



Written Testimony - West Virginia Secretary of State Mac Warner

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Committee on House Administration Hearing

American Confidence in Elections Act: State Tools to Promote Voter Confidence

1310 Longworth House Office Building

Chairman Steil, Ranking Member Morelle, and members of the House Administration Committee:

West Virginians are proud people. We pride ourselves as frontiersmen who blaze trails rather than follow paths. Today, we welcome everyone to come witness our unmatched natural beauty amid four glorious seasons and share life's freedoms for which West Virginians have fought and paid the ultimate sacrifice.

Ever since 1775 when Captain Hugh Stephenson led his mountaineer militia on the Beeline March to Boston to reinforce General George Washington, thus creating the United States Army, West Virginians have continually fought for independence and security.

Interestingly, a delegate controversy at the time of the mustering of troops in 1775 generated citizen petitions seeking fair and impartial elections in the Appalachian Mountains. West Virginia has suffered a checkered past with election integrity, including John Kennedy buying votes to tip the scales in his favor in the 1960 Democrat Primary against Hubert Humphrey.

Since my election in 2016, we have been fighting to clean voter rolls and ensure election integrity in West Virginia. Working closely with our legislature, we have built perhaps the most balanced processes in the country between election access with security. I'm honored to share some of our processes with you today.

I begin with the U.S. Constitution, which provides the time, place and manner of elections shall be left to the state legislatures. In parallel, the West Virginia Constitution follows the same principles of independence, security, and confidence in the continuity of governments. Our State Constitution guarantees individual freedoms and local governance, and the election processes are designed around a system of clear checks and balances, necessary redundancies, and transparency.

It is a system of both inclusiveness and security, which requires for every voter who participates to be both able and eligible to cast a ballot independently and privately, and for election administrators to operate with diligence, timeliness, and in accordance with the law.

Given West Virginia's troubled past with election fraud, vote buying, and voter intimidation, our legislature has taken painstaking efforts to implement a system of checks and balances to ensure election integrity. I have followed suit by coupling vigorous investigation actions with deterrence programs to bolster confidence in our elections.

With that foundation, there are three primary elements to successful election administration:

1. State autonomy;
2. Maintaining voter confidence; and
3. Limited Federal Government involvement in election administration.

1. State Autonomy

The Elections Clause expressly gives state legislatures the authority to prescribe the times, places and manner of holding elections.

Citizen confidence is best kept by running elections locally because states, not the federal government, know best how voters want ballots cast and counted. In West Virginia, our part-time legislature is made up of full-time West Virginia citizens who represent the interests of their constituents.

Another key factor of state autonomy is steady, reliable funding to keep elections secure and modern. Recognizing that need, West Virginia has implemented a program that provides permanent state-level funding for voting equipment, physical and cyber security, maintenance, and other local election needs. Joining like-minded states, West Virginia is now less reliant on inconsistent and unpredictable federal funding for election security.

Our state also cherishes voting on election day as the gold standard for election integrity. Voting on election day is both symbolic and an exercise of our civic duty and is as much a celebration of our freedom and liberties as it is our right. West Virginia enjoys a robust election day. Most people vote in person, at a local polling location, and under the watchful eye of trained poll workers of opposite political parties. The personal, private, and secure nature of this long-standing practice yields high ballot acceptance with minimal challenges or rejections, all of which promote confidence and integrity in the process and outcomes.

Beyond election day, West Virginia offers accessible and secure early voting, also done in person, for a period of ten days at designated locations. Absentee-by-mail voting is available for 46 days for those voters who meet a myriad of authorized reasons to vote absentee. Finally, and proudly, for our voters serving in the military, living overseas, living with certain disabilities, and first

responders who are not able to vote in person, West Virginia offers the option of receiving, marking, and submitting a ballot using technology, which can be printed, verified, and counted by local election officials on election night with every other ballot.

In sum, states have different histories, customs, and voting experience expectations. There is not—and should not be—a one-size-fits-all policy for election procedures. State autonomy, with legislatures being the primary authority for designing election laws, is key.

