The Election Center

an international association of voter registration and election officials

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Statement of

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Mr. Chairman and Commissioners:

I thank you for allowing me and others to offer remarks related to election administration for this hearing. You are to be commended for your focus on best practices as related to handling of voting equipment before, during and after an election, as well as a practice new to many of the states in provisional voting.

In the aftermath of Election 2000, many of my colleagues in the election profession and I were called upon to help sort out factual information from often mistaken information in reported stories. Our task, after all of the allegations and suspicions, was to dispassionately analyze the events and practices which led to 36 days of confusion, anger and questioning of that election. No matter who won that election, at least half of America was to be sure that their candidate or their side actually won.

Election 2000 was the most examined election in modern history and certainly exposed all of the electoral and voting processes to more scrutiny than it had been given in more than 100 years. Major commissions studied the process to examine flaws and solutions, to reinforce the fundamental processes that must be in place, and offered guidance to policy makers for assuring voters that their votes would be counted as they had cast them. Included among these were commissions from the National Secretaries of State (NASS), the National Association of Counties' (NACo) National Commission Election Standards and Reform, the Constitution Project's Forum on Election Reform, the Election Center's National Task Force on Election Reform, and to the National Presidential Commission on Election Reform (the Carter-Ford commission). I was fortunate enough to serve as an active participant on or testify to all of these study groups, as were some of my colleagues in the election profession.

Additionally, The Election Center became a principal resource to each of the sections of the U.S. General Accounting Office for its several studies of various components of the election process in producing their multiple reports to Congress for review of Election 2000.

We are now appropriately focused on Election 2004 and not Election 2000 but the truth is that the focus has never left Election 2000. The undercurrent of suspicions and distrust sewn as a result of the problems of Election 2000 have continued to foment to the point that

portions of our society are so fearful that their votes, their candidates, their political party may become victim in 2004.

As a result, we have groups and organizations reasonably concerned who are offering (sometimes insisting) that their ideas and their solutions be forced upon the process immediately as a cure. Unfortunately, many of the recommendations could lead to more harm than good. Instead of increasing election stability some of the changes could have the opposite effect and instead decrease our ability to assure the public of fair and accurate elections.

I want to make sure that I don't overstate the case to where I leave the impression that a majority of Americans are fearful and distrustful of the elections process, because we have evidence to the contrary. The majority of Americans and the majority of voters have faith in our processes that elections in this country are run fairly, honestly, and competently. Therefore, should we ignore the groups and individuals who express their fears and concerns as a result of Election 2000, simply because we think some of the solutions they offer will do greater harm than good?

I would hope not. I think the evidence is good that what this Commission is doing in its series of public hearings on issues vital to the health and well being of the elections process, can focus on the methods and practices that can result in better elections in America. You are addressing the concerns that, frankly, can help build confidence among disaffected voters.

After sitting through weeks and months of meetings that stretched into years, after hundreds of hours of testimony before national study commissions, after working with Congressional leaders to first understand the complexity of the elections process and then to formulate national policy and statutes to apply to what was learned, we came to know that the solutions have a whole lot more to do with people, practices and procedures than with technology.

News stories and even some groups focused overly on technology as both the cause and the cure for the problems. Technology alone, whether antiquated technology or the newest technology, will be neither the primary cause of problems nor the primary solution to problems, if the experiences of the past are any indication.

What we learned from all those hours, days, weeks, and months of study of Election 2000 taught us that the primary focus still has to be

on people, practices, procedures and principles. Look at the complexities facing us in just the sheer numbers of elections: we have a voting age population of 205 million, we are right at 156 million registered voters, and a little over 105 million voters[1] who cast ballots in almost 8,000 election jurisdictions, throughout somewhat less than 200,000 polling sites with roughly 800,000 voting devices involving 1.4 million poll workers and somewhat less than 20,000 paid county, city and state election officials[2].

To make the task more understandable in terms of its complexities it is equivalent to ordering several divisions of several armies into the field all at once with part-time officers who have each received an average of two hours training and expecting it to come off flawlessly. In a large geographical area such as Los Angeles County, there will be 25,000 poll workers on election day. In my hometown of Houston, TX, there will be 8,500 poll workers throughout a large geographical county. The logistics of election day alone would strain most large businesses, let alone the smaller ones. And all of this is accomplished with an average of one full-time employee each serving 5,250 voters on one day. What other endeavor in society, government or business, has such a ratio?

