

Testimony of John C. Fortier\*

before the Subcommittee on Elections of the House Administration Committee

“H.R. 672 – To Terminate the Election Assistance Commission”

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\*John C. Fortier is a political scientist, who has been a research fellow at the American Enterprise Institute and principal contributor to the AEI-Brookings Election Reform Project. This week, Fortier is transitioning to a new position as the director of the Democracy Project at the Bipartisan Policy Center. The views expressed here are his own and not the official position of the American Enterprise Institute or the Bipartisan Policy Center.

Chairman Harper, Ranking Member Brady, and members of the Subcommittee,

Thank you for inviting me here to discuss the future of the Election Assistance Commission.

You are to be commended in this time of fiscal peril for looking carefully at every line item in the federal budget. You are also right to make a serious accounting of the functions of the EAC and to make tough choices about whether these functions should be preserved, ended or redirected.

The EAC has a different set of missions today than it did when it was created by the Help America Vote Act. H.R. 672 recognizes the change in mission and while disbanding the EAC tries to preserve the core functions of the NVRA survey, the voting system testing and certification program, research for UOCAVA, and maintaining a clearinghouse of information on voting system guidelines.

I welcome all of this rethinking. The EAC needs a fresh look. But I will focus my testimony on two areas: (1) the need for preservation of a research function and in particular the Election Administration and Voting Survey, a biennial post election survey on election administration; (2) my concern that election administration issues can easily be lost sight of if they become part of a larger institution such as the Federal Election Commission and my recommendation that you consider preserving core functions within a leaner, meaner EAC. Or, as a fall back, if you choose not to retain an independent agency such as the EAC, you should beef up the authority and prominence of an election administration section within the FEC.

One way to consider the place of the EAC today is to remember how and why it was created.

In the aftermath of the controversy in Florida, this committee performed heroic work, assembling a parade of experts in election administration over the course of a year and a half and crafting a bipartisan compromise in the Help America Vote Act that did much to improve the state of election administration. The act is not perfect, but given how strong the passions were following the 2000 election, the accomplishment is remarkable.

With hindsight it is easy to forget how hard it was for this committee to gain a perspective on what was wrong with our election administration system and how to improve it. In a sense, the time from 2001 to 2003 was a period of time for Congress and this committee in particular to create a base of knowledge for policy makers to work from.

Election administration was ignored by many. Elections often go off without a hitch, and the running of an elections was seen as an obscure art practiced by narrowly specialized election officials. When Congress did address election issues, they were usually very specific, stand-alone issues such as voter registration. After the 2000 election controversy, Congress and this committee therefore had to re-educate itself even about the basic state of election administration in the states, who did what and how all of the pieces fit together.

And if Congress had to educate itself about the state of election administration, academia was not in any better position. The academic study of election administration was limited to a very few political scientists and legal scholars. Most of political science and law looked down upon people who studied these areas.

So from 2001 to 2003, Congress, a series of prominent private commissions, and scholars rediscovered election administration. We had a real debate about how our election system operates. We did not fix everything. In fact, we did not agree exactly on what needed fixing.

But both at the federal and state level, we have had informed debate that has changed the way we hold elections.

It is easy, however, to see that the momentum developed from the serious study of our election system has been lost. Foundations are less interested in funding research on election administration issues and scholars less interested in studying them. We are still well ahead of where we were in 2001 in terms of a broad understanding of the election system, but we have begun to slip back.

For this reason, I believe it is essential to retain a robust election administration research function. Whether the research is conducted directly by EAC staff or parts of it contracted out to outside researchers, it is important to have a dedicated in house research staff who know the issues and can continue to put out products such as the NVRA Survey, UOCAVA reports and the comprehensive Election Administration and Voting Survey and other reports.

Even if we were to adopt the current version of H.R. 672, some research staff would be necessary just to put out the NVRA survey and UOCAVA reports.

I hope you consider retaining the Election Administration and Voting Survey. This survey provides a broad view of how elections are being held across the states. It provides valuable information on the quantity of absentee and early voting, the number of provisional ballots cast and counted, the types of voting equipment used, etc.

