



Florida

Holding Power Accountable

**Written Testimony
of
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May 6, 2019

**Ft. Lauderdale, Florida
Committee on House Administration, Subcommittee on Elections
“Voting Rights and Election Administration in Florida”**

Thank you Chairwoman Fudge and members of the Subcommittee on Elections for inviting Common Cause Florida to participate in this hearing today. My name is Anjenys Gonzalez-Eilert, and I am the Executive Director of Common Cause Florida. We are a national, nonpartisan watchdog organization with 1.2 million supporters and 30 state chapters, including here in Florida where we have more than 76,000 members statewide. For nearly 50 years, Common Cause has been holding power accountable and amplifying the voices of everyday Americans through lobbying, litigation, and grassroots organizing. Common Cause fights to reduce the role of big money in politics, enhance voting rights for all Americans, foster an open, free, and accountable media, strengthen ethics laws to make government more responsive to the people, and stop gerrymandering.

Although there are many voting-related topics to cover in Florida, I will focus my observations on several key areas: our election protection program and election administration matters, election innovation & modernization, the impact on natural disasters on elections and election security in the state of Florida. We work with partner organizations both national and statewide in collaboration and coordination to ensure access to the ballot box for eligible voters.

Before continuing, I would like to state that, we have a strong appreciation for the hard work that our county Supervisors of Elections (SOEs) and staff put in everyday along with the poll workers who contribute to the election process in Florida. The three statewide recounts put everyone to the test with short deadlines during the 2018 General Election.

Election Protection Program and Election Administration

Common Cause has been a part of the Election Protection Coalition since 2002, led by the Lawyers' Committee for Civil Rights Under Law. It's the nation's largest non-partisan voter protection coalition. The Lawyers' Committee runs the [866-OUR-VOTE](#) hotline and partner organizations cover over 10 languages. Common Cause coordinates the voter assistance field program. Election Protection helps ensure eligible voters are able to participate in our democracy. Along with our partners, we have collected data that can be used to create meaningful reform ensuring that our elections are free, fair, and accessible. Common Cause Florida has engaged in Election Protection since 2010 and since 2002 nationwide.

Lack of Standardized Training:

As outlined in the Conduct of Elections Report submitted by SOEs to the Division of Elections, [70% of the issues reported](#) were due to human error. This is borne out in our [on-the-ground observations](#) performing election protection and the calls received by the Election Protection Hotline 866-OUR-VOTE. The majority of the calls the program received were questions, such as "Where is my polling place?" or "Am I registered to vote?", that could have been answered by Supervisor of Election offices. Florida Statutes include a requirement for a uniform training curriculum from the Division of Elections. However, the only state-provided training is "Serving Voters with Disabilities" on [YouTube](#). Also, the Department of State is

required to create a uniform polling place procedures manual through the rulemaking process and to ensure that the manual is available in hard copy or electronic form in every polling place. However, the [Polling Place Procedures Manual](#) has not been revised since 2014. Rulemaking workshops were held in 2016 and 2018, but revisions were never completed. Earlier this year, the governor, in response to a court case, has indicated that the manual will be updated and a [workshop](#) will be held on May 21, 2019, during Florida State Association of Supervisors of Election conference towards this end. Some examples of updates we would like to see included in this revision are: Language Access training and protocols that clearly outline how to provide assistance to Limited English Proficiency voters and an emphasis on how to update a voter's information if they have moved using the electronic poll books so that voters are not given an unnecessary provisional ballot to cast when they are entitled to a regular ballot.

Knowledge from our election protection work on the ground and the Hotline informed us that some of the issues confronted by voters during the 2018 election were: malfunctioning equipment, ballots running out, voters sent to the wrong polling place, polling locations were relocated, issues checking status of VBM ballots, polling places in gated neighborhoods making for difficult access, and failure to provide language assistance, to name a few.

There are three key players in election administration in Florida: Secretary of State (SOS), Division of Elections, and Supervisors of Elections (SOEs). In Florida, the SOS is also the Chief Election officer. The Division of Elections is responsible for [poll worker training protocols](#) and the SOEs oversee the matching of signatures process in their county Canvassing Boards. There is a need for standardized training by the Secretary of State to Supervisors and Canvassing Board members. This need is addressed in the new election bill ([SB7066](#)), which speaks to the responsibility of the SOS as it refers to signature matching as follows: "Provide formal signature matching training to supervisors of elections and county canvassing board members." Currently, the SOE organization FSASE has been providing [training to canvassing board members](#) on signature verification. In addition to this training however, a handbook needs to be developed by the SOS office for signature verification. This development should include expanded staff training. The State of Colorado has a [good manual](#) and practices.