2. Maintaining Voter Confidence

Voter confidence begins with clean voter rolls, followed by convenient ballot access and corresponding security. Since my election, I have worked closely with county clerks to remove over 400,000 outdated records from West Virginia voter rolls, approximately one of every four registrations had been abandoned or otherwise made ineligible. Nothing good comes from bloated, outdated voter rolls.

The West Virginia Legislature has partnered with government agencies to provide paper, digital and online voter registration options, election day polling places in geographically convenient locations that provide short drives and short waits, ten days (including two Saturdays) of in-person early voting at community voting locations selected by local officials with public input, and various excuse-based absentee voting options.

At the same time, citizens must be confident that their votes will be counted and not diluted by individuals who are ineligible or cast ballots outside the law. To accomplish this task, our legislature mandates voter rolls be kept up to date, requires voter identification, uses modern and tested election equipment, and pre-certification post-election public audits. Importantly, we publish unofficial results on election night. Collectively, these measures build public confidence, which has been reported independently by MIT who put West Virginia near the top of states in voter confidence.

West Virginia continues to reinforce voter confidence by implementing new initiatives using modern technology. One such measure is our “See Something, Text Something” program. Designed to both report and deter fraud, this text-service option empowers every person with a cell phone to be an extension of our investigations team.

Another technological breakthrough is an interactive Geographic Information Systems (GIS) web service linked into our voter registration rolls. GIS allows election officials to generate the most accurate pollbooks ever, while voters now have the online ability to locate and confirm polling locations, view their voting districts, and examine sample ballots.

Confidence arises from a combination of actual technical excellence, as well as the perception of access, fairness and security. Absolute transparency in elections and the process of elections is

paramount. Votes cast “outside the law” should not be counted, and remedies should be put into law to rectify alleged illegal votes.

3. Limited Federal Government Involvement in Election Administration

The Federal Government must let states run their elections and maintain accurate voter rolls. The National Voter Registration Act (NVRA) implements a lengthy blackout period for changing voter rolls, which the length should be reevaluated to allow ongoing list maintenance processes. The federal requirement to wait several federal general election cycles to remove outdated and abandoned registrations should be left to the state Legislatures to determine, as an increase in technology has come with greater confidence that voters can update their registrations and vote easier than any other time in our nation’s history.

The Federal Post Card Application for registration does not, but should, require voter identity verification as the state registration rules require. Similarly, UOCAVA voters should be required to show proof of citizenship to use the UOCAVA process if a state requires it.

CISA should offer the SAVE database in its entirety free of charge to states to ensure no ineligible voters are known by the federal government but not communicated to the state election officials. Likewise, the Social Security Administration should offer the master death file to state and local election officials in an accessible manner that is free of cost when used for the purpose of election administration.

One example of positive efforts by the Federal Government is the American Confidence in Elections Act. It is currently being considered by Congress and generally seeks to empower states to provide their citizens assistance, while also keeping the states’ autonomy intact without federal overreach or preemption. Other positive examples of Federal Government election involvement are enforcing civil rights, establishing uniform standards for voting equipment, and supporting the election Critical Infrastructure designation by, for example, providing actionable intelligence in a timely manner.

What I’d like to turn to is not just the abilities, or failure points, of the Federal Government in elections, but the actual devious actions of agencies of the Federal Government to attempt to influence elections.

Specifically, I am referring to the purposeful disinformation campaign surrounding Hunter Biden’s laptop put forth by 51 so-called intelligence experts with an intent to mislead the American people just two weeks prior to the 2020 general election.

Disinformation is a purposeful lie, and that is what the letter was—a lie to the American people with the intent to influence the presidential election. The letter was intentionally wrong, and the FBI allowed the disinformation operation to occur under its watch.

The situation was made worse when just days later, candidate Joe Biden cited the letter in a debate to discredit his opponent, President Trump. Biden's campaign knew the letter to be a lie of their own making. The Biden campaign, in collusion with members or former members of the CIA, DNI, NSA, NCC, and FBI conducted a disinformation campaign against the American people for political purposes.

