

Statement for the Record by Scott O. Konopasek
“Protecting Our Democracy’s Frontline Workers”

July 28, 2022

I want to thank Chair Durbin and the Senate Judiciary for the opportunity to share my experiences as a long time Election Official and particularly as the General Registrar and Director of Elections in Fairfax County during Virginia’s 2021 Gubernatorial Election. I am hopeful for additional federal resources and some clarity for election officials around the country as they deal with existing and emerging threats to themselves personally and to democratic institutions generally.

I have worked in elections since 1994, most of that time as the primary election administrator for large counties and have conducted 7 presidential elections over that period. I have administered elections in Utah, Washington State, California, and Virginia and have consulted with nearly 60 jurisdictions across the country. I previously served as an Army Intelligence Officer for 14 years. I retired from more than 40 years of public service in March 2022. My experiences in 2021 were not the reason for my decision to step down and retire although, candidly, they were significant contributing factors.

Much has changed in the field of elections since I began- the passage and implementation of the National Voter Registration Act (NVRA), widespread use of punchcard voting systems, the beginning of voting by mail, the 2000 Presidential Election and the resulting Help America Vote Act (HAVA), the rise and demise of Direct Recording Electronic (DRE) voting, the expansion of voting rights and access for Military and Overseas voters (MOVE Act), the rise of cyber threats to the elections eco-sphere, and the concerns about voting fraud expressed by Move-on.org becoming some of the talking points of the current election integrity movement.

Although much has changed, two things remain constant. In elections there are winners and there are losers. Winners seldom question election outcomes but losers often do. Losers seek assurance that that the results are accurate and the election was fair. I have met at length with scores of losing candidates and campaigns over the years and, after getting their questions answered and often seeing the mechanics of the process, they have largely left satisfied with the process but still disappointed in the outcomes. These meetings were a demonstration of transparency and honesty on the part of election administrators on one hand and a manifestation of good faith and a pursuit of understanding on the hand of the election doubters and deniers. I am concerned that, while transparency and honesty are still demonstrated by me and my colleagues, many deniers do not seek understanding nor do they act with good faith.

Since November 2020, the losing, disappointed parties have responded with denial, blame, interference, and threats of violence. No one was prepared for the threats of physical violence to election officials and family members, the threats to professional credibility, and the threats to livelihoods that followed the presidential election and which continue still. I want to provide the committee some details about my specific experiences in this regard in Fairfax

County during the 2021 Gubernatorial election and to attempt to connect the dots for what my experiences might mean for others in the 2022 election cycle and beyond.

In 2021, I and many of my Virginia colleagues, received many threats before, during and after the successful election of Republicans to all three statewide offices on the ballot. Threats were delivered by phone, by voicemail, by email, by social media, by a political party, and via members of partisan election boards. To whom are such threats to be reported? How can such reports be taken as credible by law enforcement? At the time, it was such a new experience, no one knew the answers. And still, despite DOJ's law enforcement efforts to protect election workers, the answers are still not clear.

In my personal case, I received an implied threat of violence by a known person; however, my reports were not initially taken as credible and there was much confusion about the appropriate agency to investigate such a report. My first report was to legal counsel, given the nature of the threat. The legal advice was to report to local law enforcement but to which agency and by what means was not clear. Several days after receiving the threats of violence, I attended an FBI briefing on federal efforts to respond to such threats. While meeting with the FBI agents, I told them of the threat I'd received. They showed interest and we had a follow up interviews but the outcome of the conversations was once again advice to report to local law enforcement. Threatening behaviors continued and I reached out again to the FBI, and also to officials at the Department of Homeland Security who all indicated that they were not in a position to take any action due to jurisdictional issues. Again, I was advised to report to local law enforcement. After originally balking at calling local law enforcement, I mentioned the threats to senior police commanders in a coordination meeting for the upcoming November 2021 election, but no follow up was ever made. The net result of these attempts to report threats and the lack of concern and follow up made me feel foolish and silly and less willing to share further threats. Once other, non-election staff at the County started receiving threats from the same person, building security, not law enforcement, began responding to the threats. I suspect other election officials across the country share the same experience.