Canvassing Boards are composed of three members: a SOE, a county judge and a member of board of county commission. Canvassing Boards have final decision making power for accepting signatures regardless of issue. Canvassing boards are on duty from the commencement of the logic and accuracy test through a manual audit, if necessary.

Cure Process for Vote-By-Mail and Provisional ballots:

In 2014, a signature cure process was created for those voters casting a vote-by-mail ballot with a missing signature that allowed the voter to complete an [affidavit](#) in an effort to provide a signature for comparison to that on file. In 2016, the cure process was extended to include mismatched signatures. As vote by mail ballots arrive, they are reviewed by SOE staff for basics such as correct election, that the ballot was issued to the person returning it, and that it includes a signature on the envelope. If there is no signature on the envelope or the signature

does not match the one on file, the voter is sent a cure affidavit and instructions. In both instances, the cure affidavit is due by 5pm the day before the election. Due to court cases in 2018, the court extended the deadline for submitting [signature cures including provisional ballots that had mismatched signatures](#).

The cure process requires that a voter submit the completed affidavit and a copy of an identification. In the election bill being considered, the new deadline would be the 2nd day after the election at 5pm, and the same provisional ballot documentation would be needed. Currently, there is no standardized process by which the SOEs contact voters to inform them of a problem with their ballot. In the election bill SB 7066 being considered, they are proposing that voters can be reached via text, phone call, and email as well as by receipt of a first-class letter up until the day before the election. The election bill recognizes that delivery and return of ballot is subject to timing of USPS and cannot be guaranteed by a set date.

Issuance of Provisional Ballots

Currently, provisional ballots are issued when the voters' eligibility cannot be verified. We have seen the following issues with provisional ballots -- poll workers don't check that a vote-by-mail ballot has not been received by the SOE office and therefore issue a provisional ballot when voter should have been given a regular ballot. Additionally, when a voter moves within or from one county to another and the receiving county uses electronic poll books, the voter should be able to update their polling location at their new site and vote a regular ballot. Sometimes voters aren't even offered a provisional ballot but instead are erroneously directed to their old precincts. We believe these issues can be resolved and improved with more stringent training for poll workers. Provisional ballots with mismatched signatures will be subject to the same cure process in the election bill being sent to the governor.

Language access has long been a problem in the state of Florida. The first time that the whole state of Florida was covered under Section 203 of Voting Rights Act for Spanish language was in [2011](#). Despite this determination from the director of the US Census, no significant changes were made in materials produced by the Division of Elections in Florida for Spanish speakers. The first time the Division of Elections made available a statewide Voter Registration and Voting Guide in Spanish was not until three weeks before the August 2014 primary. Since 2016, the [Voter Registration and Voting Guide](#) has been published concurrently in English and Spanish. The only option currently is to use Google Translate when visiting the Division of Elections website. A single Spanish webpage for voters is available only in the weeks before election day, but each topic links to an English page where again the only option available to a Spanish speaker is to use the Google Translate function. All [forms](#) that the public uses have been translated to Spanish and available to the public on the Division of Elections website since 2015.

There is currently no set of standardized instructions for poll workers to refer to in the Polling Procedures Manual for Language Assistance. Revisions must follow the rulemaking process, which can take an extended amount of time. It is currently being considered for

revision. For example, see page 17 of the 2014 edition of the Polling Place Procedures Manual, which says: “For guidance on how to assist voters in your county who speak a language other than English, please refer to instructions provided by the Supervisor of Elections. For guidance on how to assist voters with special needs due to a disability, see Voters with Special Needs on page 23.” Many of the SOEs local training manuals do not contain this information either.

Funding

County election offices are funded by the Board of County Commissioners and augmented by federal [Help America Vote Act \(HAVA\) funds](#) from the state in the form of grants. Thirty of the 67 counties in Florida are fiscally constrained counties with under \$5 million in revenue. When asked to do more, they need financial assistance to follow through with action.

Supervisors of Elections use the HAVA funds for one or more of these areas: voter education; poll worker training; standardizing election results reporting; and other federal election administration activities as approved by the Department of State. Florida’s original HAVA funds are projected to be fully expended at the end of FY 2020.

ERIC

In 2018, the Florida legislature approved legislation that would allow the Secretary of State, as of January 1, 2019, to join an organization such as Electronic Registration Information Center (ERIC) to improve the accuracy of voter rolls and access to registration. We have not yet learned of the new Secretary of State’s decision, and, at this time, there is no specific line item in the proposed FY 2020 budget for the initiation and membership fees. We know that the 26 other states involved in ERIC are waiting for the third largest state to join them.

