

**Invited Statement by
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**Before the Council of the District of Columbia
Council Board of Elections and Ethics Investigation Special Committee
Ms. Mary M. Cheh, Councilmember, Ward 3, Chairperson
Phil Mendelson, Councilmember at Large
Harry Thomas, Jr., Councilmember, Ward 5**

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Chairperson Cheh, Council Members:

As a person who has studied, monitored, and mediated the electoral process throughout the world, and as a citizen of Washington, I am grateful for the invitation by this Special Committee to comment about the state of the electoral process in the capital of our great nation. Your work in this Committee is of the greatest importance to build confidence in the electoral process, and as an expression of my appreciation, I will be very candid: I am deeply embarrassed for myself, my fellow citizens in the District, and for our country with the appalling state of election administration in the District of Columbia. Your Committee was absolutely right when it wrote in its Preliminary Report of October 8th “that the election process in the district is in need of comprehensive reform.” (p. 8) The only thing more embarrassing is that the District is not unique in its low quality. Almost every state in the Union is as bad. One of the oldest democracies in the world is in dramatic need of election reform.

Just as a point of comparison, our elections are not one-half as professional or competent as those that are conducted in our neighbor, Mexico. In just twelve years – 1988-2000 – Mexico’s elections went from the most fraudulent to the most fair and professional in the Americas. Today, our electoral process cannot remotely compare to the quality of theirs. But if, in the new age of Obama, we are willing to learn from our neighbors and others, we can bring the quality of our electoral process to their level.

Let me offer some background on my work and that of the Center for Democracy and Election Management (CDEM). In this last election, CDEM recruited and helped train 150 student poll-workers to work in D.C. precincts, and we trained, briefed, or accompanied seven groups of election observers – from Iran, Turkey, Mexico, China, Germany, and the Middle East – who observed the process in DC and elsewhere.

Election Monitoring and CDEM

I observed my first election in the state of Chihuahua in northern Mexico in the Spring of 1986. Until I observed the elections in Nigeria eighteen months ago, my first experience

taught me all I needed to know about election fraud. From that first experience in 1986 to 1998, I established and directed the Carter Center's program for election monitoring and mediating in hundreds of elections in more than 40 countries – from Nicaragua to Paraguay, Guyana, Liberia, Palestine, and China.

In the year 2000, I organized the observation of elections in Mexico and in the United States, and the truly implausible occurred. Mexico conducted an election in which all the parties immediately accepted the results, and that didn't happen in the U.S.

This may have come as a surprise to many Americans, but beginning in 1992, on behalf of the Carter Center, I brought international observers to the United States, and it was clear that the only thing saving the American electoral process was apathy and one-sided elections. Our system is excessively decentralized, partisan, and unprofessional.

After the fiasco of 2000, the Carter-Ford Commission issued a report, which became the basis for the first comprehensive federal law on election administration in the history of the United States – the Help America Vote Act (HAVA). That was an important step forward, but it was hardly enough.

In 2002, I moved to American University, and established the Center for Democracy and Election Management. We have been teaching students, training poll-workers, advising election commissions, governments, and civil society in the Middle East, Africa, the United States, and elsewhere, organizing election observers, and in 2005, we organized a second Commission on Federal Election Reform, which was chaired by former US President Jimmy Carter and former Secretary of State James A. Baker, III. I was a member and the Executive Director of that Commission, and CDEM organized it. Unfortunately, the drive for reform has stalled, and few of its 87 recommendations have been implemented.

As this past election had a clear winner, I fear that the government will not focus on the need for election reform, and that is why I am so encouraged by this hearing and your Committee's work. You started by reviewing a scandal last September – one that would have been papered over if not for your hard work and dedication. But you correctly sensed that the problem was not one precinct; it is systemic. I hope you will keep at it.

DC Election, 2008

I have observed elections in Panama under Noriega, Nicaragua under the Sandinistas, Liberia under Charles Taylor, and China under a Communist regime, but **the only country which systematically restricts observers from free access to polling sites and denies them the chance to see the closing and the count of elections is the United States.** (Missouri is the only state that welcomes international observers.) In DC, Virginia, and Maryland, polling officials only allowed us to visit designated sites, and they would not permit us to observe the count. The United States has been brow-beating new democracies all over the world to allow US and international observers, but it does not permit international observers free access here.

So the observations that I will describe below have to be tentative because we did not have the chance to randomly visit sites, but also because the seven teams that we organized or briefed and the 150 poll-workers we trained have not yet completed their reports and evaluations. Let me also mention the critical role played by CDEM staff, especially Alison Prevost and Vassia Gueorguieva, who worked full-time with the poll-workers and the observers, and my co-director George Guess and associate director Tihana Barulac. They have provided me with these tentative findings.

