

RNLA Response to the Report and Recommendations of the Presidential Commission on Election Administration

*The Republican Legal Community on the PCEA Report with
Additional Prescriptions for Reform*



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April 10, 2014

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I. Executive Summary

The Republican National Lawyers Association (RNLA) issues this report to offer its perspective on the recent report of the Presidential Commission on Election Administration (PCEA) outlining recommendations to improve election administration in the United States. RNLA agrees with many of the Commission's recommendations, particularly its identification of deficiencies in our voter registration system as a significant contributor to Election Day problems such as long lines at the polls. The PCEA's recommendations to reform voter registration are good ones and, if states adopted them, the reforms should greatly improve citizens' voting experience. RNLA offers other suggestions in addition to adopting many of the PCEA's recommendations. Taken in tandem, these recommendations will result in a secure and voter-friendly voter registration system that provides alternatives to same-day voter registration while avoiding the management issues which historically attend the combining of two functions on Election Day – voting and registration. RNLA also welcomes most of PCEA's recommendations to improve polling place management, including leveraging technology through the use of electronic poll books and ID card bar code/magnetic stripe scanners. RNLA also appreciates the PCEA pointing out the need for continued improvements to the voting experience for our military and overseas voters and generally agrees with PCEA's recommendations in this area. Finally, RNLA agrees that the current voting equipment testing and certification system is inadequate and needs reform. We recommend a move away from the Election Assistance Commission (EAC) certification process in favor of voluntary consensus standards.

While RNLA agrees with a majority of PCEA's recommendations, we caution against the Commission's recommendation that states embrace expanded early voting as a solution to the systemic election administration problems identified in its report. The experience from recent elections demonstrates that early voting does not solve the problem of long lines. It is also expensive, distracts from Election Day preparations, and diminishes the importance of Election Day. Most Americans continue to prefer to vote alongside their neighbors and fellow citizens at the polls on Election Day so reform needs to start there. Accordingly, states should instead invest their limited time and resources fixing the problems at the polling place and ensuring a smoother absentee voting process for those who use it out of necessity, not convenience.

Throughout this document, RNLA offers state and local election officials additional suggestions that will improve election administration. This report also outlines additional policy reasons why states should adopt certain PCEA recommendations. In some places RNLA urges states to use caution or establish minimum safeguards when implementing certain reforms, particularly for online voter registration. RNLA's additional recommendations from those included in the PCEA report include the following:

State and local election officials should do the following to improve the voter registration process:

- Amend their laws so there are fewer restrictions in sharing voter registration, voter history and Department of Motor Vehicles (DMV) data with other states to improve the accuracy of the voter rolls and prevent double-voting.

- States unable to participate in multi-state data-sharing agreements should negotiate one-on-one programs to share data with individual states, particularly neighboring states or voting jurisdictions adjacent to their border.
- Adopt *intrastate* data-sharing, including vital statistics information and work with their DMVs, public assistance agencies and other state agencies to obtain additional data to perform voter registration list maintenance.
- Upgrade statewide voter registration databases and explore public-private partnerships for list maintenance.
- Utilize the Department of Homeland Security’s Systematic Alien Verification for Entitlements (SAVE) Database to ensure only citizens are able to register and remain on the voter rolls and to prevent the removal of citizens from the voter rolls who may have been mistakenly identified as non-citizens.
- Adopt RNLA’s recommended best practices outlined in this report when implementing online voter registration.

States should do the following to improve Election Day and polling place management:

- Utilize ID card bar code/magnetic stripe scanners with electronic poll books to speed check-in process and improve accuracy of voter history data.
- Develop technology to display voter photographs on electronic poll books to improve the integrity of the check-in process.
- Engage in public-private partnerships to recruit additional poll workers.
- Utilize technology such as online training to better prepare poll workers for Election Day.
- Manage precinct sizes by timely re-precincting, ensuring a manageable number of voters are assigned to polling places and avoid co-locating polling places when possible.

Recommendations to improve the voting experience for our military and overseas voters:

- Simplify and streamline the registration and absentee voting application process for our overseas and military voters, including the use of the Federal Postcard Application (FPCA) and the Federal Write-In Absentee Ballot (FWAB).
- States need to improve their online offerings to our military and overseas voters by placing a higher priority on improving their websites to better explain the voting process to our overseas and military voters.
- Eliminate waiver provision for 45-day ballot mailing deadline to overseas and military voting and require express mail for any ballots mailed late.
- Vigorous enforcement of our federal and state overseas and military voting laws.

Improve the testing and certification procedures for voting equipment:

- Transition from the federal EAC voting equipment certification regimen towards adoption of voluntary consensus standards similar to those used in other manufacturing industries.

II. Introduction

The Presidential Commission on Election Administration (PCEA), a bipartisan and nonpartisan commission set up by President Obama to study problems encountered in the 2012 General Election, released its report in January following months evaluating the state of election administration in the United States. The PCEA, organized pursuant to an Executive Order, was tasked with recommending improvements to elections “to ensure that all eligible voters have the opportunity to cast their ballots without undue delay.”¹ While the commission was also charged with identifying and making recommendations regarding a broad array of election administration issues, the commission’s main purpose, at least as many understood it, was to make recommendations to prevent long lines and delays at the polls.

The Republican National Lawyers Association (RNLA) shares the President’s concerns of long lines at the polls and other election administration problems and appreciates his efforts in organizing the Commission. We also would like to thank the members of the PCEA, particularly its Co-Chairs, Robert Bauer and Benjamin Ginsberg, for their hard work that is reflected in a comprehensive report with useful online tools. RNLA is pleased that it agrees with many of the Commission’s recommendations, particularly its straightforward approach to problem-solving and focus on the “nuts and bolts” of Election Day administration. Many of PCEA’s recommendations for basic best practices and management techniques should be non-controversial and agreeable to those from across the political spectrum. We also applaud the PCEA’s resistance to calls to nationalize our elections by endorsing best practices and state-based solutions instead of federal legislation. While RNLA generally agrees with PCEA’s recommendations, we are ambivalent or offer a more qualified endorsement on some others, and there are a few areas where we disagree for reasons explained in this report.

RNLA has issued this report with the goal of making a positive and proactive contribution to the discussion on the future of elections in our country. While the PCEA made many important recommendations, we find it important to include additional suggested best practices in some areas, and in most places our suggestions and discussion complement the PCEA report. In addition, in certain places, RNLA agreed with a recommendation but felt compelled to provide additional reasons why adopting a particular policy is best practice. When necessary, the report attempts to explain the rationale behind why many Republicans and conservatives disagree in good faith with some reform proposals, particularly the wholesale endorsement of expanded early voting. We also thought it important to reiterate our belief that an approach for reform based on principles of federalism is the best one. We believe PCEA’s many good recommendations reflect the fact that voters and election administrators do not favor a top-down approach of Congress decreeing elections policy, especially in areas where there is anything but a nationwide consensus. RNLA believes recent progress on issues such as interstate voter registration list sharing demonstrates that states working together voluntarily yield the best solutions.

This report does not attempt to comment on every aspect of the PCEA’s report, rather we offer a more targeted approach to highlight specific issues we thought particularly important. Additionally, this report purposefully does not address other areas of election administration that

the PCEA chose not to address, including photo identification laws (which RNLA is on the record strongly supporting) and Election Day voter registration (which we strongly oppose).

Finally, we urge Democrats and liberal groups to join us in support of some of these basic recommendations for reform, particularly PCEA's proposals that states engage in interstate data sharing to improve the quality of their voter rolls. While many on the left give lip-service support to these programs, if recent history is any indication, we do not detect sincere support from Democrats for list maintenance activities. The PCEA chose to highlight voter registration inaccuracies as a chief contributor to long lines and other Election Day problems. Accordingly, we hope for broad bipartisan support so states can enact these important recommended reforms. First, we begin by discussing an important backdrop to any discussion of electoral reform: the necessity to respect the federalism approach in how America conducts its elections.

III. General Principles: Affirmation of Federalism Approach

Federalism – the fundamental architectural principle of the United States Constitution – remains the centerpiece of the PCEA's proposals concerning reforms of our nation's electoral process. Amid fundamental challenges to protecting the vote, liberal reformers' calls to nationalize our voting system threaten this fundamental architectural principle. As the PCEA's report demonstrates, the best path to reform is for interstate cooperation and for states to adopt PCEA and other recommended best practices for election administration, most of which can be agreed upon by those from across the political spectrum.

There were calls for nationalizing our election system after the 2000 Presidential Election. The Carter-Ford Commission rejected that notion in 2001, proposing instead a limited role for a new federal Election Assistance Commission (EAC). The Carter-Baker Commission in 2005 also rejected proposals to expand the powers of the EAC beyond those given to it by Congress in 2002. The 2001 and 2005 Commission reports were prescient about the likely difficulties that would face nationalizing our voting system, as the EAC has proven a complete failure at accomplishing even the limited federal responsibilities it was assigned by the 2002 Help America Vote Act (HAVA). The PCEA report accepts as a given the futility of attempting to nationalize control of elections. Instead, the PCEA rightly recognizes the true progress made when states cooperate with another to enact programs to improve election administration.

The PCEA approaches its charge and tasks in a manner consistent with those of its distinguished predecessors, the 2001 Report of The National Commission on Federal Election Reform (referred to as the "Carter-Ford Commission") and the 2005 Report of the Commission on Federal Election Reform (referred to as the "Carter-Baker Commission").² The three commissions fundamentally recognized that our American voting system reflects the federalism principles instituted by the framers of the Constitution, where the states have the primary role in conducting federal elections in conjunction with state and local elections, administered by thousands of local jurisdictions, with the federal government providing default supervision with respect to federal elections. As the Carter-Ford Commission summarized:

The conduct of federal elections is a federal function ..., states have no reserved

powers over federal elections because federal elections came into being when the United States Constitution was ratified. Nonetheless, the framers of the Constitution foresaw a federal-state partnership in the administration of federal elections and delegated to the states a substantial role in the conduct of those elections.³

The Carter-Ford Commission recognized:

Even though the federal government has broad constitutional authority to mandate how the states conduct federal elections...*state governments should have a primary role in the conduct of such elections for a simple reason: federal elections are, as a practical matter, conducted in conjunction with a vast array of state and local elections across widely varying conditions.*⁴ (emphasis added)

Because of this conjunction, “states are vital partners to the federal government in any plan for nationwide reform. They are also a necessary bridge between federal policy and local administration.” The Carter-Ford Commission concluded: “[W]e recommend that state governments should do far more to accept their lead responsibility for improving the conduct of elections, especially federal elections.” In taking the lead, “[s]tate governments should ensure uniformity of procedures and standards within the state and provide the essential guidance for the consistent and constitutional conduct of these elections.” The Carter-Ford Commission’s principal recommendation was to adopt reforms that came to comprise HAVA.