Hurricane - Natural Disaster Prep/Aftermath

In recent years, Florida has been struck by several natural disasters during election season. Hurricane Matthew (2016) and Hurricane Michael (2018) both arrived around book closing (29 days before election day). Hurricane Irma (2017) arrived around special elections and municipal elections in several counties. Given that election season falls in the middle of hurricane season, this is unfortunately very likely to happen again. Just as we prepare our homes and communities for these events, we need preparation for continuing an election and ensuring we do everything in our power to have standardized procedures in place that will ensure that no eligible voter is left without the ability to cast their vote and have their voices heard in our democracy. In early 2018, the state updated its rule: [Comprehensive Emergency Suspension of Election Plan](#) following Hurricanes Matthew and Irma. Each county drafts its own security and continuity of operations plan as it relates to natural disaster preparedness, and the plans can vary widely in their approach. It would be helpful to have guidelines for review of these plans with feedback from the SOS office.

The Department of State has been reluctant to extend [registration](#) around these recent hurricanes. They have been taken to court in order to do so. For Hurricane Michael, with nine

counties significantly impacted, the governor did prepare an [Executive Order](#) to assist in preparation after the hurricane for the election. With our partner organizations, we still need to ask for more information to aid the impacted voters. A special webpage was set up with quick links to information in each county, especially for voters who had evacuated. In addition, sometimes the response of the local county to a natural disaster can have a negative impact on the community. For example, 90% of the African American community in Panama City were not close to the six voting centers set up to replace precinct voting. After the SOE was contacted by the NAACP and partner organizations, a vote center was provided for only one day, the day before the election, leaving many voters disenfranchised and unable to cast their votes.

Election Security

There has been increased scrutiny over the security and integrity of elections following Russia's efforts to interfere in the 2016 election. The Department of State spent [\\$14.5 million of \\$19 million 2018 HAVA election security grant money](#) by the November election. Most of these funds were used by counties where the Supervisor of Elections were able to implement physical improvements -- badges, locks, cameras, chain of custody -- as well as cyber security in the form of network monitoring in their counties. Additionally, the Department of State was able to hire 5 network contactors since the legislature refused to fund these positions in the FY 2019 budget request. However, it's critical that more federal money go to the states and counties so that counties may develop procedures to ensure that all voting systems have the resilience to recover from an attack perpetrated by an advanced persistent threat.

Voting Rights Act impact after 2013 Shelby decision

Prior to 2013, five counties in Florida (Collier, Hillsborough, Hendry, Hardee, and Monroe) were covered jurisdictions under Section 5 of the Voting Rights Act. When the formula under Section 4 ended along with the preclearance process under Section 5 following the *Shelby v. Holder* decision, there were changes observed in two counties. In Collier County, the first time there precinct boundary changes were made, there was no collaboration with community organizations before the changes were sent to the Board of County Commissioners. After asking for this impactful review in 2018, the community was asked again to participate. Prior to the *Shelby* decision, the practice was to engage the community so it was part of the record submitted for preclearance. On another positive note, Collier County continued to provide bilingual ballots in English and Spanish. However, in Monroe County, the first ballots produced immediately following the *Shelby* decision in October 2013 were in English only. Spanish sample ballots were provided in the 2018 general election under the direction of a federal court.

Election Innovation and Modernization

To enhance participation in the election process, and to ensure that every eligible voter can and does cast a ballot that counts, Florida must adopt additional reforms that protect the right to vote. In recent years, Florida has adopted online voter registration and has the

opportunity to join the [Electronic Registration Information Center \(ERIC\)](#), two measures that make registration more accessible and assist election administration. Those reforms are important ones, and I'm proud that Common Cause Florida educated legislators on their effectiveness, but there's more that Florida can and should do.

Floridians should move toward a system that makes registration more, not less, accessible. In the 2018 midterms Floridians voted overwhelmingly – with 64% of the vote – to re-enfranchise citizens upon their release from incarceration (Amendment 4). I'm proud of the work we did to mobilize Floridians to have their voices heard on that ballot initiative, and those numbers indicate to me that the state as a whole favors election reforms that afford all eligible persons greater access so that we can truly achieve a representative democracy accountable to us all.

