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Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation
"Secure, Safe, and Auditable: Protecting the Integrity of the 2020 Elections"
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Written Testimony of
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Introduction

Thank you, Chairman Richmond, for inviting me to testify before the House Homeland Security Subcommittee on Cybersecurity, Infrastructure Protection, and Innovation. And thank you to Chairman Richmond, Ranking Member Katko, and all Members of the Subcommittee for holding this critically important hearing. My name is Sylvia Albert, and I am the Director of Voting and Elections at Common Cause, a national nonpartisan watchdog organization with 1.2 million supporters and more than 25 state chapters. For nearly 50 years, Common Cause has been holding power accountable through lobbying, litigation, and grassroots organizing. Common Cause fights to get big money out of politics, enhance voting rights, foster an open, free, and accountable media, strengthen ethics laws to make government more responsive to the people, ensure a fair Census, and stop gerrymandering.

Common Cause was founded by John Gardner, a Republican, at a time when Republicans and Democrats worked together on the most pressing issues of the day. During the 1970s, Common Cause worked with many Members of Congress -- Democrats and Republicans alike -- who put country over party, and we were able to help pass major democracy reforms that sought to correct some of the most egregious abuses of power, including the Federal Election Campaign Act, the Ethics in Government Act, and Voting Rights Act reauthorizations, which are still extremely consequential to this day.

The COVID-19 pandemic presents an unprecedented and different kind of challenge to our democracy. Under normal circumstances, conducting elections is a collection of choreographed large scale productions. With more than 10,000 election jurisdictions nationwide, our decentralized voting system is in the hands of local and state election officials. While the

mechanisms and rules vary across the country, there is one thing that is uniform - <u>there is no such thing as a perfect election</u>. Voters' experiences reveal the cracks in the foundation that infringe on their right to vote. These cracks can be seen in the adoption of policies that create significant barriers to voting for certain individuals, especially Black and Brown voters. They can be seen in election administration choices that lead to long lines, polling place closures, and ballot rejections at higher rates in Black and Brown communities. These cracks have always existed. The crisis we are currently facing is exposing the weaknesses in the system that have previously been hidden from much of the electorate. COVID-19 is exacerbating these cracks and widening the chasm between those with access to the ballot and those with significant barriers to that access. Without proper funding, guidance, and preparedness, the problems seen in previous elections are going to be just the tip of the iceberg this November.

2020 Primaries

The 2020 primary season gave us a small preview of the problems to come. Keeping in mind that only a small percentage of the electorate participates in primaries, we know that the issues we saw will grow exponentially if proper preparation isn't made before November. The problems we saw did not exist in a vacuum. Each issue, from poor election management, to faulty voting machines, to lack of poll workers, affects each other. There is neither one problem nor one solution to ensure a safe, secure, free, and fair election. However, by understanding the compounding issues, we can work to eliminate the barriers voters face from making their voices heard.

As a member of the Election Protection coalition, a national group of national and local organizations that help voters who experience problems casting their ballots through a suite of vote protection hotlines and other tools, we at Common Cause have seen many of these issues play out not only in the last few months, but in all recent elections. The COVID-19 pandemic has only made problems worse.

Polling place consolidations
As state and local governments dealt with a dramatic increase in mail-in voting, a shortage of poll workers, and attempts to follow public health guidelines, we saw many polling place consolidations across the country. Overconsolidation in the current environment can have drastic results.

[Pennsylvania's two most populous counties](), Philadelphia and Allegheny, shifted more than 2,100 polling places open in a typical election to fewer than 500, resulting in confusion, long lines, and inaccessibility for voters with disabilities. In addition, the choices with respect to consolidation were not done equitably, or with regard to the disparities in mail ballot applications. In some counties, such as Allegheny County, mail ballot applications were more likely received from white voters, so non-white voters were faced with voting in-person at more consolidated locations.

In New Mexico, only 381 out of the 548 polling locations were open, which was particularly challenging for the Native population that is suffering from COVID-19 at a much higher rate than the rest of the state. In Rhode Island, only 47 polling places of the 144 that were open in 2016 were available to voters. In Washington, DC, only 20 of the 144 polling places from 2016 were open. In Nevada's June 9th primaries, which was conducted primarily by mail, only three polling places were open for the Las Vegas area's 1.3 million voters, contributing to long lines. In Richland County, SC, polling place consolidation coupled with poll worker shortages led to long lines for the state's June 9th primary. Polling place consolidations in Wisconsin for the state's April 7th elections received widespread media coverage because of the drastic changes. In Milwaukee, just five of the normal 180 voting locations were open, and in Green Bay, only 2 out of the normal 31 were open.