The 2005 Carter-Baker Report had a similar perspective. The Commission described its task “to contribute to building confidence in our electoral process” and its objectives to “assess HAVA’s implementation, and to offer recommendations for further improvement.”⁵ The principal recommendations were those designed to foster “an accurate list of registered voters, adequate voter identification, voting technology that precisely records and tabulates votes and is subject to verification, and capable, fair and non-partisan election administration.” The Report affirmed that “[w]hile each state will retain fundamental control over its electoral system, the federal government should seek to ensure that all qualified voters have an equal opportunity to exercise their right to vote. This will require greater uniformity of some voting requirements and registration lists that are accurate and comparable between states.” Carter-Baker noted, “Greater uniformity is also needed within states on some voting rules and procedures,” and recommended that “[t]he federal government should fund research and development of voting technology that will make the counting of votes more transparent, accurate and verifiable.”

The 2014 PCEA report focuses on best practices for election administration: “This Commission’s focus...remained resolutely on the voter. We discovered...that voters’ expectations are remarkably uniform and transcend differences of party and political perspective. The electorate seeks above all modern, efficient, and responsive administrative performance in the conduct of elections.”⁶ The Commission focuses on recommendations, not federal mandates, to reduce waiting times at the polls, improvements in the voter registration process to ensure voter list accuracy and enhanced capacity, and reforms to voting equipment standards and certification processes. The PCEA Report also commends the efforts of multi-state cooperative ventures such as the Electronic Registration Information Center (ERIC) and the Interstate Voter

Registration Crosscheck Program (hereinafter referred to as “Crosscheck”). These programs are designed for states to share voter information to ensure that voters who have moved between states register to vote in their new states and are removed from the registration rolls of the departed state, to better prevent double voting. Voter registration improvements were also among the primary objectives of the 2001 Carter-Ford Commission’s recommendation to adopt HAVA voter registration improvements and the mandate for states to develop and maintain statewide voter databases and the 2005 Carter-Baker Commission’s recommendations for voter registration and identification requirements. PCEA focuses on interstate cooperation and state-based solutions rather than the federal mandates recommended in the Carter-Baker Commission.

This fundamental federalism approach was recently restated by the Supreme Court in its 2013 decision *Arizona v. Intertribal Council of Arizona*:

The Elections Clause imposes on States the duty to prescribe the time, place and manner of electing Representatives and Senators, but it confers on Congress the power to alter those regulations or supplant them altogether. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 804–805. This Court has said that the terms “Times, Places, and Manner” “embrace authority to provide a complete code for congressional elections,” including regulations relating to “registration.” *Smiley v. Holm*, 285 U.S. 355, 366.⁷

The Court also described the Elections Clause which embodies the federal power in *Foster v. Love*, as follows: “In practice, the Clause functions as a default provision; it invests the States with responsibility for the mechanics of congressional elections, but only so far as Congress declines to pre-empt state legislative choices.”⁸ The power of Congress over the “Times, Places and Manner” of congressional elections “is paramount, and may be exercised at any time, and to any extent which it deems expedient; and so far as it is exercised, and no farther, the regulations effected supersede those of the State which are inconsistent therewith.”⁹

The specter of failure in nationalization schemes is reflected in the abject shortcomings of the EAC in performing even the limited functions that Congress assigned to it in HAVA: to distribute federal funds to states for voting system modernization and to supervise states’ implementation of statewide voter databases to improve the effectiveness and integrity of the vote across the nation. The EAC failed in its two primary functions, and even basic HAVA functions assigned to the federal Department of Justice (DOJ), to ensure the implementation of statewide voter databases and voter registration systems, have not been achieved effectively or impartially.¹⁰

Not only did most states fail to establish operational statewide voter databases for the 2006 elections as mandated by HAVA, nearly 37 states requested waivers of compliance by the 2006 deadline and one state, California is not expected to bring its statewide voter database up to date until 2016.¹¹ HAVA places most of the responsibility for HAVA compliance on the DOJ and DOJ failed to ensure implementation of the now-12 year old requirement. DOJ’s unwillingness and the lack of a private right of action in HAVA ensures that states are able to openly flout this and other federal HAVA requirements for election administration.¹² At present, EAC has no acting commissioners, and is unable to function lawfully and conduct its most limited functions.

Because of the EAC’s breakdown, the agency was unable to respond to Arizona and Kansas’ respective 2013 requests for permission to adopt separate citizen identification provisions, in the aftermath of the Supreme Court’s *Arizona v. Intertribal Council of Arizona* decision. It is no wonder that there was little response from state and local election officials to lobby Congress to save the EAC when Congress has taken steps to eliminate the agency. In fact, the National Association of Secretaries of State (NASS) has adopted resolutions on multiple occasions calling for the dissolution of the agency.¹³

In sum, given our nation’s historical reliance on federalism in our electoral process, the federal government’s failure to adequately enact reform to our nation’s electoral system through the feckless and dysfunctional EAC and DOJ inaction, we applaud the PCEA’s emphasis on state-based solutions and its recommendations that states work directly to adopt the best practices and reforms called for in its report.

IV. Reform of State Voter Registration Processes

RNLA generally agrees with the analysis and recommendations to reform states’ voter registration processes. Enhancing the integrity of the rolls through the use of technology and interstate and intrastate data sharing, and holding states accountable for compliance with federal law will result in significant improvements to our voter rolls that will ensure reliable rosters for Election Day, thereby ensuring a smoother voting process. RNLA also proposes additional recommendations for states to adopt to improve the quality of their voter rolls.

A. Interstate Exchanges for Voter Registration List Maintenance

1. Overview

RNLA strongly agrees with the PCEA’s recommendation that “states join interstate programs to share data and synchronize voter lists so that states, on their own initiative, come as close as possible to creating an accurate database of all eligible voters.” The PCEA rightly recognizes that one can directly trace problems at the polling place, including long lines, back to deficiencies somewhere in the voter registration process, often from inaccurate registration records caused by inadequate list maintenance. The PCEA endorses both of the two major interstate registration data sharing agreements: The Interstate Voter Registration Crosscheck Program (hereinafter referred to as “Crosscheck”) and the Electronic Registration Information Center (ERIC). RNLA agrees both ERIC and Crosscheck are valuable tools for shoring up the integrity of states’ voter rolls. States unable to participate in these programs because of state laws or other constraints need to negotiate one-on-one sharing agreements with other states, particularly neighboring states.

As the PCEA outlines in its report, there are many good reasons to participate in programs like ERIC and Crosscheck. These programs help identify records of individuals registered in a state where they no longer reside who have also registered in their new state of residence. ERIC and Crosscheck allow states to identify these double-registrations giving officials reliable information necessary to cancel the registration record in the previous state or states of residence.

Removing these records from the rolls prevents the possibility of double-voting or from someone using that old registration record to fraudulently vote in that previous resident's name. These programs also allow officials to identify voters with inaccurate registration records before Election Day allowing officials to contact voters and fix those issues before they appear at the polls, the last place where registration problems should be resolved. Related, accurate lists equip election officials to better plan for Election Day since they will have reliable statistics on which to make resource allocation decisions, particularly to better prepare in precincts with a high percentage of registration problems. The programs, particularly ERIC, also help identify unregistered but eligible citizens allowing states the ability to contact individuals directly to solicit their registration rather than reckless third-party groups.

Crosscheck and ERIC demonstrate the progress states can make when working together and in public-private partnerships to solve problems. Both programs were organized and launched without a federal mandate or legislation and are the product of a consensus of states with diverse political landscapes. Both programs give the states accurate data to make decisions in accordance with federal law and their particular state laws and circumstances. As these programs mature and expand there will be little public policy justification for any federal legislation in this area.

The results from the Crosscheck and ERIC programs are at the same time both encouraging and sobering and underscore the need for list sharing expansion to all 50 states. The 2013 Crosscheck consisted of 22 states, compared over 45 million voter records, and identified over five million potential matches of individuals registered in two or more participating states.¹⁴ Highlighting one state's data, Virginia identified approximately 80,000 records in the 2013 Crosscheck with an "extremely high probability" that an individual was registered both in Virginia and another Crosscheck state, a number only accounting for matches from states that shared social security number data for matching. This additional matching criterion excluded almost one-quarter of potential matches so the true number of duplicate registrations was likely much higher.¹⁵ The numbers of voters registered in more than two states was also eye-opening. The Virginia State Board of Elections identified two voters registered in seven different states, ten registered in six different states, 113 registered in five states, 1,123 registered in four states and 16,361 registered in three states.¹⁶ The thousands registered in more than two states demonstrate how long some voters remain on the rolls after moving to a new state and often times multiple states after that. This is only the tip of the iceberg. A 2012 study by the Pew Center on the States estimated that over 2.758 million people are registered in multiple states.¹⁷ These numbers should not be surprising given our nation's transient population. as summarized in the PCEA report and the relatively new phenomenon of organized interstate efforts to combat the problem. Crosscheck was launched in 2005 and ERIC more recently in 2012 and still today almost half of the states are not involved in either program. There is much work to be done and states need to move quickly to join these programs.

While RNLA agrees with PCEA's suggestions for registration reform, we also recommend states take additional steps to improve the accuracy of their voter rolls, many of which relate to states cooperating on an intra-state basis with other state agencies.

2. Interstate Cooperation Prevents and Identifies Illegal Double-Voting

The interstate sharing of voter data equips registration officials with tools to remove voters who remain on a state's rolls after they have moved to and registered in a second state thus preventing the possibility of double-voting. In addition, it prevents fraud by cancelling records that could be exploited by another individual who is aware that someone remains on the rolls yet no longer resides in the state. Finally, these programs compare voting activity for individuals, thus providing evidence of potential double-voting for prosecution after it occurs.