Same Day Registration

Several states have already taken on strong registration reforms that we know have the effect of both registering eligible individuals not yet been a part of the system and then, importantly, prompting them to vote. Same Day Registration (SDR) – also called Election Day Registration – permits an eligible voter to register and vote on the same day, either just on Election Day or during an early voting period as well. It raises participation rates by upwards of 10 percentage points; [it has proved particularly effective in increasing turnout among young voters, people of color, and other groups traditionally underrepresented in our democracy.](#)

Most states close voter registration about a month before Election Day, cutting off participation just as many voters and young voters in particular are tuning into the campaign. A recent study indicated that [“keeping registration open through Election Day in 2012 would have allowed an additional 3 million to 4 million Americans to register and vote.”](#) For the 2018 election, less than [55% of eligible Floridians](#) cast a ballot in the midterms. Although we did better in 2016 – [roughly 65% of eligible Floridians voted](#) – we still lag behind many states in overall turnout. In fact, as noted in a recent report – [Cost of Voting in the American States](#) – Florida may not have been the hardest state to vote in (that prize went to Mississippi), but it was the 19th hardest, placing it in the bottom half. As the report's authors found, states with strict registration deadlines and other restrictions notably made voting harder and, thus, hurt turnout and participation. Those with the “lowest cost” of voting – Oregon and Colorado – had, among other things in place, strong registration reforms.

Florida can take a cue from both studies and the practices of other states. After Colorado enacted a wide-ranging election reform bill in 2013, including vote-by-mail and same-day registration during an early voting period, turnout jumped by 319,225 voters from 2011, the [last non-presidential election before the reforms were implemented](#). That's roughly equal to the population of Aurora, the state's third largest city. [Colorado now boasts the most comprehensive elections system in the country](#) and consistently some of the highest turnout.

[Seventeen states, plus the District of Columbia](#), now offer same-day registration; [the majority adopted it in the past five years](#). While SDR can increase overall turnout, it is most effective among communities of color and young people. Indeed, in the 2008 election, [young people whose home states offered SDR were 41% more likely to vote than those whose states did not](#). Same day registration could increase [turnout by young Americans in presidential elections by as much as 14 percentage points](#). What's more, young voters are "more likely to be contacted by a political party in states with Election Day registration by an estimated 11 percentage points in presidential elections, and by an estimated 18 percentage points in midterm elections." SDR not only encourages young people to vote, it positions them for future elections, pushing candidates to reach out and consider their concerns.

Automatic Voter Registration (AVR)

Running for President in 1976, [Jimmy Carter proposed that government take the initiative in registering eligible Americans to vote](#). France, Sweden, Argentina, Peru, Indonesia, and several other countries [register individuals automatically](#); their [turnout rates trump those of the U.S.](#)

Since 2015, when Oregon passed the first AVR law in the nation, 16 other states and the District of Columbia have followed suit. The Oregon law – and many other states' laws – effectively turns the federal requirement that states provide opportunities to register to vote at DMVs from an opt-in to an opt-out policy. Given the success of this reform, Florida should adopt it, but so should the rest of the country if we are to reduce – if not eliminate – the gap between registered and unregistered voters.

Common Cause state organizations, along with our coalition partners and other national organizations, have advanced these reforms in Oregon, California, and across the country. The two trend-setting states offer the service at Division of Motor Vehicle (DMV) offices, but others have extended the service to additional agencies that collect citizenship and other eligibility information – public assistance offices, Medicaid offices, etc. – in order to reach all income brackets and promote a robust, inclusive democracy. Several states are also proposing automatically registering eligible voters in schools and colleges. As with preregistration, this reform can help ensure early – and continued – participation by younger voters.

Automatic registration could swell the electorate by millions of people. In Oregon alone, registration rates in the first four months of 2016 increased by more than 50 percentage points from those in the last presidential year. Same-day registration could increase turnout by young Americans in presidential elections by as much as 14 percentage points. Indeed, before implementation of AVR, Oregon was processing more than 4,000 new registrations a month; following its implementation, [the state now processes over 12,000 a month through the reform alone – a threefold increase](#).

Safe and effective implementation of the program is critical. As advocates, elections officials, and legislators continue to push for automatic voter registration, they'll be challenged to

ensure that statutes or regulations include appropriate protections for those unwittingly registered – a likely rare but possible occurrence. They’ll also need to conduct outreach and educational campaigns to inform and encourage eligible voters about the new options. Registration is the first step; consistent participation is the second. Government and advocacy groups alike must take these next steps to engage and encourage citizens. Reforms serve no one unless people are aware of and use them.

Risk Limiting Audits

Members of the intelligence community have publicized that the U.S. election infrastructure continues to experience attacks. As former NATO commander four-star General John Allen told the National Association of Counties in the summer of 2016, “Our democracy is under attack and you are the people who will defend it.”

Compared to the federal government, counties do not have the same resources to defend themselves against cyber attacks. Fortunately, according to nearly all cyber security experts, the best way to defend our voting machines, votes, and vote counts from corruption by a nation-state actor is to build in low-tech checks and balances. We must ensure that every vote is recorded on paper, verified by the voter, and then that paper is used to double check that the election result is correct.