I want to point out that threats and threatening behavior do not have to involve violence or bodily harm before they have an effect on an individual, a staff and the effective conduct of elections. The cumulative effect of incessant bullying and threats is demeaning, demoralizing to the entire elections staff and is disruptive to the process of administering an orderly election- by design in my view. This bullying is manifest not just via emails, phone calls and social media posts. Freedom of Information Act requests have been weaponized by the same group responsible for other threatening behaviors.

Beginning in July 2021, the Fairfax County Elections office began receiving voluminous FOIA requests for election information. The requests were made by the same small group of people on a weekly, sometimes, daily basis. The requests were initially for basic election information already publicly available but later many requests were for extensive technical documents. A single FOIA request often asked for 20 or more documents. Some documents were requested over and over by the same person. Each request had to be evaluated to determine what the responsive documents might be, who the custodians were, if the document, in whole or

part, was subject to FOIA, and how much time and resources were needed to fulfill the request. Fulfilling these requests became a full time job for a senior staff person and involved considerable time by legal counsel and management which distracted from more time sensitive duties. The timing, volume, and complexity of a coordinated campaign of making FOIA requests had the effect of being a Deliberate Denial of Service (DDOS) attack. My colleagues around the country have also reported being victims of such deliberately weaponized records requests.

The volume, and even the nature of these FOIA requests, are another form of intimidation and bullying. During the 2021 election, I was quoted in various media about receiving graphic and threatening emails. During an Election Assistance Commission podcast after the election, I remarked that many County election officers had reported their unwillingness to serve in future elections due to their unpleasant interactions with integrity group members on Election Day. The integrity group members, who were responsible for the bullying and the barrage of FOIA requests, took offense at these comments and demanded that the emails, surveys, and other evidence documents supporting my statements be turned over to them under the provisions of FOIA. After hundreds of hours researching and redacting, hundreds of responsive documents were provided.

The week after the election, in which the preferred candidate of the requestors won, my office received 23 additional FOIA requests from the same group, 20 of them from a single person. What I felt most distressed over during this entire cycle of bullying of the elections staff is that the partisan members of the Electoral Board either condoned, ignored, or participated in the harassment. Passivity from a safe distance is a typical human response to bullying but it was disappointing from those who could have done something about it.

While I have focused on my personal experience and that of other staff, this integrity group employed the same “flood the zone” tactics and aggressive behavior on election day at all voting precincts. Attributing the success of Republican candidates to their efforts and encouraged by the passivity of on-lookers and local leaders, this group has documented their strategies and activities in Fairfax County and have dubbed them the “Virginia Model”. I believe they are training other integrity groups and the plan is a national roll-out of these tactics this fall as widely reported by the New York Times, Politico, the Guardian, The Minnesota Reformer, and many other credible news sources.

It is clear that existing local, state and federal laws are not sufficient to meaningfully address on-going and future threats to election officials and institutions. In almost every case, we knew the identity of those making threats, intimidating and harassing yet we let them act with impunity. Looking to the future and to a response by this body, I suggest the following:

- Make threats, harassment, intimidation of, and interference with election officials a federal offense and in the immediate jurisdiction of the FBI.
- Establish hotlines and more robust reporting protocols for threats.
- Prioritize timely investigative and enforcement responses to these threats as they occur.

- Develop a database and intelligence on actors and their actions to anticipate and neutralize future threats.
- Provide specific exemptions and extensions for malicious public record requests made in the course of an election.

We, as a nation, are fortunate that none of the hideous threats to election workers have actually been realized. However, these threats and the absence of a clear law enforcement response are responsible for the rapid exodus of experienced, qualified, honest, earnest and hard working election professionals and volunteers which bodes ill for our democratic institutions.

Again, thank you for the opportunity share my experiences and thoughts on this critical issue with the committee.

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