As we have seen with third-party registration groups like ACORN that intentionally or recklessly registered fictitious and ineligible individuals, there are those who will abuse the registration process without adequate safeguards in place. For example, without interstate data-sharing there is nothing to prevent a Florida resident registered in both Florida and Massachusetts from voting at the polls on Election Day in Florida and casting a mail absentee ballot in Massachusetts. Similarly, there is no impediment to Person A from voting as Person B when Person B has moved out of state yet remains registered. It is no more difficult voting as a non-resident who remains on the rolls than it is for a person to vote for a deceased relative who remains on the rolls for years after dying. While photo identification requirement laws may prevent such crimes by positively identifying voters at the polls, it is not far-fetched to consider the scenario where an individual who rents an apartment, receives a piece of official election mail with registration information of a prior occupant, and decides to vote as that person. If states do not have the proper data to identify individuals who should be removed due to non-residency, then double-voting is a very difficult crime to prevent. One cannot retrieve a fraudulently cast vote and at that point costly prosecution is the only remedy.

Nothing illustrates these vulnerabilities better than the situation in New York City uncovered by the city's Department of Investigations (DOI) in a recent audit of the city Board of Elections. After identifying a variety of individuals who should have no longer been on the voter rolls for various reasons (deceased, moved away from the city, ineligible felons), the DOI was able to "vote" for those ineligible yet registered individuals in 97% of their attempts.¹⁸ While no real vote was actually cast in the investigation since the investigators cast write-in votes for a fictitious "John Test" or simply did not vote when inside the voting booth, the exercise underscores the fact that states are at a higher risk for fraud when they are not proactive in maintaining accurate registration records. The problem is exacerbated in New York's case, since the state has no voter ID requirement as a failsafe to prevent any potential impersonation fraud nor does the state participate in ERIC or Crosscheck.

This is not a theoretical discussion since we know illegal double-voting happens. In 2008, for example, Crosscheck data led to the prosecution of six people who voted for President in Arizona and another state.¹⁹ Perhaps the most famous case in recent memory is the former Maryland congressional candidate Wendy Rosen who was charged with illegal voting in two separate elections in the 2006 and 2010 elections in both Maryland and Florida.²⁰ Rosen ultimately plead guilty as part of a plea deal. There are multiple additional convictions in other states for double-voting, both from individuals voting multiple times within the same state and from voting in two states in the same election. While states participating in Crosscheck have referred dozens of suspected instances of double-voting to law enforcement, we simply do not have comprehensive statistics on how many prosecutions have taken place nor do we know how many instances law enforcement declined to prosecute due to a lack of resources and difficulty in

cooperating with the other state to obtain the evidence needed to prove voting took place in two states. Law enforcement officials have too many competing priorities and many states do not have dedicated resources or investigators assigned to investigate and prosecute election law crimes.

We also know that these data-sharing efforts are relatively new so, historically, it has been difficult to detect the occurrence of double-voting on a national level. Relatively speaking, the ERIC and Crosscheck programs are in their infancy. Almost half of the states are still not involved in either Crosscheck or ERIC, including California, New York, and Texas, the three most populous states whose residents are also highly transient. To date, it is less likely the non-Crosscheck or ERIC states would uncover the existence of double-voting.

In sum, states can protect their citizens' right to vote by engaging in these programs to prevent and deter double-voting from taking place. Accordingly, RNLA strongly urges states to move quickly to join programs like Crosscheck and ERIC and when that is not possible, negotiate one-on-one sharing agreements with neighboring states.

3. Minimizes Lines and Allows for Better Election Day Planning

Improving voter lists through interstate data sharing can help alleviate Election Day problems, particularly in eliminating bottlenecks at the polling place check-in table. Voters who appear at polling places with inaccurate registration records or where they are not registered causes problems and delays in the check-in process. When voters do not appear in the precinct's pollbook or there is a discrepancy between the information on the pollbook and what the voter provides, poll workers are forced to spend extra time resolving those issues before permitting that person to vote. Oftentimes poll workers have to contact the local election office for instructions, request additional information from the voter to resolve the discrepancies, require the voter to complete paperwork such as an affidavit or registration application form, or require the voter to vote a provisional ballot. During a low-turnout election or in small numbers these scenarios do not seriously disrupt the traffic flow at a polling place. However, you have a recipe for disaster in a high-turnout presidential election where many voters in a particular precinct have these problems, each requiring several additional minutes of a poll worker's time. The result is a bottleneck at the check-in table that will slow the processing of voters and begin to cause back-ups and lines. This scenario was a large contributor to many of the long lines shown on television on Election Day 2012.

Using ERIC and Crosscheck data allows local election officials to contact a voter months before an election with information that they may reveal some error in their record that needs correction prior to voting, such as an outdated residence address or a name change. Each voter reached in advance is one less headache for a poll worker to triage on Election Day where many times it is too late to fix the problem. Poll workers are not trained to resolve complex registration problems at the polls on Election Day, nor should they be, and working through these problems leaves both them and the voter exasperated. Local registration officials need to identify those problems in advance in order to avoid delays on Election Day.

ERIC and Crosscheck also aid in preparing in advance for potential Election Day problems. In many respects an election is similar to planning a large party. Planning goes much smoother when the organizers have a good list of the names and number of guests who will be attending and any particular idiosyncrasies regarding the invitees. Without an accurate RSVP list, planning for the right amount of food, beverages, and space would all be very difficult. Similarly, without an accurate record of individuals registered to vote in their given jurisdiction, election officials do not have the tools to adequately prepare for Election Day, particularly if the poll book is riddled with inaccurate information and records of voters no longer living in the precinct.

Voter data sharing agreements give election officials the proper data to better allocate resources based on the needs of a particular polling place. If a given precinct is in a highly transient area and its rolls are either wildly inflated with registrations from individuals who no longer reside there, has many unregistered voters who plan on voting anyway, and/or has voters registered at the wrong address, officials would have to allocate additional staff and resources to head off problems. If local election officials have accurate data from which to determine that a particular precinct has a large amount of transient voters based on information received from ERIC or Crosscheck, then they will be prepared for problem voters who will need extra attention to resolve their problems and redirect them to the proper polling place if necessary. The local election officials can then allocate additional resources to those precincts. Finally, an accurate list will give local governing bodies better data to make informed decisions when redrawing and adjusting precinct boundaries, ensuring a more proportional allocation of voters per precinct across an election jurisdiction.

B. Additional Recommendations for Voter Registration List Maintenance

RNLA proposes states take additional steps to increase the integrity and accuracy of their voter registration rolls:

1. Amend State Laws

Restrictive laws in some states prevent their election officials from joining Crosscheck or ERIC or even from engaging in list exchanges with another individual state. States need to amend their laws to allow the sharing of voter registration and Department of Motor Vehicles (DMV) data with other states. State legislatures need to give their election officials the authority and discretion to share as much data as necessary to accurately identify duplicate voters, including social security information and DMV data since this allows for more accurate matching. Those who have routinely targeted list-sharing programs because they say they yield false matches between voters with similar names and birthdates should support measures to add DMV and other data fields to the matching process to eliminate any potential errors and silence critics' attacks on the standards and matching-criteria in the programs. Finally, when enacting these laws, states need to be particularly sensitive to privacy concerns related to the sharing of any confidential information.

2. Intrastate Cooperation

Not only is interstate cooperation critical, states need to work internally through their various public agencies to maintain their voter rolls, particularly with DMVs, public assistance agencies, Departments of Health, tax authorities, public universities, and others. Various state agencies have accurate and reliable databases with records that can be shared to aid election officials in their list maintenance efforts. For example, by now, all states should be incorporating death records from their state vital statistics offices and felony convictions from state law enforcement agencies and courts into their list maintenance efforts. There are additional possibilities states should research including accessing State Treasury tax data and university records for records indicating former residents have moved to a new state. Similarly, registration officials and government agencies at the local level should cooperate in sharing data that may be helpful for list maintenance purposes.

DMVs in particular have an accurate database of state residents whose legal presence in the United States should be verified under federal Real ID requirements.²¹ As is done in the ERIC program, state election officials and DMVs should cooperate to compare their lists to identify potential errors and remove non-citizens from the voter rolls. State DMVs should also share information with election officials such as lists of individuals who surrender their license when moving out of state. States need to amend their laws to mandate the exchange of information when DMVs or other state agencies refuse to cooperate voluntarily.

There is another practical advantage to cooperation between state agencies. Interagency data-sharing would help states identify individuals who were casualties of DMV and other state agencies' noncompliance with National Voter Registration Act (NVRA) requirements to offer registration services to agency customers. State agencies often fail to transmit applications from individuals attempting to register to vote when visiting a DMV or other state agency designated under NVRA. These individuals quite reasonably believe that the proper election official will receive and process their registration application. However, we know that often the application never gets delivered to the proper authority for processing either through bureaucratic incompetence or problems with the postal service. Comparing registration and DMV data is essential to maintaining an accurate voter list and ensuring all of those eligible who properly submitted applications through other state agencies are registered to vote.

3. Vital Records

States should make efforts to access state vital records for list maintenance purposes, particularly death and birth records. Similar to ERIC and Crosscheck, states are now beginning to share vital records data under programs such as the Electronic Verification of Vital Events (EVVE) and the State and Territorial Exchange of Vital Events (STEVE), databases which give state officials electronic access to individuals' birth certificates, and other vital records, including death records. State election officials should closely evaluate these programs to determine their potential utility in voter registration list maintenance.²²

4. SAVE Database

States should utilize the Department of Homeland Security's (DHS) Systematic Alien Verification for Entitlements (SAVE) Database to ensure only citizens are able to register and

remain on the voter rolls. In addition, even though many groups have complained about the use of the database for list maintenance, SAVE is actually a valuable tool to double-check records that may have been mistakenly marked with non-citizen status by another data source such as by DMV. DHS should also stop stonewalling states' efforts to obtain access to the database.

5. Public-Private Partnerships

States should consider utilizing data from private entities that have credible and accurate data identifying inaccurate and outdated addresses and other information. While states should use extra care when using these private data sources, experiences in places such as Orange County, California utilizing commercial data from Experian to update voters' addresses have yielded promising results.²³

6. Compliance With and Upgrades to HAVA-Mandated Registration Databases

Some states' failure to meet deadlines to comply with HAVA's bare minimum requirements for a "single, uniform, official, centralized, interactive computerized statewide voter registration list" is inexcusable. Even now, one decade after HAVA was implemented, California's statewide registration database is not HAVA compliant. California needs to invest the necessary resources, including spending its remaining federal HAVA grant dollars to comply with this requirement to ensure it has a voter registration database that helps protect the integrity of the state's electoral process.