And much of this information is very difficult to get given the fragmented nature of the way we run elections. Take for example the phenomenon of absentee and early voting, which I studied in *Absentee and Early Voting: Trends, Promises and Perils*.

States have different definitions of absentee voting. Some call absentee voting “early voting.” Others call in person early voting “absentee voting.” Some states have long periods of early in person voting; others have several periods of early voting, with different voting sites available during each period.

In addition to the definitional problems, election administration data is always well reported. In the beginning, the EAC’s Election Administration and Voting Survey did not always overcome this difficulty, but it did significantly improve the rate at which states and localities report their data. It is an excellent starting point for researchers.

In my early research on absentee and early voting, I remember seeing blanks on the 2004 and 2006 EAC survey in the fields of how many absentee votes were cast in a particular state.

When I called the state itself, I was told that they did not have statewide numbers of absentee ballots cast and that I would have to call each of the several hundred towns to get their individual results and then add them together to get a statewide total. The lack of proper data collection and sometimes the lack of will to report it were problems faced by the EAC survey.

But each election cycle, the survey has improved as experienced staff has become more familiar with the pitfalls of data collection and has developed contacts in state and local offices. The EAC has also become more aware of some of the definitional problems as to what is an absentee vote by mail and what was an in person early vote, and subsequent surveys improved on the earlier ones.

This institutional knowledge would be lost if the Election Administration and Voting Survey were cut.

And while the Election Administration and Voting Survey provides valuable information on its own, it also directly provides data for reports on UOCAVA voting and the NVRA survey. While it might be possible to disentangle the data collection on UOCAVA and NVRA from the election administration data, they are now interrelated, and eliminating the election administration survey might undermine the issuing of UOCAVA and NVRA reports.

Could the private sector take over this function? In certain aspects, yes. But private research organizations would have a much harder time than the EAC requiring states to standardize data or even report data at all. Private research will often piggyback on EAC collected data, not try to recreate the data collection of the EAC.

Two other points about research. First, the EAC in 2008 has issued its first biennial statutory overview report, which catalogues election laws on a number of topics in the states. This new survey also provides value for federal and state policy makers as well as private researchers.

Second, in addition to the several regular surveys mentioned above, there is the need for some additional research on specific topics. The committee is right to note that many of the reports envisioned by the Help America Vote Act have been undertaken. And it is worth considering how this type of specific issue report should best be conducted. But a simple point is that the field of election administration is changing, and there will be developments in the field, so there is a place for some new research reports. Some of these areas of study should be laid out Congress in law, but there should be at least a small capacity to conduct research in new areas.

## 2. Maintaining the Prominence of Election Administration Issues.

Recall again, how little everyone knew about election administration in 2001. A crisis drove our institutions to gather more information about elections. Without a crisis, the likelihood is that we will slip back to the days where only state and local election officials understand election administration.

For policy makers at the federal level, it is important to preserve needed information to edify the debate. At the state level, it helps our “laboratories of democracy” to be able to compare their systems to other states. And for scholars, the survey and other research provides the data for future research.

But there is a significant danger that these issues will be lost if election administration functions are moved to the FEC and then essentially forgotten as the FEC pursues its other activities relating to the financing of campaigns.

For this reason, my preference would be for a smaller and much more focused independent EAC that would engage in research, produce regular surveys, and maintain a knowledge base that would help federal and state office holders and scholars.

If, however, Congress does decide to move the remaining functions of the EAC into the FEC, then you should work to ensure that the section of the FEC dedicated to election administration is not dwarfed by other concerns. It is hard to know how to accomplish this task, as election administration issues will need the time and attention of FEC commissioners, and they already have a very full plate of issues.

Some may say that because the FEC once housed election administration functions that there will be little problem returning to the status quo. But the status quo in the year 2000 was one where Congress, state policy makers and researchers did not know enough about how elections were run. I urge you not to simply return to that status quo. Rethink the role of the EAC. Maintain a research capacity. Consider creating a smaller more focused independent EAC. Or if you decide to move the functions of election administration to the FEC, find a way to ensure that those issues are not lost among the other priorities of the FEC and its commissioners.