1. Inadequate training of poll workers. Poll-workers are very dedicated and work very long hours, but they are not given sufficient training to understand and apply the relevant laws and regulations. In this last cycle, student technicians received roughly 3 hours of training by us. DC Board of Elections and Ethics (BOEE) arrived 2 hours late for the second training session, so students only received 1 hour of training from BOEE.

2. Poor coordination of poll workers. BOEE did not inform precinct captains about student poll workers, and it appeared that the BOEE did not know who was assigned to any particular precinct. We had a similar problem two years ago, and were not able to reach anyone in BOEE headquarters who would help. In some cases this year, our staff and student workers themselves got directly in touch with precinct captains, who gladly accepted the additional workers. In addition, resources were often misallocated with a precinct being assigned 5 technicians, but no check-in clerks. Some precincts received 28 poll workers, whereas others received as few as 10-12. A few students were told they weren't wanted by a few precinct captains, but most precincts appreciated the young, energetic, and technology-savvy recruits. Unfortunately, DC BOEE Headquarters did not take full advantage of this opportunity. .

3. Communication problems. With the exception of Dan Murphy, the Acting Public Information Officer, BOEE officials were inaccessible. Almost every time we attempted to call the person responsible for poll worker training, she did not answer and her voicemail box was full. Had Dan not provided our staff with a list of precinct captains and assignments, students would have received no information from the BoEE about their precincts. We encountered the same problems two years ago, but we did not have the list of precincts then. Many students did not know where to go until election day. In February 2007, I sent our report and sought an explanation for all of these problems from the then-Executive Director, Alice Miller. I never received a response.

4. Lack of support for poll workers. Many students were not aware of a dedicated line to call with polling place issues and were unable to get timely tech support from the DC BOEE when problems occurred with voting machines.

5. Overall lack of organization – There appeared to be no central source for information on the election process or to get answers to basic questions. Staff answering the phones at DC BOEE were often unhelpful and many times hung up on callers.

6. No Uniform Application of Rules. Our observers found differences between polling sites on the application of “provisional ballots” and on ways to deal with challenges.

This is not surprising given the inadequate training and the highly decentralized system, but in a close election, it could be subject to dispute. Uneven and even discriminatory enforcement of election laws is a persistent threat to the integrity and basic fairness of our election system. Our experience showed that practices vary as much from precinct to precinct as they do from state to state.

7. Poll Books. One encouraging initiative that we witnessed was that the precinct captain had a “poll book”, where they wrote down any and all problems that occurred during the day. Most countries keep such a log, and the Carter-Baker Commission recommended it for the United States. We do not know if this was done systematically in all polling stations, but if it was done, we would recommend a systematic study of these books. Usually, we have to rely on anecdotes and faulty memories to get a picture of all the problems that occur during the day. Indeed, I was at one polling site two years ago where the officials asked me not to watch because there was a problem that they wanted to address! Of course, that is exactly what observers should see. In the absence of a comprehensive and systematic analysis of everything that goes wrong during the course of a day, it is very hard to judge the quality of the system.

Comparisons with Other Democracies

The United States has been an inspiration for dozens of new democracies, but while many of them have experimented with modern ways to conduct elections, we have taken our electoral institutions for granted for too long. We can learn a lot from other nations’ practices. Let me try to summarize some of what we know from other experiences and then propose ways to adapt them to the conditions in the United States.

1. **Election Commission.** Over the past two decades, National Election Commissions (NECs) have been established in most of the new democracies and many of the older ones. Some of these Commissions have evolved through three stages. First, they are extensions of a political party or the incumbent government. In response to pressure from the internal opposition and the international community, some NECs then became bipartisan or multi-partisan, but these Commissions have a tendency to stalemate or collude to protect themselves, as we have learned from the Federal Election Commission (FEC) and the Election Assistance Commission (EAC). The most advanced stage occurs when NECs become nonpartisan institutions that are autonomous of the political parties and the Executive Branch of the Government. The Federal Election Institute in Mexico (IFE) passed through all three stages in the last 12 years. In the United States, states theoretically should organize elections, and technically partisan Secretaries of State are in charge, but in practice, counties and municipalities often control the process. The Carter-Baker commission recommended that states establish non-partisan, professional, and autonomous election authorities. CDEM has drafted a model law on that, which we would be happy to share with you.