The other 49 states that have technically complied with the HAVA database requirements should work to make upgrades to their databases. Many of these systems were launched several years ago and it is likely that many are in need of upgrades or replacement to modernize their functions, including enhancements that can better identify and notify election officials of duplicate voter registrations and provide metrics on possible voter registration activity anomalies within the state. Many state's first generation systems developed following HAVA enactment were inadequate to the task even if they technically complied with the federal requirements. States should continue to invest in their database technology to improve functionality and integration of the various list maintenance programs and data-sources such as DMV records into the system. Related, states should take steps to protect their statewide databases from hackers and cyber-security threats.

7. Use of Bar Code Scanners with Electronic Poll Books

This issue is discussed more thoroughly below but one often overlooked problem is inaccurate voter history data and its impact on voter registration list maintenance activities. States should utilize bar code scanners with their electronic poll books to more accurately check in voters. This will ensure that voter history data, an important source of data for voter registration list maintenance, is more accurate.

C. Integration with Department of Motor Vehicles Registration Processes

RNLA strongly agrees with the PCEA recommendation that “[s]tates should seamlessly integrate voter data acquired through DMV with their statewide voter registration lists.” Doing so, would allow a registration application completed at a DMV to be electronically transmitted to the appropriate registration official. The PCEA summarizes the various problems with lawful, eligible voters who properly submit registration applications at DMVs and who quite reasonably assume that their registration application will be processed by the appropriate registration official. However, as statistics and studies indicate, many of these applications never make it to the appropriate election official for processing. Various studies have been published analyzing the extent of the problem so an exhaustive recounting of many states’ continued failures to comply with basic National Voter Registration Act (NVRA) requirements is unnecessary. It is worth noting, however, one egregious example to illustrate the extent of the problem. In 2011, the *Baltimore Sun* found that almost 25% of those applying to register to vote at Maryland’s Motor Vehicle Administration staff offices were not registered.²⁴

This disrupts the conduct of the election because these applicants then arrive at the polls on Election Day and are rightfully upset that their names do not appear as registered voters on the poll books. While some states have adopted safeguards to audit whether an individual did or did not submit a registration application at DMV, in many instances it is simply impossible to determine what went wrong. PCEA smartly holds out Delaware as an example for having voters complete an application electronically at DMV for wireless and near instant transmission to the appropriate election official for processing. Provided these processes follow Delaware’s model of obtaining an applicant’s digitized or electronic signature on a signature pad or tablet, RNLA strongly encourages states adopt this model. States should use technology and adopt business practices that ensures DMV obtains as high-quality and accurate digital signatures for voter registration as possible. While developing an electronic system to transmit this information requires an upfront investment in the IT infrastructure, these costs will be more than offset by the savings in mailing the paper applications and in potential litigation costs.

D. Best Practices for Online Voter Registration

Although the RNLA supports the concept of allowing an individual to complete and submit a voter registration application online, in light of the recent major examples of consumer fraud through hacked credit card information and rising number of cyber-attacks on state and federal government databases, there remains lingering concern regarding the susceptibility of an online registration system to fraud. Just as serious examples of consumer fraud lead to mistrust among the American public, electronic fraud in the voter registration process could similarly undermine confidence in the electoral system. While online voter registration can improve the quality of the voter rolls, save states money, make registration more convenient, and better prevent registration fraud, there are also risks.

Accordingly, while the RNLA Task Force supports online registration, the system used to undertake online registration must include certain safeguards to protect the integrity of the electoral system. It is imperative that states take steps to design a system that positively determines the identity of online applicants, ensures only eligible voters can utilize such a system, protects against cyber-attacks, leaves the registration determination in the hands of the proper registration official, and ensures the transmission of a valid signature.

1. No Automated or Automatic Online Registration

Any online voter registration option should leave the registration determination in the hands of the local election authority instead of allowing for instantaneous or automated registration. States should design their online registration system so an individual can submit an application online and an appropriate registration official can later review the application and determine eligibility before acceptance. In most states, local voter registrars or clerks are responsible for registration determinations and online voter registration should be designed such that the registration determination is left in the hands of local officials who know their voters and any potential idiosyncrasies in their election jurisdiction. In sum, online voter registration should not be synonymous with instantaneous or automated registration.

2. System Tethered to DMV or Other Official State Database

It is imperative that any online voter registration system be tied to an official state database such as the DMV to properly establish an applicant's identity prior to acceptance. States that have successfully implemented online registration have designed the system so that an individual applying online must provide information such as a Driver's License number, date of birth, social security number information, other unique personal identifying information that is matched and verified electronically against state's DMV records. The registration and DMV databases communicate with each other and ultimately inform the registration official that the applicant provided information on the application that matches information in the DMV database. Online applications should only be an option for those that can provide such matching information. It is possible other official state databases could provide such a credential, but DMV is most ideal due to its large and relatively accurate database that requires customers prove identity and provide evidence so DMV can determine lawful presence in the U.S. Voters without a DMV or other official state credential can utilize the traditional paper and mail process.

3. Necessity of a Signature

Third, the system should be set up to ensure a digitized signature is transmitted to the local registration official with the online application. Most states have set up a system where the DMV can electronically transmit the applicant's digitized signature in its file to the local registration official allowing that signature to serve as the voter's official signature for voting. It is important for local election officials to have a voter's digitized signature on file, especially in states that utilize signature matching in absentee voting, petition verification, and for other purposes. It is also important that a signature be on file in the event of any potential fraud. Finally, states should adopt the procedures outlined in the Uniform Electronic Transactions Act (UETA) for the completion of a signature during electronic transactions.

4. Adequate Safeguards to Prevent Cyber Attacks

Finally, states need to work to prevent piracy and hacking of the online voter registration portal. States need to consult with their appropriate information technology authority responsible for ensuring the integrity of state data and systems' processes and that monitors attacks on state

computer systems to develop these safeguards. Online registration systems must comply with industry standards for security. States need to maintain security measures for the transmission and storage of the information and actively monitor for cyber-attacks on the online registration system. States should leverage public-private partnerships when possible to obtain additional cyber-security expertise.

V. Improved Polling Place Management

The RNLA Task force generally agrees with the PCEA's recommendations to improve management of polling places, better train election officials, and place a higher priority on recruitment efforts for local poll workers to ensure access to the vote for all registered and qualified voters. This section of the PCEA Report provides straightforward concepts that local election jurisdictions can implement relatively easily, cheaply, non-controversially and without legislation.

For example, the recommendation that jurisdictions adopt best practices for polling place location and design is a common sense step for adoption throughout the country. Improved training and professionalism for poll workers and better traffic management in polling places are relatively simple solutions that will have immediate and dramatic results in many jurisdictions. RNLA also welcomes PCEA's suggestion for states to implement the use of electronic poll books as it speeds up the check-in of voters at the polling place thereby decreasing lines and increasing the security of the check-in process. RNLA also strongly recommends states pair bar code scanners with the electronic poll books. Finally, RNLA urges that authorities responsible for drawing precinct boundaries take appropriate action to ensure precincts do not grow to have too many registered voters and to avoid co-locating multiple precincts in one physical location when possible.

A. Polling Place Design and Election Day Preparations

Given the naturally transient existence of polling places that are set-up and torn down for use only a few days each year, there does not appear to be a uniform consistency of design to ensure logical line flow, signage, and poll worker locations. As the PCEA Report notes, many businesses—like theme parks—have mastered the art of moving large groups of people through lines in the most efficient manner. Election workers can mimic some of those techniques by evaluating space use and developing a floor plan that anticipates the flow of lines from check-in to ballot distribution to voting booth. Such an analysis naturally will also ensure proper ingress and egress for disabled voters and those voters requiring additional assistance.

Recognizing that different jurisdictions have varying facilities at their disposal for use as polling locations, it is not appropriate that policymakers mandate the use of any particular type of building. Rather, a consistent and uniform design formula should be provided that states and jurisdictions therein can adopt for polling places that may include township halls, schools, community centers, fire stations, etc.

B. Management of Voter Flow

1. Line Walkers and Greeters

The Commission's discussion regarding the efficacy of "line walkers" is a noteworthy commonsense improvement that would be relatively easy to implement in the short term. Particularly in larger voting locations that house multiple precincts, a continuous source of frustration and delay for voters is the failure to properly identify their correct precinct. A constant complaint from voters is that they waited an hour in line only to be told when they reach the check-in location that they are in line for the wrong precinct. Line walkers, coupled with adequate signage at the polling location, would alleviate such unnecessary delays by ensuring voters select the correct precinct upon arrival at the polls.

Line walkers or greeters can also expedite the process by determining in advance which voters may need to vote provisionally and, in certain jurisdictions, which voters may need to complete an affidavit due to some issue in the voter's record or in lieu of possessing a valid photo or other valid form of identification. To the extent line walkers can provide voters the affidavit to review before reaching the check-in table, valuable minutes can be saved by explaining the affidavit while the voter waits in line. The line walkers can also communicate the necessary information regarding what type of identification the voter is required to display when reaching the check-in table.

A technological component would be to provide line-walkers with electronic tablets with the roster of registered voters to help voters verify the correct polling location and precinct. Finally, greeters can also hand out official sample ballots and/or the text of ballot referendums, proposed constitutional amendments, and other more technical ballot items that may delay a voter in the voting booth and slow down the voting in the particular precinct. To make a line walker program work, individuals will need adequate training and oversight to ensure the integrity of the voting process. If line walkers (or any other election workers) appear partisan or biased, they could do more harm than good. That being said, line walkers also would serve as a first line of defense for those seeking to cause chaos, delay, or fraud on Election Day. They could help deter unlawful campaigning at polling locations and ensure voters receive accurate information.

2. Electronic Poll Books and Bar Code/Magnetic Stripe Scanners

RNLA strongly agrees with the PCEA's recommendations that states transition from paper to electronic poll books. Electronic poll books speed up the check-in process because election workers can search a field by typing in the voter's name rather than flipping through hundreds of paper pages. They also result in a more accurate roster of those who have checked in and voted at the polling place. The ability to, in real time, accurately identify those voters checking-in, including those who have already voted, will help to combat fraud and abuse.