These are just not facts and figures either. These problems affect real people and voters across the country. Amina M., a Wisconsin voter who had given birth only 2 weeks earlier, waited over 2 hours in line in Milwaukee, fearing for her health. Layato G, a voter in Fulton County, Georgia, told Common Cause her story during our election protection efforts, and her story was not unique. She requested an absentee ballot, but it never arrived so she was forced to vote in person. When she arrived at her polling place, she found out there were problems with the voting machines and ended up waiting in line to vote for three hours. When she was finally able to cast her ballot, she was forced to vote on a provisional ballot because she had been marked as an absentee voter in the pollbook. Because of this confusion, she left the polling place without assurance that her vote would even be counted.

When coupled with the roll out of new vote by mail procedures, election officials' inability to process absentee ballot applications in a timely manner, new voting machines, a lack of voter education, and a global pandemic, long lines and confusion were a foreseeable outcome of overconsolidation. Again, no issue exists in a vacuum. Decisions around polling place closures must be made in consideration of all of the other pieces of election administration, and the needs and wants of the community. Closing a polling location should never be the first option considered in changes to election administration.

Administration of Increased Vote by Mail Usage
In nearly every state that voted since the COVID-19 pandemic outbreak, we saw a dramatic increase in the use of mail-in ballots. In Washington, DC, more than 60% of ballots cast in the 2020 primary were by mail, compared to just 7% in the 2016 primary. In Iowa, 410,000 people voted absentee in the 2020 primary, compared to 38,000 in the 2016 primary. In Pennsylvania, more than 1.8 million people requested absentee ballots, compared to just over 100,000 from four years ago, thanks to Pennsylvania's recent law expanding absentee ballot use. In Georgia, election officials saw a 2,500% increase in voting by mail from the 2016 primary. In West Virginia, more than 262,000 voters requested an absentee ballot compared to 6,700 requests in 2016.

Unfortunately, states were not equally prepared to handle this influx. Voting by mail is a solution that has been tried and tested in states across the country, but many of the primary states were trying to implement and process a level of mail-in voting that took Colorado, Oregon, Washington, and Utah years to get to. To be clear, with the correct implementation, administration, and resources, running an election mostly by mail is possible, but time is running out, and states must act now.

The challenges we saw with voting by mail varied from state to state. One common issue we saw was that ballots were mailed too late to voters and that some voters did not receive them at all. In many of the states that recently expanded vote by mail options because of COVID-19, the infrastructure to process requests and produce ballots was not fully implemented to deal with the huge increase of mail-in ballot requests. Expecting voters to use the mail, election officials overconsolidated polling locations. When they were unable to fulfill the requests for absentee ballots, voters were forced to vote in person at a small number of polling places that were therefore overrun.

In Maryland, for example, ballots were mailed to all of the state's 3.5 million registered voters, but at least 1 million of those ballots were delayed in Baltimore City and Montgomery County. In both of those localities, people of color make up a majority of the population. In Pennsylvania, the complaint heard overwhelmingly from voters was that they requested their absentee ballot, had not received it, and were risking their health to vote in person. Indiana, Rhode Island, and Georgia had similar challenges with ballots being mailed late.

Another issue with rapidly expanding mail-in voting are the use of strict return deadlines, such as Indiana's deadline for voters to drop off their ballots that they could or wish not to mail by 12pm on Election Day, even though the polls didn't close until 6pm. In Virginia, over 5% of absentee ballots were rejected for arriving after Election Day. For Pennsylvania's June 2nd primary, the state's inability to process absentee ballot applications and provide voters with an absentee ballot led Governor Tom Wolf to extend the deadline for receiving mail-in ballots in some counties until Tuesday June 9th as long as they were postmarked by Election Day. As a result, tens of thousands of ballots were counted that would have been rejected.