For us to analyze it further, look at the additional complications:
- The election official has little control over voter registration agencies outside of the election official's own office, and this is a continuing source of problems at the polling place. The federal requirement for provisional voting so that voter eligibility questions can be determined after allowing the voter to cast a provisional ballot will be a major step in the right direction but is unlikely to solve the total problems of multiple agency registration issues.
- The facilities used for elections are not under the permanent control of the election officials. The school buildings, the churches, the public facilities, and even the private facilities are usually available on the day before the election and election day (with many being available only on election day). In only rare instances are those facilities used exclusively for elections (although a room may be used exclusively), so parking facilities and building access have competing influences beyond the regulation and control of the election official.

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[1] Data from *Voter Registration and Turnout 2000,* from the Federal Election Commission, election administration statistics, compiled from state election offices.
[2] National Task Force on Election Reform, *Election 2000: Review and Recommendations by the Nation's Elections Administrators,* August 2001, from The Election Center, Houston, TX.

- The election official has no control over the candidates, the campaign volunteers, and the political parties except directly within a boundary established around the polling site.
- The election official has little control over legally mandated "poll watchers," i.e., partisans who represent their party or their candidate, and yet, historically, have been one of the areas that generates complaints. Or, voters incorrectly assume that poll *watchers* are official poll *workers*.
- The election official has no control over the news media and if the media gets the story wrong about something in the elections process, it is difficult to correct the misinformation.
- The election official has only limited ability to assist the voter and the attempts to identify and educate voters with little or no voting experience has been frustrating. New and inexperienced voters are unlikely to self-identify and whatever methods we use to reach them, to inform them and to keep them from making mistakes which result in uncountable votes, all while inside the polling place, has to be done in three minutes or less...which is a major challenge for anyone.

Do I mention these to be defensive about why there are problems? No. Those are factual conditions which affect elections. I bring them up simply to indicate why it is so important to have excellent policies, practices and procedures.   Without well thought out and well executed policies and procedures, there are simply too many points of failure.

Add to this that only 25 percent of the local elections offices in America are as well funded as other governmental offices and that 75 percent of them are usually the least well funded part of government. What this means is that the majority of election administrators don't get training outside of their state, and some can't even afford to attend their own state training.

That's why your concentration on "best practices" will be so valuable not only in Election 2004 but in future elections as well. Elections professionals will welcome any guidance and advice which will better serve voters and improve the odds that more votes are counted for candidates.

When reviewing publicly reported problems in Election 2000 – in Florida and in other locations – the nation's elections administrators on the National Task Force on Election Reform clearly found examples

of where practices and procedures, utilizing identical voting systems, had very different numbers of voter errors.   We reviewed and learned that some jurisdictions had fewer disqualified votes, than other jurisdictions utilizing the identical voting equipment.   And, we discovered that was true whether we were talking about punchcard voting equipment, optical scan voting equipment, or lever machines, and sometimes even DRE's.

It became abundantly clear to us that practices, procedures and policies which were written, where significant training of the key staff and poll workers occurred on voting systems, made a significant difference.

For instance, on punchcards: if there is a clear definition of what will be counted as a vote BEFORE the election begins and before counting begins, there is little disagreement after the counting. If the ballots are reviewed before processing through the voting equipment, to be sure that all the ballots are cleaned of chad; and if questionable ballots are re-made to conform to the definition of what is to count as a vote, before the voting equipment receives them, there is little room for error or mistakes.

Continuing with the example of punchcards, it became clear that regular maintenance of the punchcard mechanisms, to clean out old chad, to align the templates correctly, to have a functioning stylus clearly made differences. Additionally, it was shown that clear voter instructions as to alignment of the ballot in the correct position, care in turning pages, clear instructions printed on voter booklets, made differences in how many voters successfully cast their votes – thereby increasing the number of votes for offices.

We saw widely varying numbers around the country in percentages of successful ballots in central count optical scan counties.   Central count simply means that voters mark and cast their ballots into a ballot box and that box is returned to a central location for counting later.   Precinct count is the other type of optical scan and that situation is where the voter marks the ballot and the voter also processes their own ballot by inserting it into the voting equipment and learning immediately if they have over voted for any given office. We saw that how candidates are placed through ballot design can affect either optical scan or punchcard ballots.

We learned that there are differences between central count and precinct counting systems and that fewer voter errors are made initially in precinct count systems. But even within central counting systems, practices and procedures seemed to make a difference in the numbers of qualified votes being counted.

So we observed and we learned that attention to detail, clear instructions, good ballot design, poll worker instruction, well established practices and procedures, do indeed make a difference in the numbers of votes that are counted.