By 2020, every vote cast in Florida will be stored on some kind of paper record -- either a paper ballot or a summary card. This will ensure that if votes are deleted or changed in an attack, there is still a permanent record that voters have verified. However, those paper records and ballots MUST be used to check that election results are correct. The way to do that is through a “risk limiting audit.” Currently two states (Rhode Island and Colorado) require risk limiting audits, but many other states are now piloting these audits in preparation for statewide risk limiting audits in the future. Florida is beginning to follow this trend.

Florida’s current law spot checks machine function, but it doesn’t tell voters what they really want to know -- “Did the winner really win?” Risk limiting audits are a “smart” election audit that check the election results.

Florida needs to take a first step in allowing county Supervisors of Elections to conduct risk limiting audits. Unless and until all of our election results are double checked with a risk limiting audit - our vote counts are at risk. Common Cause will continue to advocate for this critical reform so that our counties have the tools they need to preserve the will of the voters in the face of the inevitable, continued attacks on our election infrastructure.

State and Federal Highlights: H.R. 1, For the People Act

Despite significant barriers to advancing reform at the federal level in recent years, Common Cause and many other reform groups have continued to pass significant pro-democracy reforms at the state and local levels that help empower the voices of all

Americans. Just last year, as we outlined in our [Democracy on the Ballot report](#), voters in more than 20 red, blue, and purple states and localities passed pro-voter democracy reforms, with strong support from Republican, Independent, and Democratic voters. This includes voting rights restoration for formerly-incarcerated individuals here in Florida, an anti-gerrymandering measure in Utah, independent redistricting commissions in Colorado and Michigan, and automatic voter registration in Michigan and Nevada. Additionally, we led the successful campaign in Maryland to pass same-day voter registration, and in Ohio, we spearheaded the successful effort to create a bipartisan redistricting commission that passed with support from 75% of voters.

It isn't just through direct democracy ballot initiatives that voting reforms become law. Over the past few years, dozens of democracy reform measures have passed with bipartisan support in state legislatures, as well as at the city and county levels. In New York earlier this year, we led a coalition that passed a package of reforms including early voting, no-excuse absentee voting, voter registration portability, and pre-registration for 16- and 17-year-olds. Despite congressional Republicans blocking progress in Congress, reforms will continue to pass at the state and local level.

However, we have made some progress in the new Congress. Many of the most significant voting reforms that would greatly benefit Florida are included in H.R. 1, the For the People Act, which passed the House in March. Common Cause spent significant time working on this historic legislation and strongly endorsed this bill. I'd like to highlight several of its key provisions:

- Automatic Voter Registration: Decades ago, many states passed restrictive and discriminatory registration laws to try to disenfranchise voters. In the last few years, 15 states, from Alaska to West Virginia, have created automatic voter registration programs and enabled millions of eligible voters to register to ensure their voices can be heard at the ballot box. Automatic voter registration makes common sense updates so more eligible Americans can register to vote and be able to have their voices heard, while at the same time safeguarding our election system with mandatory audits and better technology, as well as saving taxpayers money.
- Same-Day Voter Registration: 17 states now offer same-day (sometimes called Election Day) registration. This common-sense reform improves the voting process by allowing registration to take place at the same time voters are casting their ballots. This can be helpful when voters have been erroneously purged from the rolls or faced early registration deadlines. In states where same-day voter registration has been implemented, it has helped increase voter turnout by an [average of 5%](#).
- Election Security: After the United States was attacked in the 2016 elections when Russia attempted to manipulate our elections, Congress provided \$380 million in election security funding to update voting machines and help secure our elections,

including about \$20 million for Florida. While that was a step in the right direction, we desperately need much more. We need a bolder response to counteract continued Russian attacks and potential future attacks by other foreign interests as well. The Election Security Act is a strong response because it would promote post-election risk-limiting audits, voter-verifiable paper ballots, and increased funding for states to improve their voting machines.

As certain states and localities, including here in Florida, continue to try to suppress the votes of some communities and rig the rules to make voting more difficult for some people, Congress must step up to ensure that voting remains a right for all eligible Americans. You can be on the correct side of history and support reforms that strengthen our democracy, or you can be on the side of the status quo and turn a blind eye to voter suppression tactics such as poll taxes, switching or eliminating polling places, and using “signature mismatches” to disenfranchise eligible Americans. For nearly 50 years, Common Cause has fought to ensure that the voices of all Americans can be heard in government, and we will continue fighting until all eligible Americans can have their voices heard at the ballot box.
