HELP AMERICA VOTE ACT:
A RETROSPECTIVE & VISION FOR THE FUTURE

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When Congress passed and then President George W. Bush signed into law the Help America Vote Act[1] in October of 2002 it represented a significant shift in the way in which elections are administered and funded in the United States. It was a time of anticipation and opportunity as the nation recognized all at once the power of a single vote and the vulnerabilities associated with that power. Reflecting on the ten years since enactment, there is much that has occurred and much that remains to be addressed.

On the heels of the historic 2000 Presidential Election countless commissions, task forces and study groups dissected and diagnosed the intricacies of America's electoral infrastructure. Volumes were published citing the need to modernize voting systems, provide better funding for elections, improve accessibility, safeguard against corruption and work to increase voter participation.

Congress spoke loudly and soundly in response, calling for swift and meaningful reform. For the first time in our nation's history, federal funding -- significant funding -- was allocated to the states with the promise of centralized statewide voter registration data bases, failsafe voting, accessible polling places and new voting equipment that would simultaneously assure accuracy, expand access and prevent fraud.

A new federal agency was created to provide the necessary oversight. The United States Elections Assistance Commission (EAC) was established and charged with overseeing the accountability of the funding allocations, regulating the commercial voting systems market, adopting standards for the development of modern voting systems and creating a clearinghouse of election-related data and best practices.

This unprecedented federal action was all premised on conclusions that the razor thin outcome of the 2000 Presidential contest was the result of an underfunded, weak and decentralized structure of elections administration; outdated systems and equipment used for casting and counting votes; inadequate technology standards; and a lack of federal support and oversight.

Now on the eve of the third Presidential election since the historic United States Supreme Court decision in Bush vs. Gore,[2] it seems appropriate to step back and reflect on our nation's performance delivering on the promise of the Help America Vote Act. Without question, the ten plus years since the passage of the Act have been characterized by change.

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[1] http://www.fec.gov/hava/law_ext.txt
[2] Bush v. Gore (2000) 531 U.S. 98

The federal agency took shape and its originating leadership moved without pause to distribute the federally authorized funding to the states. Regulators and election administrators alike responded in kind acting quickly to replace outdated punch card voting systems that were the focus of the 2000 election controversy. Most states moved swiftly to set up centralized voter registration data bases under the direction of a statewide election official.

In many precincts throughout the country voters with disabilities experienced their first opportunity to vote independently, while all voters became empowered to review their ballots for inadvertent errors before depositing them in secure ballot boxes or precinct vote scanners. Still others who fall victim to administrative error -- or in some states appear at the wrong polling place on Election Day -- now see their votes protected through the issuance and processing of provisional ballots.

While these enhancements and improvements represent progress, questions remain regarding the usability, stability and sustainability of the core infrastructure of our elections process. Arguably, many of the concerns highlighted during the months and years following the 2000 Presidential contest and the drafting of the Help America Vote Act remain relevant today and new concerns have surfaced in the ensuing years.

The weighted focus on systems and technology has fallen short in adequately addressing issues of usability and in fully examining and recognizing changes in voter behavior and the inherent operational and human dependencies associated with voting and election administration. Likewise, the economic downfall of the past decade has left precious few resources available for further improvements to the nation's voting processes.

Prior to the establishment of uniform technology standards and testing protocols, the bulk of federal funding was depleted replacing punch card voting systems with paperless touch screen voting interfaces that turned out, in many cases, to be unreliable and susceptible to tampering. Clunky efforts to retrofit the equipment with voter verifiable paper records has similarly been inadequate in quelling controversy associated with reliance on proprietary software and commercial industry as the means of securing and counting America's votes. As a result, the manner in which votes were cast and counted was once again a subject of controversy in the 2004 Presidential Election.

Meanwhile, the regulatory environment set up to establish standards and protocols for modernizing voting systems has become increasingly unstable resulting in a shrunken market and a disincentive for research and development. The time frame and cost of getting a new voting system tested, approved and on the market is now prohibitively excessive and the new federal oversight agency charged with the responsibility is vacant of leadership and mired in partisan political maneuvering that is expected to last at least through the 2012 Presidential election.

The establishment of statewide voter registration databases has consolidated data collection, storage and reporting options but, until very recently, much less has been done to address the deficiencies, administrative barriers and inefficiencies of a paper-based voter registration system. The debate over the accuracy of voter registration data remains not just a policy question but an issue embedded in the political

dynamics of the 2012 Presidential election contest.

Still, there are many bright spots in the expansive and increasingly collaborative work of non-governmental organizations (NGO), election administrators, voting integrity activists, academics, computer scientists, voting rights advocates and research institutions that has taken shape since 2000.

A growing focus on ballot design and usability is raising the profile of and addressing the human interaction inherent in the voting process. Much of the work in that area transcends the use of a particular type or flavor of voting system. The American Institute of Graphic Arts (AIGA) Design for Democracy[3] program and the Brennan Center for Justice report on Better Design, Better Elections[4] are examples of this work.

Research and pilot demonstrations using risk-based and ballot-level auditing techniques show great promise in offering options for independent verification of election results, establishing standards for accelerated auditing and recounts based on the margin of victory in a given contest or ballot measure and in streamlining the voting system testing and approval process at both the federal and state levels. The Department of Statistics at the University of California, Berkeley[5] and Verified Voting Foundation[6] have helped to spearhead these efforts.