2. **Registration, Identification, and Voting Participation.** Compared to virtually all democracies, **the United States registers one of the lowest percentage of its eligible voters, and has one of the weakest, most porous systems for identifying**

voters. In few countries do people move as often as they do in the United States, and our registration systems can't keep up. I suspect DC voters' list are inflated. I noticed that my son, who moved to California more than one year ago, is still on the DC voters' list. Let me offer some more specific comparisons:

- **Registration Lists.** In comparison to the 55% of eligible voters registered in the United States, both Canada and Mexico register more than 95 percent of its eligible voters. Many countries, including the United Kingdom, Canada, and the Caribbean countries register voters by going door-to-door, much as we do our census, and they review the data regularly. Mexico audited its registration list 36 times between 1994-2000.
- Regarding **identification cards**, Mexico printed at substantial expense, a state-of-the-art voter identification card – with color photo, magnetic strip, and fingerprints – and its registration list also has photos. Peru has an identification card with a color photo and a digitized thumbprint, which is issued when a person reaches voting age. **Indeed, virtually every country in the world has a better system for identifying voters at the polling site than the United States.**
- **Voter Participation.** Almost every country has its election on a holiday or a Sunday. More than 30 nations even require their citizens to vote, but only six – Australia, Belgium, Cyprus, Luxembourg, Switzerland, and Peru – enforce the law. In Peru, a citizen cannot cash a check if he or she did not vote until paying a fine of \$35.

3. **Polling Officials.** In Mexico, IFE chose its polling officials by random selection from the voters' list in each precinct. The names were then winnowed down based on education, and then the citizens were trained to conduct the election. This increased citizens' involvement and improved the quality of administration.

5. **Machinery and Audits.** Brazil and Costa Rica have employed a touch-screen voting system, which had some problems initially, but are reportedly doing well. Jamaica began to install one, but the costs and the reliability were so questionable that they abandoned it. In the United States, we moved toward touch-screen machines after 2000, but realized the need for a voter verifiable paper audit trail. Some touch-screen machines can do that, but most states – like DC – are moving to optical scans, which are satisfactory, provided that they are audited systematically, as you have recommended.

6. **Campaign Finance/Access to Media.** Virtually every country that we consider democratic sets limits on campaign contributions and provides free access to the media for candidates and parties. In no democracy do private campaign contributions reach the magnitude – more than \$3 billion in 2008 – that they do in the United States. In a survey of 59 democratic countries, there were a wide range of restrictions on corporate contributions, paid political advertising, and foreign contributions – with about 10-35% of the countries banning all three, 7-17% partially banning them, and 47-75% allowing them.

7. Auditing Results and the Process. Many NECs routinely audit both the process and the vote count. Few do so in the United States so I commend your Committee's recommendation to do so.

Next Steps

The response of our students after their Election Day experience shows that good things come from allowing young, bright people work through the entire voting process, and that is not just because the average age of poll-workers – excluding our student – is about 70 years old, and we ask them to work without stop for about 14 hours on election day. Student comments remind those of us who are election veterans just how antiquated our laws and procedures have become. Why don't we allow poll workers to leave the polling place for meals? Do we really need the same number of poll workers in the polling place all day when most voters arrive early in the morning, late in the afternoon or at lunch time? Are our election rules written in such a way that they can be easily and uniformly applied by poll workers with only the briefest of training? Why do our polling places lack uniform procedures for documenting problems and voter complaints?

As fruitful as our observation efforts were, we were constantly reminded how far we have to travel before we reach basic international norms on election access. Our visits in D.C., Maryland and Virginia had to be arranged prior to Election Day through local election offices, and our time in the polls was limited. We were not able to gain access to the critical vote count in any of the three jurisdictions. Election Day failures and eroding public trust remind us time and again that the United States desperately needs the transparency bona fide election observers can provide.

In conclusion, our experiences on Election Day 2008 suggest both the gravity of the challenges facing the American electoral system and some possible paths toward meeting those challenges. Our successful college poll worker program was a positive step toward meeting the chronic shortfall in poll workers for American elections, and introduced a large number of young people to greater involvement in the electoral process. On a larger scale, our experience suggests that opening the voting process to public scrutiny, improving poll worker recruitment and training, building administrative capacity at the local and state levels, and auditing the machines and the entire process are all vital steps to rebuilding public confidence in our democracy.

Democracy is nowhere perfect; it is a work in progress – abroad and at home. The beauty of the spread of democratization throughout the world is that all countries can now learn from each other how to improve their democracies. Just as America has long been the model for emerging democracies so too can we now profit from their more recent experiences to modernize our own democracy.

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Dr. Pastor received his M.P.A. from the Kennedy School of Government and his Ph.D. in Political Science from Harvard University. He is the author or editor of 16 books, including *Democracy In the Americas: Stopping the Pendulum* (1988) and *Democracy and Elections in North America: What Can We Learn From Our Neighbors? Election Law Journal* (2004).

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