Knowing what will be counted as a vote (and conversely, what won't be counted) is one simple but effective practice that will do more to establish the fairness of elections than any other single measure. Having written guidelines for determining whether this kind of marking or that kind of marking will be counted or rejected, and having those guidelines adhered to throughout each state, will give assurance to candidates and interested parties. But County A determining that a certain marking will be counted while County B disqualifies it is an unacceptable situation for elections in 2004. Many states will have, for the first time, a clear definition of what will count as a vote, and to the extent that that definition is explained in each local jurisdiction within the state, there should be limited variances.

Election 2002 also gave us proof of the critical need for well developed policies and procedures when implementing new voting system. There is a Catch-22 here. If the voting system is substantially different than the one the jurisdiction has been using for the past 15 or 20 or 30 years, then mistakes are far more likely. You can be experienced in elections but if it is the first time in your working career that you will deal with a totally new voting system, then it is likely that you don't know all the right questions to ask or the right precautions to take. Your experience doesn't include the intuitive practices developed over 10 to 30 years of dealing with a different type of voting system.

A simple matter of understanding how long it takes different voting equipment to "startup" and to plan for that so you can open the polls on time is sometimes a painful lesson to learn. Human nature being what it is, there is a tendency to assume that you know more than you really know. This is where a "best practices" approach can be so helpful and so useful. Other elections officials have had experience with such systems and have learned the lessons they can pass onto their colleagues.

It is often simple for allegations to be made that "they should have known." Maybe the allegations are correct in an ideal world, but if you have no experience with something, and despite dedicated training and a willingness to learn, there is no reference point for even dreaming of the "right" questions to ask, then mistakes are likely. This holds true for voters but it also holds true for election officials.

Some of us have been asking for 10 years (and longer) to begin the process of developing "Management Practices Standards" also known as Operational Standards and Procedures.   Whatever name we call them, they are needed and desired because they can help make the difference in significant improvements in the administration of elections.   As important as the Voting Systems Standards were and are to the improvement of the design and manufacture of voting equipment, the Management Practices Standards are equally important.

We have asked Congress repeatedly over the years for funds to begin that process of developing this additional and much needed administrative tool. In the Election Center's National Task Force on Election Reform, it was the first recommendation under "Role of the Federal Government."[3] Clearly, the nation's elections administrators called for this as a part of the solution. Now, thanks to you Commissioners, the beginning of that process will appear through "best practices."

Tom Wilkey, the former executive director of the New York State Board of Elections, an experienced election professional at both the local and state level for 34 years, has called for the development of these standards for almost 15 years now. In his role as Chair for 10 years of the Voting Systems Board for the National Association of State Election Directors, he knew full well the value of the Voting Systems Standards, but he also recognized that the standards are incomplete until the Management Practices Standards are also developed.

You have chosen wisely in breaking these best practices down into focused efforts for each distinct type of voting system because they will have more value and be used more frequently due to their specialized material.   By issuing separate best practices on DREs, optical scan

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[3] National Task Force on Election Reform, *Election 2000: Review and Recommendations by the Nation's Elections Administrators,* August 2001, Executive Summary, Governance and Administration, Item 7.

(and its two components of central count and precinct count), for lever machines, for punchcard systems and even hand counting processes, there is a better chance of reaching the correct audience with a targeted approach.

Much of the debate in the last year has had to do with improving the security of voting equipment and we have had significant attention to that issue by security experts and by certain elements of the news media. Since so much has been made of this issue, I will not repeat most of those concerns here nor the kinds of things necessary to secure not only the voting system but secure the ballots.   I am confident that you will have each of the best practices include items on security.

Just as some people focused previously on changing the technology of elections as a solution to the problems in elections, focusing narrowly on the security of a voting system will not get to all the other aspects of best practices that should eventually comprise operational or management standards.

We have learned that we must focus more on how to assure that voters do not disqualify their own votes on the ballots. Voters are creative and unique people who always prove to us in election administration that they know more inventive ways to cast ballots and record votes than we know in preparing for ways to keep them from making mistakes.

Our challenge, yours at the Commission and ours in election administration, is how to structure ballot designs, instructions to voters, education on voting equipment, on how to vote for the correct number of candidates, and how to develop – and follow -- clear, concise, and under-standable instructions so that each vote as recorded by the voter gets counted exactly as the voter intended. This is a real problem.   We know from provable experience that this is a challenge.

What are the common elements of where the voting system is the same from in jurisdictions throughout the nation and yet some have significantly lower voter errors than others?   What can we learn from those to assure changes in training, procedures, developmental materials, instructional materials, to assure that voters have the best possible experience in the polling place?

I applaud your effort to codify these answers. But to assure that we are still developing them in coming years, we also need to be gathering data at the Commission that helps us to understand how to measure that effort and see if we are hitting the mark in teaching best practices.

