

Testimony of
Mr. Thad Hall

September 9, 2003

Committee on the Judiciary

Testimony of

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on

“Ensuring the Continuity of the United States Government:
The Congress”

10:00 a.m., Tuesday, September 9, 2003
Room 226 Senate Dirksen Office Building

Mr. Chairman and Members of the Committee:

The September 11th terrorist attacks could have been far worse had one of the airplanes hijacked by the terrorists struck the United States Capitol. The attack would have come just as the House was going into session and the House Appropriations Committee met in the Capitol building. Many members of Congress could have been killed or injured in such an attack. The question of how to maintain the continuity of our government, especially the membership of the House, is of critical importance.

At this hearing on the issue of ensuring the continuity of government, especially the Congress, in the aftermath of a national disaster, I will be discussing the issues associated with holding special elections in a short timeframe. There are three key points I want to make in my testimony today.

First, in many states, current laws limit the ability of election administrators to conduct a special election in a short timeframe.

Second, Congress can use its powers to regulate elections to ensure that special elections held after a national disaster are done quickly and successfully.

?« Third, technological changes;Xcoupled with meaningful improvements in election administration;Xwill make special elections easier to hold on short notice in the future.

Regardless of whether or not one supports a constitutional amendment to make it possible to replace House members via appointment, the issue of how to ensure that special elections can be conducted quickly and effectively remains. If Congress determines that a constitutional amendment is necessary to remedy the continuity of government problem, passing such an amendment will likely take some time, given the supermajorities that have to be attained in the House and Senate, and the supermajority of state legislatures who must ratify such an amendment. Therefore, special elections will likely remain the way in which House members are chosen when vacancies arise for some time.

The fundamental question is this: how can Congress make the special election process work so that vacancies in the House can be filled in a timely manner? Answering this question requires rethinking the way elections are currently conducted because in many states the laws that govern elections today are typically not designed to facilitate speedy special elections.

The Current Environment

We are all in the midst of getting a national civics lesson about special elections, courtesy of the State of California. The gubernatorial recall illustrates the issues associated with running a special election, and the pitfalls that need to be avoided. Here, state law makes quickly conducting a special election difficult. For example, consider the following two factors:

1. Under California law, any special election that affects more than 1,000 voters must be conducted on a single day in poll site voting. Local election officials cannot conduct the election using innovations such as vote-by-mail.
2. Because of the tight timeframe and the lack of additional resources available to pay for the election, officials are being forced to consolidate precincts, which will make it more difficult for voters to get to the polls on Election Day.

The problems associated with running a poll site election on short notice is well illustrated by the example of Los Angeles County. To run a countywide election, Los Angeles has to find 5,000 poll sites;Xor approximately 2,000 poll sites if they consolidate precincts;Xand to hire about 25,000 poll workers. To put these numbers in perspective, 5,000 sites is roughly equal to the number of Starbucks in the United States and 2,000 sites is larger than the number of Wal-Marts worldwide. The 25,000 poll workers in Los Angeles on Election Day outnumber the LAPD three to one. The County does not control any of these polling places or have any of these poll workers as permanent employees. Every election is a new process; the availability of poll sites and poll workers has to be re-confirmed. And with six language minority populations in the County, all voting information has to be prepared in 7 languages, and certain poll sites have to have either bilingual poll workers or interpreters in order to comply with the Voting Rights Act. Additionally, approximately 20 percent of voters in California will vote absentee.

The California situation is not helped by the fact that the threshold for being on the recall ballot is exceptionally low. Voting machines are not generally meant to handle a race with 135 candidates on the ballot, and the size of the ballot is likely to create even more problems at poll sites on Election Day, not to mention problems counting the votes.

Another Model ;V Vote-by-Mail with Early Voting

The California experience illustrates the difficulties of conducting a precinct-based election in a short period of time. However, if one looks north from California to Oregon, there is a different model of elections that could serve as a model for how to do special elections more effectively. In 1981, Oregon began conducting short-term special elections using vote-by-mail and it quickly grew in popularity because it was easy and inexpensive for election administrators to implement and made it easy for voters to vote; the ballot box came to them. Since 1996, when voters passed a referendum that expanded vote-by-mail, all elections have been conducted using this method.