As voters exercise their right to vote in a new manner, there are bound to be mistakes made. There is a learning curve, and implementation which educates and assists voters is vital. Unfortunately, without this, voters using mail-in voting saw their ballots rejected at high rates. In the April primary in Wisconsin, 23,000 ballots were rejected, mostly because voters or their witness missed one line on the form. These voters did not receive notice of the mistake or given an opportunity to address it - their votes were simply not counted. Wisconsin's experience is not unique. In New York, as many as 28% of ballots in parts of Brooklyn were rejected. Seven percent of absentee ballots were rejected in Kentucky's primary and 6,700 Nevada voters had their ballots rejected because officials could not verify signatures. These ballot rejections do not affect all communities equally. Disproportionate numbers of young people, people of color, and

first-time voters have their ballots rejected. We must do more to ensure that voters can vote a ballot and have confidence that it will be counted.

While all the issues we saw with mail-in voting can be solved by November with proper funding, planning, and processes, we should not lose sight of the dramatic increases in people wanting to vote by mail, which is a good thing. It is clear that many people want to vote by mail given the COVID-19 pandemic, and now election officials must make the appropriate changes to ensure they are prepared to handle a dramatic increase in mail-in ballot requests for November. State and federal lawmakers must also provide the adequate resources to make this happen, and implement policies that notify voters of any issues with their ballots, and allow them the opportunity to cure.

Technology Problems
The pandemic also coincided with the rollout of new voting equipment in various states, such as Georgia and Pennsylvania. While states with new equipment were not the only ones to encounter problems, their problems were more severe and widespread. In deploying any machinery during elections, jurisdictions must have resiliency plans to deal with unforeseen events while protecting voters' access. Election jurisdictions that only deploy machines to vote must have emergency ballots and provisional paper ballots on hand in the event that the primary voting system fails and no one can vote or only a few people can vote at a time. Unfortunately, during the primary elections, machine failures and a lack of paper backup ballots led voters to be disenfranchised.

Several states, including Georgia, Pennsylvania, and Indiana, saw voting machine glitches and failures which contributed to further long lines. Voting machine problems in Georgia were particularly a widespread problem. Issues ranged from machines not working to polling locations not being staffed with enough machines, both which contributed to long lines. Unfortunately, election officials were warned that this would happen and did not listen. In February, Common Cause and the Brennan Center for Justice submitted comments to the office of Secretary of State Brad Raffensperger with specific recommendations on managing the 2020 elections. Included in these comments was both a call for more voting machines in polling locations and a clear warning that Georgia's new voting machines could fail on Election Day and that emergency back-up paper ballots were needed. Regardless of the warning, these actions were not taken. When machines went down, there were not enough paper ballots available to meet the demand, despite a legal settlement in 2019 that required greater numbers of paper emergency ballots be available. Polling places did not have "ballot on demand" printers that could print out ballots once the original supply of paper ballots was depleted. As a consequence of the shortage, voters had no choice but to wait in line or not vote.

Lack of Poll Workers
A dearth of poll workers is a long standing problem in the US that has been exacerbated by COVID-19. In the 2018 Election Administration and Voting Survey, 70% of election officials reported that it was difficult to staff polling locations with an adequate number of poll workers.

These poll workers, with an average age of 60, are overwhelmingly at high-risk for COVID-19 and unable to work the polls without danger.

David B. of Kentucky is another voter Common Cause contacted in our election protection efforts. David was a long time poll worker, but decided he should not work the polls in the 2020 primary election because, as an older American, he was more vulnerable to COVID-19. David is not alone in the thousands of poll workers across the country who rather not expose themselves to this pandemic - and although we desperately need poll workers like David, we cannot force people to choose between their health and the willingness to volunteer.

As mentioned earlier, all these problems play off one another. When a significant number of voters who requested absentee ballots but did not receive them decided to vote in person, they voted in consolidated polling places, some with faulty voting equipment and a shortage of poll workers, all of which led to long lines for voters. In some cases, like in Georgia, the poll worker shortages and confusion over polling place consolidation led to voting locations not opening on time on Election Day.

Solutions

As election experts can attest, the majority of these problems are not new. Certain election officials have long tried to make voting more difficult for Black and Brown communities. It is especially appalling, though, that in the midst of a global pandemic, certain election officials are trying to suppress the votes and voices of largely Black and Brown communities. In many cases, the coronavirus pandemic is simply exposing these problems for all to see. It is also clear that there is neither one problem nor one solution to problems witnessed in the primaries. However, there are several short-term solutions, as well as a number of legislative solutions that would get to the root of many of these problems and create systemic change.