The PCEA report outlined the many benefits of electronic poll books comprehensively but we feel it is important to specifically also recommend states use identification card bar code scanners to pair with their electronic poll books. Most state DMVs and some other government agencies already utilize bar codes or magnetic stripes on government issued identification.

Electronic poll books can be paired with bar code/magnetic stripe scanners to further expedite the check-in process by allowing poll workers to simply scan an identification card when a voter appears at the check-in table. Utilizing this relatively cheap technology to help automate the check-in process will simplify and speed the processing of voters and prevent errors in official voter history records. In addition, scannable bar codes can be included on paper identification cards that officials can provide to voters easily and free of charge. This scanning process would be similar to that used by the Transportation Security Administration for air travel.

The use of bar code scanners ensures nearly a 100% chance that the right individual gets marked off as having voted on the poll book. When manually checking in voters, poll workers frequently mark off the wrong voter on the poll book. For example, a poll worker may mistakenly mark off John Doe, Sr., when John Doe, Jr. comes to vote. These errors can then later lead to several problems, including delays and confusion when the voter who was earlier mistakenly marked as having voted appears to vote and the poll book shows the individual as having voted. Oftentimes these impacted voters will need to complete additional paperwork or even vote a provisional vote.

Additionally, these check-in errors can also result in more systemic problems in the voter registration process, particularly impacting list maintenance efforts. The data from the poll books become an individual's official voter history that serves multiple purposes, including its use in voter registration list maintenance processes mandated by federal law. The National Voter Registration Act (NVRA) requires officials to remove a voter after they have reliable information that the voter has moved outside of a registration jurisdiction, failed to respond to a subsequent mailing, and then does not vote at least once over a period of two consecutive federal elections.²⁵ Consequently, errors in voter history data often result in voters mistakenly remaining on the rolls if a poll worker checked in another voter under their name. Conversely, election officials may erroneously remove a voter from the rolls if a voter was not marked as having voted because a poll worker failed to accurately mark the poll book. This is a relatively common problem, particularly for individuals who vote less frequently, and are more likely to be inaccurately identified as having moved residences. Similar problems result when voters who voted but are not given credit may remain on the rolls but with inactive status. Voters that may have been mistakenly moved to inactive status or removed will then create problems for poll workers if they show up to vote and are not on the pollbook or are listed with inactive status.

Inaccurate voter history data could make prosecution for potential voter fraud more difficult since the reliability of that record as evidence could be called into doubt, particularly when there is no other evidence that indicates the voter did actually vote. This is particularly applicable to instances of potential double-voting if a voter who has moved away from a state is mistakenly marked as having voted by a poll worker. In sum, pairing electronic poll books with bar code scanners can improve the speed and accuracy of the check-in process, prevent confusion, improve states' list maintenance processes, and aid in the prosecution of potential voter fraud.

Finally, one promising idea that some states have considered is enhancing electronic poll books by adding the display of photographs to the registered voter's record. This would be done through interfacing with state DMV databases so voters' state identification photos can be displayed along with their name and other identifying information.²⁶ This system would allow a

poll worker to display a voter's photograph on the poll book along with their other identifying information when checking in the voter, verifying that the voter is the same person in the image provided by DMV. This idea would be particularly helpful to states that do not have a Photo ID requirement. This technology should be piloted by states to gauge its effectiveness in accurately ensuring the identity of voters and providing for a more accurate check-in process.

3. Use of Online Tools

Another technology-based solution recommended by PCEA is the use of online tools to assist voters before getting to the polling place. Existing social media and other online resources can be used by election officials to inform voters regarding location and directions to proper polling places, estimated wait times at each precinct, and suggested return times for shorter waits. States can also take advantage of public-private partnerships such as Google's Voting Information Project (VIP) to leverage inexpensive or free offerings to implement these solutions. Much of this information can be anticipated in advance of Election Day—for example when a jurisdiction has a particularly lengthy ballot—and election officials can advise voters in advance regarding optimal voting times with regard to crowd levels.

In developing programs to equip local election officials to determine crowd levels and better allocate resources on Election Day, there are significant opportunities to learn from corporate America. Theme parks, hospital, grocery store and restaurant industries have worked for years to master the art of wait line optimization and would be great partners in translating those efficiencies to the polling place.

Providing sample ballots to voters that can easily be reviewed and printed on computers, tablets, and smartphones will help voters familiarize themselves with ballots before Election Day in order to expedite the voting process upon arrival at the polling locations

4. Better Recruitment and Training of Poll Workers

The RNLA Task Force agrees with the premise that effective polling place management requires well-trained personnel, with the recognition that such personnel will only undertake this job a few days each year. Election officials can also utilize technology to bolster training efforts. By their nature, election workers work a maximum of only a few days per year, so a refresher is helpful in reminding election workers regarding processes, procedures, and changes to the law. Online training sessions and video training can be used to compliment in-person training and mock voting demonstrations to ensure election workers are comfortable with their duties and the tools and technology in use on Election Day. Poll workers should be incentivized to receive extra training with additional compensation and official professional certifications for those who seek out and receive supplemental training.

Although recruiting from the private sector has significant advantages and should be pursued, recruiting high school and college students raises concerns regarding their reliability and less likelihood that they would work more than a few elections. College students are also less likely to be residents and registered to vote where they attend school. The Commission Report's concerns regarding the large number of retirees currently serving as poll workers is reasonable

and understandable; however, those individuals tend to be one of the most reliable groups in participating in long, stressful election days, most giving of their free time, and years of valuable experience administering elections. The RNLA Task Force urges prudence in evaluating whether to replace retiree volunteers with teenagers and recommends that targeted recruitment efforts be done so with the aim of complementing or supplementing those most experienced in running elections at the precinct level.

To reach potential new poll workers, states and local election jurisdictions should engage in public-private partnerships and contact local major employers' community outreach liaisons for potential volunteers. Many corporations are receptive to public-private partnerships and are increasingly sensitive to their responsibilities as corporate citizens. Corporations and local election officials teaming together for a day of volunteerism for employees to work as poll workers is a natural fit. In addition, outreach efforts should be made to faith-based organizations, community groups like Rotary, and state and local employees who may be willing to serve on Election Day.

Another potential tool to ensure rapid voter flow without allowing voting fraud is to continue to allow properly credentialed poll monitors full access to the election process. A system must exist for poll monitors to observe the voting process and to raise issues of concern where they exist. Furthermore, such monitors must have a clear line of appeal in the event poorly trained or unknowledgeable election workers do not properly understand or apply election law. The rules for such poll monitors must be clear and uniformly applied for all political parties and, although election officials generally are partisan, every effort must be made to ensure no bias or partisanship shapes their decisions.

C. Addressing the Needs of Particular Communities of Voters

The RNLA Task Force agrees that establishing community advisory groups for voters with disabilities and those with limited English proficiency will help to ensure those voters are considered at all stages of the voting process. Advisory groups can serve as a conduit between those groups and election officials within the jurisdiction to help election officials better understand the needs of a particular group or issue.

As part of each jurisdiction's polling place identification and design, election officials must endeavor to provide physical access to each polling place, including not only the building, but parking lots and parking spaces and ensure compliance with state and federal accessibility laws. Additionally, as with training for other election-related functions, technology also should be utilized to train election officials and workers in assisting voters with disabilities. This is another area in which election officials may be able to partner with outside organizations—such as those representing voters with disabilities—to prepare online videos and other training mediums that help election workers understand how best to work with voters.

D. Additional Recommendations: Reduce Precinct Size and Avoid Co-Located Polling Places

A large contributor to many of the reported long lines on Election Day 2012 was that many precincts simply had too many registered voters. Too many voters in a precinct can be both a direct cause of lines and an aggravating factor when a polling place has other deeper-seeded issues such as an insufficient amount of voting equipment, not enough poll workers, mismanagement, or has an inaccurate voter list. Election jurisdictions need to pay careful attention to the size of their precincts to prevent them from reaching an unmanageable size. In addition, local election jurisdictions should be careful when housing multiple precincts in one geographic location since it has the same effect of confusing voters and drawing several thousand voters to vote in one particular place, thus increasing the chances for congestion.

The local decision-makers who determine precinct size, typically a local governing body such as city council or county board of commissioners or supervisors, need to work with their local election officials to closely monitor increases in the number of registered voters in precincts and population shifts within a county. Local officials need to make changes when precincts become too large or unbalanced across a jurisdiction. It is clear from the 2012 election that many local governments either failed to recognize this problem or just ignored the warning signs and refused to act. Notwithstanding the relief that purportedly accompanies early voting, there will still be problems in oversized precincts. Even with a substantial amount of early or absentee voting taking place before Election Day, a good percentage of the population will still choose to vote on Election Day so officials need to plan carefully.

Florida's Miami-Dade County is perhaps the best example where jumbo-sized precincts significantly contributed to long lines. Amazingly, Miami-Dade has not engaged in any significant re-precincting since 2002.²⁷ The lack of action resulted in approximately 25 polling places swelling to at least 4,803 registered voters by Election Day 2012 with one topping out at 8,745 voters.²⁸ Of the six polling places that had voters voting after midnight on Election Day 2012, all but one had over 5,000 registered voters. These six polling places averaged 6,199 voters per precinct, an extraordinarily high number of voters. While other problems contributing to the lines in these precincts, including insufficient staffing and voting equipment, the correlation between the large number of voters per polling place and lines is unmistakable. Miami-Dade's Election Department noted voter distribution among precincts several times in its After-Action Report as a contributing factor to problems. Even after the 2012 election debacle, Miami-Dade still refuses to enact meaningful re-precincting out of fear of voter's being confused by polling place changes. Miami-Dade's continued refusal to re-precinct and its negative impact on the county's elections spurred Ken Detzner, Florida's Secretary of State, to recently travel to Miami and plead with its County Commissioners to re-precinct at the earliest possible time.²⁹

The same problem played itself out in different parts of the county, including in Northern Virginia outside of Washington, DC, where many of the precincts with the longest lines had too many voters. In Prince William and Fairfax Counties, many precincts had long lines, and like Miami-Dade, those counties had experienced growth and population shifts over the previous decade. In a bipartisan report issued by Prince William County analyzing the long wait times in many of its precincts, the commission found "there was a high correlation between large precincts and number of citizens voting after 7:00 p.m.," the time polls close in Virginia.³⁰ The Prince William County commission recommended subdividing precincts with more than 4,000 registered voters into smaller precincts in order to avoid the long lines/waits suffered by citizens

in 2012” and to work “to anticipate the opening of new housing developments and apartment complexes with the precinct[s]” which may result in precincts growing too large.³¹ In Fairfax County, two precincts that had extremely long lines were near the statutory maximum for number of voters assigned to precinct.³² Finally, a recent audit report in Virginia Beach analyzing lines in city precincts in the 2012 election made similar conclusions that large precinct size contributed to long lines in many of its precincts. In Virginia Beach, “[o]ut of the 25 larger precincts, 21 had closing times between 2 hours to 5 hours after poll close.”³³

A related contributor to polling place problems, particularly lines, is the co-location of multiple precincts at one polling place or facility. While this is a popular trend, RNLA cautions against stacking too many voters into one physical location which may have the practical effect of creating one giant, unmanageable precinct on Election Day. Many of the problem areas in Miami-Dade, Fairfax County, and other places that had the unfortunate distinction of showing up on national television with long-lines in 2012 were in co-located polling places. In response to problems at many of these co-located polling places, Fairfax County’s after-action report recommended that “co-located precincts should be avoided” but recognizing that it is sometimes impractical or impossible to avoid them, recommended best practices to mitigate the risk of problems.