In Oregon, all registered voters are automatically sent a ballot 14 to 18 days prior to an election. The voter then votes the ballot, places it in the secrecy envelope, seals it, and places it in the return envelope. The voter then either mails it back or returns it to a ballot drop-off location by 8:00 p.m. on Election Day. The votes are then tabulated and results reported. Among the benefits of the by-mail system is that it generally results in more accurate ballots being cast and provides all voters with equal access to the voting process.

The effectiveness of vote-by-mail has been recognized internationally. The United Kingdom's Electoral Commission, which is analogous to the soon to be established Election Administration Commission, has recently recommended that all local elections in the UK be held using vote-by-mail. This determination was made after a series of experiments were conducted by the Commission in local elections held in both 2002 and 2003.

Vote-by-mail is not without its drawbacks; perhaps most problematic is that the voting technology currently used for vote-by-mail; paper ballots of some sort; are not accessible to the disabled. However, this problem can be overcome by combining vote-by-mail with early voting on touch screen voting systems that are fully accessible. Los Angeles County has been successful in encouraging its disabled and language minority communities to use early voting so that these voters can vote on systems that are fully accessible.

Addressing the Problem

If Congress wants special elections to work in crisis situations, then Congress can follow two paths, which are not mutually exclusive.

First, it could require states and localities to develop legally binding plans for how they would hold a special election in a short timeframe. These plans would be reviewed by the Election Administration Commission or outside experts to ensure that they were comprehensive and addressed all problems associated with holding an election in a short timeframe.

Second, Congress could pass a law that would govern all special elections held in the aftermath of a national disaster. This might structure the candidate selection process by parties and encourage localities to conduct these elections by using vote-by-mail, supplemented by limited poll site early voting and, in the future, internet voting. This same result could be obtained if Congress gave the Election Administration Commission the power to issue binding rules governing special elections that occur after a national disaster.

The Election Administration Commission could also put together a group of experts; not limited to election officials; that would think through the problem without preconception and develop

short-, medium-, and long-range plans for ensuring that special elections can be conducted in a short period.

For short-notice special elections to be conducted successfully, the federal government should be willing to pay for these elections so that localities have the money they need to do the job right. Congress could require the General Services Administration or the Election Administration Commission to fund the steps necessary for states and localities to be prepared for a special election. For example, these funds might pay for special contracts with any contractors;Xsuch as ballot printing or direct mailing firms;Xthat will be needed to ensure that any special election can be conducted in an expedited manner. Similarly, these funds might be used to pay the premium necessary to hire poll workers and to pay for poll sites on short notice.

One of the primary limitations on how quickly special elections can be held is the time it takes to ensure that individuals covered by the Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA) can participate in the election, and I would defer to the Federal Voting Assistance Program as to how quickly these voters can be served in a crisis. I would note that FVAP is a leader in promoting the use of technological innovations by local election officials to improve service to UOCAVA voters, and their innovations;Xsuch as the SERVE Internet voting project that is being implemented in 2004;Xare likely to make serving this population easier in the future.

We do not have a tradition in the United States of evaluating various ways of conducting elections in order to determine if we can do things better. The Election Administration Commission should be required to conduct evaluations of election management techniques that can facilitate the rapid completion of a special election, and conduct experiments in elections to determine what works best. The United Kingdom;’s Electoral Commission has been conducting experiments in local elections in Britain since 2000;Xworking with local governments with the agreement of the political parties;Xto identify the best ways to conduct elections. Such an ongoing effort in the United States will bring forth the best ways to conduct special elections as conditions and technological improvements occur.

Biographical Note

Thad Hall is a program officer with The Century Foundation. He was a member of the professional staff of the National Commission on Federal Election Reform. In 2001, he served on the peer review committee for the Federal Voting Assistance Program;’s Voting Over the Internet (VOI) initiative and is currently part of the evaluation team for the Secure Electronic Registration and Voting Experiment (SERVE), which will allow certain uniformed service personnel and overseas civilians to register and to vote online in the 2004 elections. His book with R. Michael Alvarez;XPoint, Click, and Vote: the Future of Internet Elections;Xwill be published later this year by the Brookings Institution Press. Two articles on administering elections for voters with special needs are forthcoming in the American Review of Public Administration and the International Journal of Public Administration. He has a Ph.D. in political science from the University of Georgia. Before coming to The Century Foundation, he worked for Governor Zell Miller of Georgia and for the Southern Governors;’ Association.

Endnotes