of the Committee on House Administration:

Our group of 38 organizations and individuals write in strong opposition to HR 133, a bill to terminate the Presidential Election Campaign Fund and HR 634, a bill to terminate the Election Assistance Commission. (See below for a list of signers of this letter.)

These two bills could profoundly impact the way we administer and finance national elections.

At stake is the survival of the public financing system for presidential elections and a commission that plays a vitally important role in standardizing and modernizing election administration. In the interest of ensuring a fair, ethical, and accessible system of elections, we urge the committee to reject HR 133 and HR 634.

HR 133

We oppose HR 133 because it vitiates an important check on special interest money by eliminating public financing for presidential campaigns.

The current public financing system does not work because Congress never modernized the system to account for greatly increased costs in the financing of presidential campaigns. The system needs meaningful reform, not repeal, and should be updated to accommodate the new realities of campaign fundraising after the Supreme Court's 5-4 decision in *Citizens United*. Before the introduction of copious amounts of soft money in the 1990s and the *Citizens United* decision, the federal financing of presidential elections worked well to ensure that campaigns were financed by the public, not by special interest groups and bundlers. Almost every major presidential candidate from both political parties used the system for a generation of elections.

While the current system is now in need of extensive reform, wholesale elimination of public funding of elections is not the answer. In 2012, outside groups spent over \$652 million in the presidential race alone,^[1] and campaigns engaged in a fundraising arms race to match the super PACs and dark money groups. This "new normal" means that important issues facing the country take a backseat to keeping up in the spending race. Candidates and campaigns should be focused on issues, not on fundraising.

^[1] Center for Responsive Politics, "2012 Outside Spending, by Race," <http://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=R&pty=A&type=A> (last accessed March 3, 2015).

Public financing of campaigns serves another important purpose: eliminating the appearance of corruption in the office of the president. Put in place following the Watergate scandals, public financing sought to reduce the role of money in elections and prevent the appearance or reality of having a president beholden to special interests.

Big money in elections, especially after *Citizens United*, is corrosive to government accountability and representative democracy. Now is the time to upgrade our presidential public financing system to empower small donors. Eliminating the presidential public financing system will ensure that the presidency is in the hands of the nation's wealthiest individuals and special interest groups.

HR 634

We also oppose HR 634, the Election Assistance Commission Termination Act, because it would eliminate a resource that is a critical part of the government's effort to ensure that our elections are fair, efficient, and accessible.

Established in the wake of the widespread election administration failures in the 2000 election, Congress created the Election Assistance Commission (EAC) to address serious problems with our voting systems that can suppress voter participation and turnout, including long lines at polling stations and outdated voter registration procedures. The EAC serves every American voter by conducting research, collecting data, and sharing information among elected officials, the public, and interested organizations. The EAC also oversees the distribution of federal funds that assist states and municipalities with election administration.

In December 2014, after over three years without a single commissioner in place, the Senate unanimously confirmed three new commissioners - two Republicans and one Democrat. Although a single vacancy remains, the EAC now has the quorum it needs to address the backlog of business that built up over the years.

In the two years since the EAC has had a quorum again, it has voted to accredit a new voting system test laboratory after a recommendation by the National Institute of Standards and Technology. The lab will test new voting equipment against the voluntary voting system guidelines, which are themselves in need of attention. The EAC has provided best practices on voting and election administration to countless jurisdictions around the country. It is an invaluable agency that serves a critical function to strengthen our democracy.

The four-year absence of a quorum at the EAC hindered the agency when Americans needed it most. The EAC could not hold public meetings, adopt new policies, or issue advisory opinions. It adopted its most recent voting system guidelines in 2005 - several lifetimes ago when it comes to technology. That's why so many local jurisdictions ran the 2012 election with outdated, broken voting machines and why so many voters waited in line for hours to cast their ballots.

The bipartisan Presidential Commission on Election Administration, co-chaired by the general counsels of the Obama and Romney 2012 campaigns, wrote in their report last year that

“the standard-setting process for new voting machines has broken down ... due to a lack of [EAC] commissioners. ... Without a fully functioning EAC to adopt new standards, many new technologies that might better serve local election administrators are not being brought to the marketplace.”^[2] Now that it has a quorum, the Commission has gotten back to work evaluating and endorsing standards and guidelines that reflect the newest and best methods of election administration.

In light of the many challenges faced by our state and local election administrators and the serious procedural problems that weaken voter access and participation, we believe that this is a time to reaffirm our commitment to voting rights and fair elections by strengthening the EAC and providing it with the staff it requires to function effectively. HR 634 would eliminate an important tool for improving a voting system fraught with problems and should be rejected.

Conclusion

The presidential public financing system and the EAC are important components of an honest and fair election system that suffer from congressional neglect and gridlock, not from any inherent flaw. Instead of eliminating these important democracy reform tools, members of Congress should work to strengthen and expand our public financing system for presidential elections and provide the Election Assistance Commission with the resources it needs to perform its duties. The problems facing our electoral system demand such an effort to improve the integrity and effectiveness of campaign finance laws and election administration.

Signers of the letter include:

African American Ministers in Action (AAMIA)
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Asian Americans Advancing Justice (AAJC)
Asian American Legal Defense and Education Fund (AALDEF)
Asian and Pacific Islander American Vote (APIAVote)
Campaign Legal Center
Center for American Progress
Common Cause National Organization and State Organizations
CREW
Crescent City Media Group
CWA - Communications Workers of America
Demand Progress
Democracy 21
Democracy North Carolina
Demos
Every Voice
Fair Elections Legal Network
Franciscan Action Network

^[2] PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, THE AMERICAN VOTING EXPERIENCE: REPORT AND RECOMMENDATIONS OF THE PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION, p. 11-12 (2014), available at <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

Georgia Coalition for the People's Agenda
Issue One
League of Women Voters
Maine Citizens for Clean Elections Action
MAYDAY America
NAACP
NAACP – National Voter Fund
National Council of Jewish Women
Native American Rights Fund
Nebraskans for Civic Reform
Norm Eisen, Former Ambassador, Former chief White House ethics lawyer, 2009-2011
Norm Orenstein
Patriotic Millionaires
People For the American Way
Public Citizen
Represent.Us
Service Employees International Union (SEIU)
Seth Waxman, Former United States Solicitor General
Sunlight Foundation
United Steelworkers (USW)
U.S. PIRG
Voter Participation Center
Voting Rights Institute
Wisconsin United to Amend
Women's Voices Women Vote Action Fund