RNLA does not formally oppose co-location of precincts in all instances; however, we believe that they should be avoided whenever possible in favor of unique physical polling places for each precinct. This approach does divert somewhat from PCEA’s recommendation that states establish vote centers to consolidate precincts into vote centers when possible. However, we believe that the lessons learned from those places with the very longest lines point to the need for smaller precincts, not larger, super-sized ones. When officials cannot avoid co-located or very large precincts, then RNLA adopts the Fairfax County recommendations that officials take the following steps to mitigate problems:

- Co-located precincts should be adequately staffed so that a person can be located outside voting rooms to direct voters to the correct room and/or correct line. Pages could be especially useful in co-located precincts, but if pages are not available, then a poll worker should be assigned to work outside if possible;
- Precinct maps must be posted outside each room so that voters can determine which room is their polling place;
- Signage should be improved to assist voters in finding the correct room; and
- Aggressive advertising for how voters can find or confirm their precinct and polling place after they are already inside the building, such as a “mobile app” that allows voters access to their voter information from their mobile devices.³⁴

A common theme among precincts with long lines and other problems is their large number of registered voters and their co-location with other precincts. While not all precincts with lines are too large, nor do all precincts with a large number of voters have lines, there is a greater probability for problems and election officials have a smaller margin for error if other problems exist. States and local election districts need to closely monitor population shifts and growth within their counties, especially leading up to high-turnout elections and ensure that there is a proper balance of voters in their precincts. When precincts do grow too large and re-precincting

is not possible, then decision-makers need to devote extra resources, including experienced poll workers, more voting booths, and voting equipment to handle the larger volume of voters.

VI. Early Voting: An Expensive Non-Solution to Lines

In its final report, the PCEA came out strongly in favor of expanding opportunities for pre-Election Day voting (no excuse absentee voting, early voting, etc.). The Commission believes that early voting, in all its forms, is “here to stay.” While that may be true, it is not a compelling policy reason why other states should adopt it. The RNLA Task Force disagrees that early voting will have a positive impact on our electoral system or make the voting experience better for voters, and we respectfully disagree with the PCEA’s conclusions on early voting. If early voting actually accomplished the goals that its proponents so stridently claim, then perhaps RNLA could be persuaded to agree with PCEA’s recommendations. However, we cannot recommend its further adoption when weighing its high costs against whatever convenience it may incur for voters. Instead, RNLA argues that states should focus on improving absentee voting for voters that require it for reasons other than convenience and devote resources that would go to early voting to adopt best practices for polling place and resource allocation management.

A. Not a Line Problem-Solver

Early voting is not a solution to long lines. There are states with early voting that had precincts with exceptionally long lines (Florida for example) and there are those without no-excuse or early voting that did not have lines (Alabama, Mississippi, others, particularly in the Northeast). Similarly, some areas with a high percentage of absentee voters still had long lines and some areas with low numbers of absentee voters regardless of the law, had few problems on Election Day. Supporters of early voting would argue that the more people voting before Election Day means fewer voters showing up on Election Day and consequently less people on site to cause lines. Perhaps in theory but observations from the 2012 General Election do not back that up. In Virginia, many of the precincts with long lines, particularly in Northern Virginia, had above average absentee voting rates, with over 20% of voters casting their ballots before Election Day. One precinct in Arlington County had over 30% of their votes cast by absentee ballot in advance of election day, one of the highest rates in the state, and yet still had voters waiting up to two hours in line.³⁵ In Miami-Dade County there were extraordinarily long lines even after several days of early voting. If early voting was so successful at preventing long lines then why do we still have problems in so many places that have adopted it or where such a high percentage of voters vote before Election Day?

In reality, most of the problems with lines can be attributed to systematic registration problems, failure to properly plan for Election Day, a lack of resources, and in many cases, too many voters assigned to a particular precinct. In addition to adopting the other best practices recommended by the PCEA, the most efficient way to ensure less gridlock is to reduce precinct sizes, thereby guaranteeing less people voting at a precinct on Election Day. As discussed above in the recommendation to reduce precinct size to a manageable level, many of the precincts with some of the worst lines in the country had far too many voters, particularly in Miami-Dade County.

If nothing else, the post-mortem of the 2012 General Election revealed the need to focus on the basics of Election Day administration. As the PCEA pointed out repeatedly, the long-lines were typically a result of management problems which can be solved with proper planning and resource allocation and upgrades to our voter registration system. Anything that distracts from the main focus of absentee voting for those who need it, the close of registration books, and the monumental task of preparing for Election Day is simply that, a distraction. Local election officials have finite resources and are already stressed to the breaking point with juggling poll worker training, press inquiries, programming and testing voting equipment, and the other planning that needs to take place on the eve of an election. Being required to administer a robust early voting program is simply going to draw resources and attention away from those preparations.

The fact is that many voters still want to or find it more convenient to vote on Election Day so crowds are not going away. Accordingly, election officials need to be ready for whatever turnout Election Day may bring. Relying on early voting to disguise what are typically management and resource allocation problems is unwise. Policymakers who implement the recommended early voting as a cure-all should not be surprised when the same Election Day problems continue to occur, resulting in lines and gridlock at the polling place. Instead states should invest their resources on Election Day and should closely review the recommendations by the PCEA, this report, and other best practices publications for resources on how to avoid lines.

B. Early Voting is Expensive

In the section of its report on early voting, the PCEA spends little time discussing the increased costs certain forms of early voting have on state and local governments. According to the PCEA Report, the average early voting state allows for 19 days of early voting before Election Day. While early voting states differ on how many hours and on what days to offer early voting, early voting is requiring election administrators to incur the costs of running multiple Election Days with officials at the local level typically bearing the brunt of the expenses.

We need only take a quick look around the country to see what early voting is doing to the budgets of state and local governments. In the deep blue state of Maryland, voters approved a constitutional amendment in 2008 to establish early voting, with implementation for the 2010 elections. For that first round of early voting in 2010, Maryland taxpayers paid an additional \$2.6 million for their elections. The cost for 2012 was expected to be similar.³⁶ Miami-Dade County has estimated that each early voting site costs an estimated \$20,000 per day.³⁷

Another deep blue state, New York, has been another battleground between supporters and opponents of early voting, and most of the bipartisan opposition to early voting is focused on the additional costs county governments would incur if early voting were implemented by the state legislature. In one county alone, early voting was estimated to cost taxpayers an additional \$1.5 million per election.³⁸ At a recent meeting of the Election Commissioners Association, a bipartisan group of county elections commissioners passed a resolution in opposition to Assembly Speaker Sheldon Silver's early voting bill.³⁹ This came after the state's nonpartisan Association of Counties came out against the same proposal because of the increased costs on

county governments.⁴⁰ Other states' nonpartisan Municipal Leagues and Associations of Counties have regularly opposed early voting legislation due to the high expenses incurred by local election jurisdictions.⁴¹

RNLA supports greater state and local funding for elections. Imagine the good these millions of dollars going to fund early voting could have on voter registration upgrades, purchases of new voting equipment, and other upgrades to the electoral system? Whatever policy decisions states make on early voting, RNLA agrees with the PCEA Report recommends that any expansion of early voting opportunities not take place at the expense of running the election on Election Day.

C. Does Not Increase Turnout

While it's easy to see the downsides to early voting, it's awfully difficult to see the benefits. Early voting advocates frequently claim that early voting makes voting easier and because voting is easier, more voters will turn out to vote. In 2008, a University of Wisconsin-Madison study found that early voting does not increase voter turnout. In fact, the study concluded that early voting actually decreases voter turnout.⁴² Additionally, a 2003 study conducted by three professors from Reed College found that voter turnout increased at an insignificant level because of early voting.⁴³ With these effects on voter turnout, is early voting really worth the additional costs imposed on state governments, local governments, and most importantly, taxpayers?

D. Primary Beneficiaries: Campaign Consultants

There is another player in the political world that incurs additional expenses because of early voting – the campaigns. Without early voting, campaigns know exactly when the vast majority of voters will be casting their votes. This allows campaigns to spend their advertising and get out the vote resources in the most effective possible manner. If, however, voters can cast their ballots on any one of the, say, 19 days before Election Day, campaigns can only guess when a voter might vote. This leads to longer and costlier campaigns, more negative advertising, and more annoying phone calls to voters. Most Americans dread the onslaught of late-October political advertisements. Early voting will force Americans to see and hear more of these ads. While political consultants may savor the extra days of campaigning, American voters do not.

And early voting does not just increase campaigns' costs. It also makes it more difficult for smaller and underdog campaigns to obtain the volunteers necessary to do all the last minute campaign work that is traditionally done on or just before Election Day. When Election Day is every day for two weeks, it's not easy to find volunteers who will devote that much time to a campaign. The big, well-funded campaigns might not be adversely affected by early voting, but the ragtag, long-shot campaigns will suffer. Many Americans are cynical about the non-stop, expensive campaigns that make it exceptionally difficult for candidates that do not have the financial resources to compete in a month-long election. We should be wary about promoting a system of voting that gives better funded campaigns an additional leg up.