The Pew Center on the States' Election Initiatives[7] program has convened several working groups and has committed resources to solution-based initiatives focused on developing an elections performance index and introducing new structure and technological data matching tools to modernize and improve voter registration processes. Similarly, the Voting Information Project (VIP)[8] in partnership with Google has enhanced voter access to important public resources such as polling place information.

The Voting Technology Project (VTP)[9] jointly established by the California Institute of Technology and the Massachusetts Institute of Technology serves as an invaluable source of published research and data on voting trends, voter behaviors, residual voting statistics, use of various voting equipment and technologies and a host of related topics. VTP has convened numerous forums and published several reports documenting efforts aimed at identifying and addressing critical voting issues.

Perhaps the greatest benefit of the past ten plus years since the adoption of the Help America Vote Act is the quantification of how America votes in ways that have never been formally documented before. With that data now at hand, it is important that the data is used to more fully deliver on the promise of the Act – helping the eligible electorate vote. Patterns and recurring themes embedded in these data can serve as guides in envisioning the voting systems and processes to be used in the future.

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[3] http://www.aiga.org/design-for-democracy/
[4] http://www.brennancenter.org/content/resource/better_design_better_elections/
[5] http://statistics.berkeley.edu/~stark/Preprints/pvalues09.pdf
[6] https://www.verifiedvoting.org/article.php?id=5816&printsafe=1
[7] http://www.pewstates.org/projects/election-initiatives-328601
[8] http://www.pewstates.org/news-room/video-library/introducing-the-voting-information-project-85899379927
[9] http://vote.caltech.edu/

The civic voting experience and human interface associated with voting devices at the polling place, or in marking and returning ballots by mail continue to surface among the more critical elements in conducting better elections. Voters seek a user-friendly, intuitive interface with integrated accessibility features and one that mirrors the manner and range of options associated with other interactions common to functioning in an active and free society. Similarly, there is a desire for a ballot design that provides a paper based record for audit and recount purposes, but that is small scale for ease of handling, storage and environmental sustainability.

Development of a common election mark-up language in the design of voting systems framed by principles associated with an open review of code, transparency and verifiability is fundamental in addressing voting system security and public confidence.

There is a decade or more of research and data defining the problems associated with voting and ballot counting. The risks and vulnerabilities have been highlighted; the delicate balance between accessibility and fraud prevention articulated. It is now time to move beyond the retrospective to a future-spective. Efforts should be on continuing to establish and support a research and development platform and a regulatory framework that is focused on securing solutions and sustainability.

Ten years into the expanded interest in elections integrity and a highlighted awareness of the nuts and bolts of election administration, it is highly appropriate to refresh and re-shape the dialogue. A shift in emphasis from risk analysis, problem identification and vulnerability assessment to innovative and proactive development solidly founded on principles adopted to mitigate risk and vulnerability seems in order.

As we look forward and shift to a solution-based focus, it is important to acknowledge and recognize new and emerging issues that have surfaced in the years since passage of the Act.

The demographics of the electorate are changing and an effective voting system -- one built to facilitate participation and to functionally ascertain the will of the majority -- must align with those changing demographics. A mobile society with growing numbers of voters expected to maintain multiple residences characterized by frequent travel and non-traditional work schedules elicits different needs and expectations for voting than one that is characterized by neighborhood-based community identity and traditional nine-to-five work schedules.

Local and state election officials are often ill-equipped to adequately respond and react to data-driven advocacy. Rising interest in and availability of raw election-related data through public records requests and other transparency initiatives brings with it the challenge of adequate time for data analysis and context. Advocacy organizations, online communities and individuals are acquiring raw election data, conducting independent analysis and drawing conclusions prior to election administrators' ability to review, analyze and provide context for the data. As a result, election administrators are increasingly spending time on defense, trying to respond to data analysis and conclusions without the necessary time and organizational review to provide context and to refute or clarify the relevance of the data. Time and staff capacity for internal data analysis is significantly limited and, where it does exist, spread thin.

In regions of the country that rely heavily on vote by mail as a means of assuring access and maintaining rates of voter participation, the economic and business trends impacting the United States Postal Service cannot be ignored. A change in levels of service and availability of postal service facilities is already beginning to impact the infrastructure of voting in some areas. This is symptomatic of the need for a broader discussion regarding expanded options for ballot distribution and collection.

And, what about the viability and sustainability of signature-based authentication? Almost every element of the electoral process is validated using voter signatures -- initial registration, applications for ballots, attestations of oaths in voting rosters, initiative and referendum petitions for placing measures on the ballot, and certification of vote by mail ballots, for example. Yet, penmanship is no longer taught in schools and the consistency and reliability of individual signatures is depreciating. Very little discussion, research or policy development has been devoted to this issue – one which could fundamentally alter the elections process if left unaddressed.

As a country, America is hailed as a leader among big thinkers, visionaries and innovators. The United States established and has led from the epicenter of the technology boom that has changed the face of domestic and international commerce. When Americans put their minds to it; they go big. That sense of the possible and the achievable is needed to creatively address and envision the future of the nation's electoral process – the process most central to our citizen-driven form of governance.

At a time when government and businesses are reinventing the ways they do business and serve citizens; at a time when the preservation of an open, transparent and participatory democracy seems most important given what has been observed around the world in places like Syria and Egypt -- at this time, the United States should be crafting and implementing a vision for 21st century elections.

If we do so, we will deliver on the promise originally envisioned by the Help America Vote Act. If we do not, we are almost assured to be caught unprepared and to repeat the patterns of the past.

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