Every one of our Federal Government agencies and personnel that took part in this election interference operation should be excoriated, the participants fired, their security clearances revoked, and criminal charges implemented where appropriate.

That is the way to restore voter confidence in America.

I take no pleasure in casting aspersions on any U.S. government agency. But, as a secretary of state and West Virginia's chief election officer, I have taken an oath to protect our Constitution and abide by the rule of law. I am obligated to run free and fair elections, and what our own federal agencies did in the 2020 election was not legitimate or fair.

What the agents of those three-lettered agencies did was as bad or worse than anything Russia, China, North Korea, or Iran have done to interfere with our elections. We expect disinformation campaigns from those nations, but we do not, and should not have to anticipate, purposeful attacks and disinformation from our own government.

Now turning to the future, we must learn from past acts and make appropriate adjustments to maintain election integrity and improve confidence.

First, it's time to revisit the National Voter Registration Act (NVRA). Technology has advanced considerably since 1993, and many local election officials, and our state's Department of Motor Vehicles (DMV), contend that DMV should not be registering people to vote. People can register online using a cell phone, computer, tablet, or other mobile device. Political parties, candidates, high schools, colleges and universities, and countless nonprofit and advocacy organizations now duplicate the voter registration services offered by DMVs.

West Virginia has opposed the expansion of voter registration offices into federal agencies that are created for a different purpose and funded by Congress without an appropriation for the task of voter registration. Last summer, West Virginia and 14 other states jointly opposed Pres. Biden's Executive order 14019, allowing federal agencies to be considered as voter registration offices without Congressional approval.

Second, it is time to reconsider and reduce mail-in voting. In 2005, former President Jimmy Carter and former Secretary of State, James Baker, co-chaired the Commission on Federal Election Reform. They warned, "[a]bsentee ballots remain the largest source of potential voter fraud."

When we move away from in-person voting on election day, the voting process itself occurs away from the watchful eye of trained election officials of opposing parties. As more ballots arrive after

election day, initial results are less reliable, the chances of outcomes changing increase, and the public is given reason to question both processes and the results when changes occur. Accordingly, voters lose confidence in the outcomes and integrity of elections. Voting by mail should only be done when absolutely necessary, and limited to specific circumstances that are expressly prescribed by law.

Third, it is time to prioritize enforcement of election laws and violations to punish bad actors and deter those tempted to cheat. Following the 2020 election, my office has been reminded painfully and repeatedly that the Department of Justice’s focus is not on investigating all types of election fraud, but primarily only on investigating threats to election officials and cyber incidents. This narrative wholly ignores ongoing efforts in states to revamp grassroots fraud activities and political shenanigans and prevents states from utilizing necessary federal resources for investigating and prosecuting election fraud activities.

In West Virginia, an investigation into coordinated illegal election influence activities was turned over to the FBI for further action. After months of waiting, my office was told a federal investigation would not continue because DOJ did not have interest in pursuing that election investigation at that time because it did not involve threats to election officials or systems. In another matter concerning campaign finances, the DOJ and FBI declined to investigate. These denials leave the alleged criminal matters up to local prosecutors, who could be involved or conflicted to some degree in the activities, all of which decrease confidence in our elections.

Fourth, using courts to alter election processes must be reconsidered. “Lawfare” has become a means to thwart the Election Clause of our U.S. Constitution. Rather than going through the legislative process to change election procedures, the courts have been used to change the way people vote, at times on the eve of an election. The overreach by courts must be curtailed and improved long before or just after an election, not during. That is, for election fraud and irregularities, courts must act more quickly on election challenges, before elections are certified, or otherwise take action after voting has taken place. Otherwise, trial court decisions cannot be reviewed in a timely manner prior to affecting the election process, which can affect the outcomes.

Finally, state legislatures should address the opportunities for judicial gamesmanship that has been taken advantage of in our elections, and instead make clear post-election challenge procedures the priority. If such challenges are heard before elections are certified, when there is time and opportunity for corrective action, the issues known at the time can be assessed, validated, or dispelled, and the outcomes of those elections can be confidently certified in a timely manner.