E. Convenience vs. Citizenship

Voting should be about more than convenience; voting is about citizenship. By turning Election Day into Election Month through early voting, we are cheapening the voting experience and cheapening citizenship. As George Will wrote, “it is not admirable to scatter to private spaces, and over many weeks, the supreme act of collective public choice. The coming of the public into public places for the peaceful allocation of public power should be an exhilarating episode in our civic liturgy.”⁴⁴

Part of the voting process requires a voter to educate himself or herself on the issues facing the community, state or country. When a voter in an early voting state casts his or her ballot weeks before Election Day, they’re putting convenience over thoughtful deliberation. While this also happens with voters who vote on Election Day, we should not be encouraging it in our country.

There are few shared civic experiences left in America. Election Day – the act of casting a ballot alongside your family, friends, and neighbors after having taken a good look at all the candidates running for office is really one of the few common civic experiences left. Early voting destroys that civic experience and turns voting into just one more chore we all must do.

F. Focus on Those Who Need to Vote Absentee

To be clear: there is a difference between necessity and convenience. For many Americans, it is simply impossible to cast a ballot at their polling place on Election Day. Members of the Armed Forces, overseas voters, the disabled, college students, and those who travel for work frequently find it difficult or impossible to cast a ballot on Election Day. We need to accommodate the needs of these individuals through absentee voting. Instead of creating a complex and costly early voting system for voters just looking for convenience, election administrators and other policymakers need to work to make sure that the Americans who *need* to vote on Election Day are able to exercise their right to vote. While the data on early voting points to few positives, we do know that significant systematic problems exist in our absentee voting by mail procedures for those who actually need it. We should invest our energies in improving the system for these voters.

The Task Force applauds efforts like the MOVE Act, the SENTRI Act, and other recent steps taken to enable the members of the US military to cast votes while away from their homes, abroad, or in combat, and we strongly urge public officials at all levels of government to do anything possible to enable these brave Americans to exercise their rights.

In short, this Task Force strongly disagrees with the PCEA’s determination that early voting is a positive change to the American electoral system. We strongly urge legislators and other policymakers to oppose any efforts to implement or expand early voting.

VII. Continued Need to Improve Military Voting Efforts

The RNLA Task Force appreciates PCEA addressing the continued obstacles to our military and overseas citizens (also known as “UOCAVA voters” after the federal Uniformed and Overseas Citizens Absentee Voting Act) to voting and generally agrees with PCEA’s recommendations to better serve these voters. While the U.S. has made significant strides in recent years, helped in part by the enactment of the 2009 Move Act, more can be done. First, RNLA agrees with the PCEA’s recommendations that states and election jurisdictions should “provide a targeted website” for UOCAVA voters and generally do a better job explaining the registration and absentee voting process and providing materials online. Related, states need to leverage the internet to allow UOCAVA voters to change their registration address electronically to maintain accurate and up to date registration records for our UOCAVA voters. DOJ needs to ensure compliance with our federal overseas and military voting laws, including by suing non-compliant jurisdictions when needed.

The PCEA report outlined statistics regarding states’ shortfalls in providing quality online materials to UOCAVA voters. As the data shows many states are simply not providing adequate information and materials online. Accordingly, states and local election jurisdictions need to make this issue a higher priority. States need to display relevant overseas voting information prominently on their websites, explain the procedures in as simple terms as possible, and timely update information and dates when required.

The average overseas military voter may not know what a Federal Postcard Application (FPCA) and Federal Write-In Absentee Ballot (FWAB) are nor are they likely to have memorized the applicable deadlines for voter registration and absentee voting in their state. States need to convey this information online clearly and simply so that voters do not give up because they perceive the process to be too complex. States also need to make very clear that UOCAVA voters can request the delivery of their ballots via email. Moreover, state and local websites should also prominently display contact information for a staff member to provide assistance who is trained and knowledgeable on overseas voting. Many of our military and overseas voters have complex and unique scenarios that may require one-on-one problem solving from a state or local official. If states need assistance communicating this content effectively then they should work with the Federal Voting Assistance Program (FVAP), Military Voter Protection Project, state National Guards, and other organizations with expertise in communicating these issues and who are committed to improving overseas voting.

Related, UOCAVA voters would greatly benefit from the ability to update their registration information electronically. Virginia State Board of Elections Secretary Don Palmer in testifying before Congress on the proposed Safeguarding Elections for our Nation’s Troops through Reforms and Improvements Act (SENTRI), noted, “[t]he members of the Department of Defense (DOD) are a highly mobile population of voters and because of this mobility, inaccurate addresses and information lead to significant delays in ballots reaching the military or result in undeliverable ballots where the ballots never reach the voter.”⁴⁵ There are fewer more transient voters than those in our military and mailing in paper change of address requests is simply not feasible or efficient for those who may need to change their registration and/or mailing address on a regular basis and without much warning. Making registration changes easier for our UOCAVA voters will also mitigate a potential security risk. Absentee ballots are sent automatically for subsequent elections to certain voters who apply to vote absentee through an

FPCA. Some states will send ballots for all following elections over a certain period of time, often for an entire federal election cycle. If voters are unable to update their registration information then these ballots are more likely to be mailed to places where the voter no longer resides, thus creating the potential for mischief in addition to the more obvious problem of the voter not receiving his or her ballot.

Some of the good recommendations from the PCEA report and others are included in the proposed SENTRI Act, currently before Congress. The RNLA Task Force endorses some concepts included in SENTRI Act.⁴⁶ SENTRI proposes improvements to overseas and military voting, particularly for voter registration, an overlooked issue for our military and overseas voters. Among SENTRI's highlights is a repeal of the hardship waiver provided for in the 2009 MOVE Act which allows states to request an exemption from the Department of Defense (DOD) from the 45-day pre-election absentee ballot mailing deadline for federal elections. Currently, states granted a waiver get de facto permission to disenfranchise their UOCAVA voters since ballots mailed overseas after the 45th day run a high risk of not being returned in time to be counted. While some states enacted laws to require their local jurisdictions to count ballots mailed to voters late and returned after the deadline, the MOVE Act did not require it. SENTRI also requires states to send any ballots not mailed by the 45-day deadline via express delivery, something the MOVE Act recommended but did not require. SENTRI addresses some of the same issues outlined in the PCEA report for the need to improve registration and voting opportunities through online systems making it easier for our military voters to update their voting information electronically.

SENTRI begins to tackle some of the confusing components of the absentee voting process, particularly the lack of uniformity for the use of certain absentee and registration application forms. The PCEA points out voters and election officials' confusion resulting from different state standards for the use of FPCAs and FWABs. The PCEA highlights these specific problems and they do not need to be explained again in depth in this report, but we agree that confusion regarding issues is an impediment to overseas voting. For example, uncertainty regarding the effective duration of an FPCA and whether registration through an FPCA results in permanent or temporary registration creates an unnecessarily complex voting regimen for our UOCAVA voters, those who would benefit most from a straightforward and simple process. SENTRI takes aim at one of the areas of confusion by providing a uniform one federal election cycle timeframe for the duration of an FPCA. While different and confusing state standards in other areas remain, the uniform FPCA duration is an excellent start and will ensure that ballots will be mailed to UOCAVA voter applying via an FPCA for an entire federal election cycle.

Additionally, the Department of Justice needs to remain vigilant in enforcing federal laws pertaining to military voting. Even in 2013, four years after passage of the MOVE Act, some state and local election officials have still not come into compliance, evidenced by three enforcement actions DOJ took in 2013. When states fail to get their ballots sent by the 45th day before an election, DOJ needs to move swiftly to enforce compliance.

In sum, states' adoption of PCEA's recommendations, embracing some of the concepts included in the SENTRI Act, and vigorous Department of Justice enforcement of existing federal

military and overseas voting laws should help to build on the improvements made in recent years for our overseas and military voters.

VIII. Voting Equipment and Technology

A. Overview

As a fundamental principle, RNLA believes that there is no technology need, application or implementation which requires a federal role in the development, purchase or use of voting systems. RNLA believes that the attempted development by EAC of the HAVA Voluntary Voting System Guidelines Standards (VVSG Standards) and certification and testing standards failed, proving that top-down federal management of voting technology through attempted issuance of technology standards is not only contrary to our system of federalism and decentralized form of voting in America, but also counterproductive. Rather, RNLA believes voting technologies and all relevant standards should be developed and implemented like any other technology product in the competitive American economy. Necessary performance standards should be developed by using the voluntary consensus standards approach used throughout manufacturing. Congress should continue to fund and make available services of the National Institute of Standards and Technology (NIST) to assist election administrators and manufacturers as a convening and research organization. However, development of performance standards and related testing and certification procedures can best be achieved by experienced consensus standards organizations, such as American National Standards Institute (ANSI) and the Institute of Electrical and Electronic Engineers (IEEE), or by professional organizations such as the National Association of State Election Directors (NASSED), National Association of Secretaries of State (NASS) and the International Association of Clerks, Recorders Election Officials and Treasurers (IACREOT). RNLA believes state and local jurisdictions should adopt testing and certification requirements based on voluntary consensus standards they prefer, and be left to finance and purchase voting systems of their choice based on their state laws without any federal regulation or intervention. Finally, RNLA believes the EAC, if continued as a federal agency, should no longer have authority or funding to engage in voting system development.

B. The EAC Obstructed Innovation

As a result of the 2000 *Bush v. Gore* recount, election authorities experienced a dramatic increase of interest on the part of voters and local oversight bodies in obtaining more usable and secure voting systems. If the federal government had simply left matters in the hands of local governments and election technology manufacturers, the market would have rationally responded to this demand with rapid development and availability of new, updated technologies. Unfortunately, certain requirements in HAVA in combination with the inability of EAC Commissioners to timely and competently perform their statutory duties severely deformed the marketplace – and obstructed the normal market incentives for private enterprise to innovate.

HAVA required the distribution of significant federal funding to local election authorities and required that it be used to purchase and deploy new voting systems by a date certain. The

product inventory of election technology manufacturers at that time was in most cases better than currently deployed systems. However, such immediately available products did not always include capabilities demanded in the post-recount environment. For instance, Direct Record Electronic (DRE) systems typically did not include the capability to print paper receipts to document individual votes. The intent of Congress in passing HAVA was to have the EAC develop new technical standards in time so that new voting systems purchased with the Federal funding would have cutting-edge security, auditability, and usability features.