We need, for example, to have all states and all jurisdictions to track the following information:

- How many people showed up at the polls to vote? This sounds simple but many of our polling sites are not required to know this simple fact.
- How many people voted blank ballots? Every election administrator in America knows that voters show up at the polls, take a ballot, and turn it in blank. But how often does this happen and what factors seem to affect how many of these there are?
- How many ballots are over voted? (Where the voter votes for too many candidates for a given office). What are the factors that reduce over votes? Are there differences in types of voting equipment and the percentages of overvotes?
- How many ballots are under voted? In major races, are there factors that can reduce the numbers of under votes?
- How many "hot contests" were skipped by voters so we can begin to understand the real percentages of when this happens? Every election administrator has seen ballots where voters vote on all the other races or issues but skip the hottest contest (whether for governor, senator or sheriff or some ballot issue) [This may be too difficult to track since it would involve subject judgements on what are "hot" contests.]
- How many "correction" ballots were issued to voters?
- Is there a complete accounting reconciliation of all the numbers? How many voters showed up, how many ballots were issued, how many ballots were counted, how many blank ballots, how many ballots were returned to headquarters.
- How many provisional ballots were issued?
- How many of the provisional ballots were qualified as votes?

After establishing benchmarks for these kinds of data (over a period of say three federal general elections), we can begin to know what factors affect voters and voting and when our "best practices" are working.

I would be remiss if my comments didn't include something on poll workers and their education. I have seen and heard many comments

over the years about how we need more and better poll workers. And how poll worker education needs to include all kinds of new training and more hours of training.

Commissioners, "better" poll workers connotes choice. As if we had a surplus. In many of our jurisdictions, especially in urban settings, if they are breathing, they serve. Our needs immediately are to have more people to become involved as poll workers, not just for one election but for many elections. And considering better education of poll workers, I think we can improve upon that. The Election Center is working to find better ways to conduct adult education and to have more effective training within the time allotted to us. Usually this does not exceed 2 hours for the overwhelming majority of poll workers. I don't think we will be successful, long-term, trying to insist that poll worker attend 8 or 10 or 12 hours of training. It may work in a few areas but I have my doubts about it being successful nationally. We will welcome anything you can do to help us improve upon poll worker recruitment and we especially need ideas and research on how to give better training within two hours.
But we also need to consider how to transform the process from the precinct-based elections we have known for decades into something that utilizes far fewer election day workers. But that is not the subject today, which is focused on best practices.

The Election Center has had since 1995 a program to feature and recognize excellent professional practices. Ours is differentiated from what you are doing in that ours are not focused on a specific voting methodology, but rather on innovative or well executed practices or programs that can be shared with other jurisdictions. We give recognition to those programs so that others can develop their own variations of submitted practices' papers. We will be glad to share these with the EAC if you want to see them.

Just so that you know, The Election Center has started a program to think through all the items needed to make an election successful. We started ours without knowing that the Commission would be doing its best practices.

Our new program, launched this year, delivers a Checklist for elections administrators to check themselves against all the items to assure that they have thought about and done all they could do in preparing for the election. Back in February, we asked various committees of elections professionals to prepare checklists on various subject

matters that we then share with our members nationwide. The first of those was issued last month on Voting Accessibility Preparations (a copy is provided here for you). The next one to be released next week is on Voting Systems Preparations. Additional Checklists will be released on other subjects including Polling Place Preparations; Poll Worker Preparations; Ballot Security, and Recounts/Contested Elections in coming weeks.

These should nicely compliment the substantive reports issued by the EAC through its best practices. Perhaps the work of our groups in creating checklists can be of use to your study groups in the creation of their papers.

While I hope and think that our program will be valuable to our members, your efforts are even more important because they will involve more detailed reports. And you have the ability to assure far wider distribution to the majority of election jurisdictions that usually can't afford to get outside training outside of their state or even lack the funds to join one of the national election organizations.

Let me thank each of you as Commissioners for being willing to take on tough issues and substantive projects early in the administration of the Commission. Even though Congress has not yet adequately funded your operations to allow you to do your best service for the elections process, you have been willing to tackle the challenges facing American elections.

Elections administrators throughout America have the same goals you have: to assure that voters are well served, to assure that all properly qualified voters get to cast their ballots and to have their votes counted.

We will do our part to make sure you have the resources necessary to be a vital part of American elections. And we will always welcome the efforts to help us make this process better for all voters.

Thank you for your efforts on the best practices. And thank you for allowing my colleagues and me to share with you. Know that we believe you are needed and we are thankful for your willingness to serve through the Commission.