Members of Congress can help recruit poll workers and find new polling locations: Given the significant shortage of poll workers this year, Members of Congress are encouraged to use various platforms to help recruit new poll workers. Putting out requests on social media, doing PSAs, and using their extensive email lists can be effective ways to attract new poll workers. Additionally, because some in-person polling locations that have previously been used may no longer be conducive to social distancing, Members of Congress can play an important role in identifying and connecting with venues in their district, such as sports stadiums and other large buildings that could provide social distancing for voters, that could serve as polling locations.

Additional election funding: As many states and localities face huge budget deficits caused by the pandemic, our democracy is not immune. Because many elections officials essentially have to prepare for two different elections (one conducted by mail and one for in-person voting) this November, states and localities need additional resources to ensure no one is disenfranchised. To address each of the problems discussed above, states need not only to adopt good policies, but also have the funds necessary to execute those policies. The CARES Act passed and

signed into law in March provided $400 million for states to administer their elections, but it is going to take significantly more resources for states to run efficient elections in the COVID-19 environment. One study estimates the cost of the 2020 election during the COVID-19 pandemic to be $4 billion.

In May, the U.S. House passed the HEROES Act, which includes an additional $3.6 billion in election funding, a modest investment in our democracy to help states and localities prepare to run their elections during the pandemic. It was unconscionable that the recently-released "HEALS Act" from Senate Republicans contained no funding for our elections, yet included billions of dollars for fighter jets and other extraneous causes. Senate Republicans must immediately pass $3.6 billion in election funding to ensure that hundreds of thousands or even millions of voters are not disenfranchised this year. With less than three months until the November election, Congress must act now so states have enough time to make the necessary changes and plans, recruit and train workers, buy equipment, and do outreach to the public about new voting processes.

HR 1, the For the People Act: HR 1 includes many extremely strong protections for voters, such as online voter registration, same-day (also known as "Election Day") registration, and automatic voter registration to ensure that voters can safely and securely register to vote during the pandemic. Each of these provisions allows for voters to have more opportunities, in the face of challenges (brought on by COVID for some, but always in existence for others) to be able to vote and have confidence that it will count. The For the People Act also includes the Deceptive Practices and Voter Intimidation Prevention Act to deter bad actors from trying to spread false information about voting. And importantly, the For the People Act includes the Voter Empowerment Act, which Congressman Lewis long championed. We very much appreciate Chairman Richmond cosponsoring and voting for HR 1 when it passed the House in March 2019, and we continue to strongly urge Senator McConnell to bring it up for a vote in the Senate.

HR 4, the John Lewis Voting Rights Advancement Act: Before elections officials close, move, or consolidate polling locations or make other changes to voting procedures, covered jurisdictions with a history of discrimination would need sign-off from the Department of Justice to ensure that these changes aren't being made for discriminatory purposes. Five previous Voting Rights Act reauthorizations were signed into law by Republican presidents, most recently by President George W. Bush in 2006. As we approach the 55th anniversary of the Voting Rights Act later this week, I can't think of a better way to honor the life of Congressman John Lewis by having the Senate follow the House's lead and pass the John Lewis Voting Rights Advancement Act.

Conclusion
Voters should not be forced to choose between their health and their right to vote. With the 2020 election less than three months away, we need Congress to act now to help protect our elections so all voters can have their voices heard and votes counted. In order to ensure the 2020 elections are safe, secure, accessible, and fair, Congress must make modest investments

so states and localities can implement critical voting system changes that this pandemic demands of us. At a bare minimum, we urge Senate Republicans to listen to the hundreds of thousands of Americans who have contacted their offices to urge them to support additional election funding.

And if there's a more reform-minded Senate and Administration next year, Congress must pass critical reforms like HR 1 and HR 4. As President Obama made plain just last week, the fight for a more just and responsive democracy demands we continue the march of John Lewis. We must ensure all voices can be heard in our democracy by restoring voting rights, enacting automatic voter registration, and ending partisan gerrymandering, as HR 1 and HR 4 would do. And if Republicans refuse, we must cast aside the filibuster as the "Jim Crow relic" it represents. Thank you.