C. HAVA Funds Were Spent on Obsolete Technology

That did not happen. The appointment of EAC Commissioners and employment of their staff members were delayed. Once appointed, rather than asking Congress for an extension, the EAC Commissioners insisted on distributing the federal funding to local election authorities even though the new technical standards had not yet been developed. This caused state and local authorities to purchase the then-best available late-1990s technology, which was often nearly out-of-date at the time it was acquired. So a principal technology development failure was that HAVA funds were effectively required to be spent *prior* to the development of new standards – the voting systems purchased only partly addressed technical problems identified during the *Bush v. Gore* recount. Election authorities are often under-funded, and only occasionally are able to obtain funding to update their voting systems. As a result, many voting systems acquired with HAVA funding were nearly-obsolete, and many are still in use today.

D. The EAC is Incapable of Developing Standards

Election technology manufacturers benefitted financially from the HAVA-funded explosion of equipment purchasing, and were consequently in a better financial position to develop their next generation of voting systems. But, the manufacturers were effectively prevented from doing so by a dysfunctional EAC – whose Commissioners were unable and unwilling to do the technical and policy work needed to issue technical standards.

The EAC's efforts to develop updated equipment standards went forward. NIST received funding from Congress, and its personnel convened principal manufacturing and user stakeholders. NIST also formed a Federal Advisory Committee known as the Technical Guidelines Development Committee (TGDC) comprised of private citizens of national-class expertise in the areas of security, usability, technical performance, and other relevant subjects. The TGDC members and professional technology and standards professionals from NIST developed a series of VVSG proposals (VVSG 2005, VVSG 2007) for consideration by the EAC Commissioners.⁴⁷ But instead of responding quickly to the proposed VVSG standards, EAC commissioners chose to over-emphasize other aspects of their duties, became mired in partisan and personal rivalries, and consequently slowed – and eventually halted – most aspects of research, standards development, and certification and testing. Attempted interference by individual EAC commissioners with the conduct and conclusions of NIST research, and their willingness to divert technology research funding to unrelated uses ultimately caused Congressional appropriators to provide the relevant research funding directly to NIST. The EAC

displayed bewilderment and incompetence in its attempted consideration and processing of NIST-developed and TGDC-recommended VVSG Standards. Despite some good showings by individual commissioners, the EAC was never able to establish what local election authorities and the manufacturing industry needed – a clear set of updated performance standards that could enable a manufacturer to confidently invest funds in the development of testable voting systems a local election authority would want to purchase.

E. The EAC Should Be Removed from the Standards Process

The attempt by the EAC to develop and mandate technology standards for voting systems is an example of when federal over-regulation and administrative agency dysfunction has nearly ruined an industry. Prior to enactment of HAVA, the election technology manufacturing industry in the United States was relatively healthy. Companies sold hardware and software products in a competitive marketplace. Major technology companies, such as financial industry technology titan Diebold, engaged in the business. Sales to election authorities were certainly challenging as a result of election authorities having either overly-conservative views toward new technologies, or lack of sufficient funding to purchase new systems. But, the industry was clearly positioned to provide necessary innovation and product in response to market demands.

The ability of manufacturers to raise capital funds to invest in research of new election technology innovations was consequently deformed, because there was no assurance that resulting innovations could be tested against updated standards. The EAC’s standards were formally labeled “voluntary”. This was a misnomer, because manufacturers and local election authorities regarded them as mandatory. No local authority was willing to purchase a system lacking certification to the updated standards mandated by HAVA and, as promised by the EAC. No manufacturer was willing to invest sufficient funds to develop entirely new product lines without the guidance of the promised standards. The PCEA gets this right: it truly was a regulatory “netherworld” created by a dysfunctional EAC.

Since this regulatory meltdown occurred, frustrated and disbelieving state and local authorities have had no choice other than to purchase what is available in this deformed market. Manufacturers have had to reverse-engineer their innovation activities by using some updated Federal Election Commission equipment standards (originally adopted in the 1980’s), and the few VVSG Standards adopted by the EAC. An example of a typical enhancement is add-on paper receipt-printing devices. But generally, election equipment manufacturers have no choice other than to sell the outdated technology they have available, because the EAC failure has disrupted the normal innovation incentives.

RNLA agrees with PCEA observations that the standards development, testing and certification process is broken and needs to be fixed. However, we believe that there is no role for EAC, and Congress should terminate all of its related statutory responsibilities in this area. We recommend that the leaders of Congress take all necessary steps to prevent continued EAC activities in this area. Further, we believe that no federally-appointed political panel should again engage in a voting system standards setting process. The dysfunction of federal control of the process is likely to lead to continued partisanship and incompetence.

F. States Should Use Voluntary Consensus Standards

In sum, RNLA believes voting technologies and all relevant standards should be developed and implemented like any other technology product in the competitive American economy. Necessary performance standards should be developed by using the voluntary consensus standards approach used throughout manufacturing coupled with states' adopting their own certification standards to fit their particular needs. Congress should continue to fund and make available services of NIST to assist election administrators and manufacturers as a convening and research organization, consensus standards development organizations, and testing laboratories. However, development of performance standards and related testing and certification procedures can best be achieved by experienced consensus standards organizations, such as ANSI and IEEE, or by professional organizations such as NASED, NASS, and IACREOT.

IX. Conclusion

The RNLA is pleased that there appears to be in many areas a bipartisan consensus on how we can improve our nation's elections to ensure a pleasant voting experience for our voters while protecting the integrity of the ballot. The PCEA report and recommendations demonstrate the substantial amount of common ground on these issues. RNLA hopes that Democrats and their allies on the left can embrace some of the common-sense proposals, specifically enhanced voter registration list maintenance through interstate data sharing, as the bipartisan PCEA so heartily endorses. The goal by both political parties should be development of a system of voter registration and voting which assuages the competing concerns of access and integrity so each side of the political spectrum feels its respective concerns in that regard are met.

Moreover, we are wary about programs that essentially waive the white flag of surrender on efforts to improve the traditional approach of voter registration coupled with voting at the local polling place on Election Day. We believe that proposals like universal registration, election or same day voter registration, and the increased emphasis on early voting and vote by mail send the message that we should scrap rather than fix a system that has served our nation exceptionally well for most of our history. With a few exceptions, particularly regarding early voting, PCEA outlines the necessary steps that election officials and policymakers can take to reform and improve our electoral system. The additional recommendations in this report will further help election officials and decision-makers in this process.

Endnotes

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² The 2001 report by The National Commission on Federal Election Reform, “To Assure Pride and Confidence in the Electoral Process” is available here: http://web1.millercenter.org/commissions/comm_2001.pdf; the 2005 report “Building Confidence in U.S. Elections” is available here: <http://www1.american.edu/ia/cfer/>

³ To Assure Pride and Confidence in the Electoral Process, pg. 22.

⁴ Ibid at pg. 23.

⁵ Building Confidence in U.S. Elections, pg. 1

⁶ “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration”, Introduction. The PCEA report, released in January 2014, is available here: <http://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

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¹⁰ DOJ’s failure to properly enforce HAVA is documented by author and former DOJ whistleblower J. Christian Adams in his 2011 expose, *Injustice: Exposing the Racial Agenda of the Obama Justice Department* Adams, Christian. *Injustice: Exposing the Racial Agenda of the Obama Justice Department* Washington, D.C.: Regnery Publishing.

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¹² HAVA section 303(a), as mandated by HAVA section 401 (42 USC § 15511).

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¹⁵ Not all states permit the sharing of social security number (SSN) information in the voter record, including last four SSN. Federal Privacy Act restrictions further limit states’ use of SSN information for voter registration purposes.

¹⁶ Annual Report on Voter Registration List Maintenance Activities, Report to the House and Senate Committees on Privileges and Elections, Virginia State Board of Elections, January 6, 2014; available at: [http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD442014/\\$file/RD44.pdf](http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/RD442014/$file/RD44.pdf)

¹⁷ Inaccurate, Costly, and Inefficient, Evidence That America’s Voter Registration System Needs an Upgrade; Pew Center on the States, February, 2014; available at: http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Upgrading_Voter_Registration.pdf

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²⁰ “Congressional candidate charged with illegal voting,” *The Baltimore Sun*, December 20, 2012, available at: http://articles.baltimoresun.com/2012-12-20/news/bs-md-wendy-rosen-charged-20121220_1_congressional-candidate-general-election-voter-fraud

²¹ States are in varying degrees of compliance with federal Real ID requirements.

²² Additional information regarding EVVE is available at the National Association for Public Health Statistics and Information Systems (NAPHSIS) website here: <http://www.naphsis.org/Pages/EVVE.aspx>; additional information regarding STEVE is also available at NAPHSIS here: <http://www.naphsis.org/Pages/CooperativeAgreementforStateVitalStatisticsImprovement.aspx>

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²⁴ “Nearly 25 percent of MVA voter registrations fail,” *The Baltimore Sun*, February 20, 2011, available at: http://articles.baltimoresun.com/2011-02-20/news/bs-md-voter-registration-20110220_1_voter-rolls-new-voters-motor-voter-act

²⁵ 42 U.S. Code § 1973gg–6; States typically use information from the United States Postal Service (USPS) National Change of Address database, election mail returned undeliverable from USPS to election officials, and other reliable sources of data to initiate the process described above.

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²⁹ Florida's chief elections official to Miami-Dade County: Draw new voting precincts now,” *The Miami Herald Blog*.

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³¹ *Ibid.* pg. 8.

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⁴⁴ “Farewell, Election Day,” George F. Will, *Newsweek*, available at: <http://www.newsweek.com/george-f-will-farewell-election-day-88705>.

⁴⁵ “Improving the Registration, Absentee Request and Voting Process for the UOCAVA Voter.” Testimony on the Record by Don Palmer, Secretary, State Board of Elections, U.S. Senate Committee on Rules and Administration January 29, 2014; available here: http://www.rules.senate.gov/public/?a=Files.Serve&File_id=bcc45672-7b96-4df0-a7b8-3c38c25c2f55

⁴⁶ A link to the SENTRI Act is available here: <http://www.gpo.gov/fdsys/pkg/BILLS-113s1728is/pdf/BILLS-113s1728is.pdf>

⁴⁷ 2005 Voluntary Voting System Guidelines and 2007 Voluntary Voting System Guidelines; available at http://www.eac.gov/testing_and_certification/.