

**TESTIMONY OF BENJAMIN L. GINSBERG
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BEFORE THE SENATE RULES COMMITTEE
FEBRUARY 12, 2014**

Mr. Chairman, Mr. Ranking Member, thank you for inviting us to testify before you today on the Report of the Presidential Commission on Election Administration.

Both Bob and I are proud of the work of this Commission. The President charged the Commission with making recommendations to the state and local officials who put on our elections to ease problems in a number of areas that serve as obstacles to duly qualified citizens being able to cast their votes.

Elections and voting is an area where there can be conflict between Republicans and Democrats. But it is also a subject where Republicans and Democrats can agree on both the basic principle and on common sense solutions to make the voting experience better.

Bob and I and the eight other Commissioners – a remarkable combination of professional election law administrators and leaders of private sector customer service companies who Bob and I learned from and tremendously enjoyed working with – did reach bipartisan and unanimous agreement on our recommendations and best practices.

As to that basic principle, Republicans and Democrats agree that every legally registered voter has the right to be able to cast his or her ballot easily and without barriers.

As to the details, Bob and I had some history to fall back on. We've been on the opposite of many partisan battles over the years and undoubtedly will be again.

Among those battles have been a lot of recounts. All those recounts were instructive to this exercise because they provide an unparalleled view after the casting and initial counting has been completed of how the system worked. Voters who had problems are spotted in recounts.

We'll both tell you that there are problems with our system of voting.

It also meant that this Commission presented a unique opportunity for us to address a series of problems that both Republicans and Democrats know are problems, and which we need to do something about.

That is not a partisan issue. That is trying to help get right something that very much needs to get right. In fact, it is so important to get right that it deserves doing even if it doesn't satisfy all the issues that one party or another believes need to be fought in this area.

As for fixing these problems, Bob mentioned some and I'd like to touch on some others.

First, the Commission recognized that our elections are administered by approximately 8,000 different jurisdictions largely using volunteers who do not receive much training. As a result, achieving uniformity, or federal solutions that actually work, in our elections has proven challenging.

Our Report's recommendations and best practices fall into two areas. First, we believe they provide common sense solutions to those jurisdictions that do experience challenges in the areas detailed in the President's Executive Order. And second, we address some big picture challenges that virtually all jurisdictions either face now or will face in the not too distant future.

Let me turn to a couple of the key big picture issues.

The state of our voting equipment and technology is an impending crisis on which the Commission feels a need to shine a spotlight. The machines now being used in virtually every jurisdiction – purchased 10 years ago with HAVA funds – will become obsolete in the next 10 years. Voting equipment generally has not kept up with technological advances in our daily lives. The current equipment is expensive and unsatisfactory to virtually every election official with whom the Commission spoke. That's heavily due to a federal certification process that is broken and must be reformed. This is a subject to which few are paying attention and which will not end well on its current path.

One of the issues we heard about consistently was having adequate physical facilities for polling places. We address the elements that go into making up a smoothly functioning, accessible polling place. In most communities, those facilities are schools. The Commission strongly recommends the use of schools as polling places, but officials in an increasing number of jurisdictions are citing safety concerns as a reason for not making schools available for voting. Adequate facilities to vote and safety for our children cannot be competing interests. For that reason, the Commission felt a strong need to call attention to the problem and to recommend that to address security concerns, Election Day should be scheduled as an in-service day for students and teachers.

In terms of improving the voter experience directly on Election Day, Bob already talked about long lines and ways to improve a situation whose causes are both identifiable and solvable. Let me touch on some other of the Commission's specific recommendations.

Early voting – The Commission's goal was to make recommendations that would make it easier for all eligible voters to vote. A majority of states, with both Democratic and Republican state officials leading the charge, now have early voting and told us that early voting is not only here to stay but increasingly demanded by voters. The details of the number of days and hours will vary by state and county and locality, and are decisions best made there. But the benefits of early voting, including reducing waiting times and providing voters with choices, is clear.

On-line registration -- Whether to help ensure that only duly qualified registered voters vote or to facilitate more people being able to vote more easily, the Commission found agreement and support across the political spectrum for more accurate voter registration lists. To further that goal, the Commission makes two recommendations.

First, the adoption and use of on-line registration for the ease it provides the voter, the enhanced accuracy it provides the system and the efficiencies it can provide to perpetually strained budgets. The Commission notices on-line tools at supportthevoter.gov that can be used by state and local

jurisdictions and, where permitted by law, by non-government groups to register voters accurately and easily. This on-line open-source program can be used and branded by groups and governments to facilitate accurate, convenient and efficient on-line registration.

Second, we recommend that all states join two existing and complimentary programs – the Interstate Voter-Cross Check program and the Electronic Registration and Information Center. Both allow states to share data and synchronize voter lists so they can, on their own initiative, come as close as possible to having an accurate database of all eligible voters.

Military and overseas voters -- Serving in the military or living overseas, and especially serving in the military overseas, should not be a barrier to voting. There has been improvement over the last few years, but it is still not as good as it should be. We provide a series of recommendations and best practices – including specifics on how states and counties can make their web sites better serve these voters and how to fix a simple flaw in federal registration and voting forms to reduce confusion for those serving or living overseas.

Disabled voters – Both policy and law require accessible polling places for the nation’s voters with disabilities, a population that will increase as the Baby Boom generation ages. The Report makes numerous suggestions for increasing accessibility to polling places (another reason being able to use schools as polling places is important since schools must meet basic accessibility standards) and for enhanced poll worker training to meet these needs.

Language minorities – For both the disabled and for those with language proficiency issues, we urge local officials to listen to their voters about their local polling place needs. Bilingual poll workers with increased training can make a real difference in the polling place, as can ballots and ballot materials with plain language and design.

Compliance with existing laws – throughout its deliberations, the Commission heard testimony that existing federal laws impacting voting were not being adequately followed.

For the military, it is the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment (MOVE) Act, which despite the strides, means that many voters covered by these Acts still find difficulties registering to vote, receiving their ballot in time to be voted, or having their voted ballot reach their election office in time to be counted.

Disability rights groups noted concerns with the enforcement of the relevant provisions of the Americans with Disability Act (ADA) and Help Americans Vote Act (HAVA).

For language minorities, the Commission heard from witnesses and experts about failures to comply with Sections 203 and 208 of the Voting Rights Act, which provides assistance to voters.

The federal election statute most often ignored, according to testimony the Commission received, is the National Voter Registration Act (NVRA or “Motor Voter”) whose compliance varies widely among the states.

If a law is on the books, it should be enforced.

Data and Testing – Let me close by highlighting a series of recommendations from the Report that should be self-evident but are not. That is the need for more data and testing in this field. There should be regular post-election audits of machines for their accuracy and performance, and the sharing of that information between jurisdictions to spot problems or make more intelligent purchasing decisions.

We were surprised by the lack of standard data about elections. As it turns out, there is not the uniform data on voting from the different jurisdictions. As our political scientists friends tell us, more data uniformly collected about results and process would lead to more and better solutions of many of the problems we have with voting today.

Senators, thank you again for having us here today and letting us report to you on the recommendations and best practices of the Presidential Commission on Election Administration.

Benjamin L. Ginsberg

Co-Chair and Member, Presidential Commission on Election Administration.

Benjamin Ginsberg, a partner at Patton Boggs LLP in Washington, D.C., represents numerous political parties, political campaigns, candidates, members of Congress and state legislatures, PACs, Governors, corporations, trade associations, vendors, donors and individuals participating in the political process.

In both the 2004 and 2000 election cycles, Mr. Ginsberg served as national counsel to the Bush-Cheney presidential campaign; he played a central role in the 2000 Florida recount. In 2012 and 2008, he served as national counsel to the Romney for President campaigns. He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the national party committees. He serves as counsel to the Republican Governors Association and has wide experience on the state legislative level through Republican redistricting efforts.

In addition to advising on election law issues, particularly those involving federal and state campaign finance laws, he advises on ethics rules, redistricting, communications law, and election recounts and contests.

Before entering law school, he spent five years as a newspaper reporter at the Boston Globe, Philadelphia Evening Bulletin, The Berkshire (Mass.) Eagle, and The Riverside (Calif.) Press-Enterprise. He appears frequently on television, is current a guest lecturer at the Stanford University Law School and has been a Fellow at Harvard University's Institute of Politics as well as an adjunct professor of law at the Georgetown University Law Center. He was recently named one of the National Law Journal's 100 Most Influential Lawyers in America.

He lives in Washington, D.C. with his wife Jo Anne. They have two grown children, Josh and Rebecca.