

United States Senate
Committee on the Judiciary Hearing
“Protecting Our Democracy’s Frontline Workers”
June 19th, 2022
Testimony of Tommy Gong

Introduction

Chair Durbin, Ranking Member Grassley, and members of the Senate Committee on the Judiciary, and honored guests, it is a privilege to provide testimony regarding the treatment of election administrators since the 2020 election.

My name is Tommy Gong and I currently serve as the appointed Chief Deputy Clerk-Recorder for Contra Costa County in the California San Francisco Bay Area. I have worked as an election administrator for almost twenty years, spending fifteen of those years in San Luis Obispo County on California’s Central Coast– nine as the Assistant, then six years as the elected County Clerk-Recorder. I have also served as the vice president of the California Association of Clerks and Election Officials – the state association representing all 58 counties in California - and currently a member of the Advisory Board for the Election Official Legal Defense Network. I am also the ad hoc leader of the Coalition of Bay Area Election Officials, comprising of eleven counties of the greater San Francisco Bay Area collaborating on ensuring public trust in elections by communicating and providing access to accurate, current, and transparent election information across the region Area in its shared media market.

Today, I would like to share with you my concerns for protecting election officials at all levels – from the Secretaries of State to county/jurisdictional registrars of voters to the poll workers – all guardians of democracy. What should have been acclamation for successfully conducting one of the most difficult elections in United States history on November 3rd 2020, election officials across the country came under fire and were vilified when the incumbent U.S. President was soundly defeated and refused to accept the results. Please indulge me with a personal story as an elected county election official in a sleepy coastal community in California with fewer than two hundred thousand registered voters.

Conducting the 2020 Presidential Election in the Midst of a Pandemic

Just after the March 3rd 2020 Presidential Primary Election in California, news was rapidly developing that COVID-19 was spreading across the nation. California dodged a bullet by having its primary early, but other states with later primaries did not fare as well. Large numbers of cancelled polling places and poll workers resulted in fewer polling places and long lines of voters standing for hours to cast their ballots. Record levels of absentee ballot requests and returns overwhelmed election offices that did not have the infrastructure to support the vast increase of mail-in ballots.

Reading about these challenges in the news, the California Secretary of State formed an informal group to discuss how the state might adapt to the pandemic for the general election. The group comprised of county election officials, advocacy groups, and staff from the state legislature and governor's office. Every week, there were multiple virtual meetings to break down the election processes and how each might be conducted to keep it safe for voters, poll workers, and election staff. Topics included expanding Vote By Mail (VBM) voting, increasing drop boxes, providing ballot tracking for voters, reviewing in person voting methods, considering multiple days of voting, having proper health precautions in place and obtaining personal protective equipment while the rest of the world was clamoring for the limited supply.

Out of these discussion came some election reforms to accommodate the anticipated record-setting number of voters while maintaining health and safety in the midst of a major pandemic: all registered voters would automatically be sent ballots in the mail and counties would have the option to reduce the number of in person voting locations with health and safety measures over multiple days of voting to reduce exposure of the coronavirus. To expedite the process, the Governor issued two Executive Orders followed by the state legislature passing bills to codify the new requirements. In many ways, this made sense in California where permanent vote by mail voting had been around for almost twenty years and in person voting had proportionately decreased. These efforts afforded county jurisdictions to adjust and prepare the election with these changes.

In San Luis Obispo County, where I served as the elected County Clerk-Recorder, the new changes were a blessing; we were facing 40% cancellation of polling places and poll workers due to concerns regarding the pandemic. I decided to convert from a traditional polling place operation to a "vote center-like" operation. This resulted from having seventy-five polling places on Election Day to twenty-two vote centers for four days of voting. Communities across the county offered their support by providing their largest, most visible locations so that "in person" voting could continue with proper safety distancing. Much support was provided by city clerks and county library staff to service the additional ballot drop boxes located throughout the county with chain of custody procedures and two person teams. In consultation with local health professionals, a health and safety playbook was created to conduct in person voting with the requisite personal protective equipment and protocols. In this way, we had literally the cleanest election in history.

Herculean efforts were made to purchase the requisite equipment and establish communications to support the technological needs of a vote center operation when there was fierce competition for electronic equipment around the world, including back-up generators in case of a power outage. Due to the wildfire dangers throughout the state, counties faced public safety power shutdowns, so contingency plans had to be in place. It never ceases to amaze me what my staff achieved in a short period of time, pivoting with an all-mail election, revamping poll worker training for the new vote center operations, and supporting nineteen drop boxes.

For San Luis Obispo, 94% of the voters voted by mail, a dramatic shift from the 2016 Presidential yielding 76% of voters who voted by mail. Of those voting by mail, 48% utilized official Drop Boxes, 41% used the Post Office, 11% dropped off in person. All the hours of the

days (including Saturdays and Sunday) leading up to Election Day, I would hear the flap of the office's drop box repeatedly, indicating a ballot being deposited. It was ceaseless.

All the hard work paid off: it was a huge success! Actually a huge success across the state, but while all counties saw unprecedented levels of voter registration and turnout, San Luis Obispo leapfrogged from 12th to 4th place amongst the fifty-eight counties in voter turnout (88.35%). This is attributed to the extensive voter education and outreach efforts my office implemented to inform voters of the changes to the election while reminding voters to register and vote. The department never had a budget for voter education and outreach, but grant funding supported the program. All in all, it was a job very well done by election officials in San Luis Obispo, in the State of California, and throughout the nation.

Request for Forensic Audit and Aftermath

Long after the election was conducted and certified, I was contact by the local Republican Party in March 2021 requesting that an audit of the department's Dominion voting system be performed. This would have involved providing physical access to the voting systems components and imaging its hard drives, thereby breaking the county's chain of custody of its voting equipment and raising serious security concerns. This was a highly unusual request, since the normal course of challenging the results of an election would involve requesting a recount of a contest on the ballot within five days after the certification of an election. During the course of conducting the election, I had not been provided any notion or evidence of any irregularities. Observers represented by the local Republican Party were often present in the office during the Canvass period after Election Day, and I cannot recall any concerns raised regarding ballot tabulation.

During my career in election administration, I have been involved with two recounts. They both upheld the final results. While it takes time to prepare and conduct a recount, it is validating and vindicating for the election office. I would not have been opposed to conducting an additional manual tally of a sampling of ballot, like we perform during the course of the canvass of the vote, but after the certification period, there are no provisions for performing any additional recounts. As this was happening, I read that Maricopa County in Arizona would be subjected to a forensic audit of its voting system and ballots related to the Presidential Election. Eerily similar, but at least there was a legal-legislative process in place for the audit in Arizona.

In my response, I indicated that I did not have the legal authority to allow such an audit to be performed since state election code forbade it: the ballots and identification materials shall be kept by the elections official, *unopened and unaltered for 22-months (federal elections) or 6-months (state and local elections) from the date of the election*. I also described the rigorous certification testing that the California Secretary of State performs, the audits that counties are required to perform before and after the election, and the strict chain of custody procedures that are required for use of the system.

What resulted was unprecedented. Two email campaigns flooded my inbox, and those of the five county supervisors and county administrator. The party contacted all of its membership to simply click on a link to send a canned automated message to our inboxes. I provided each

email with a response indicating that the requested audit was not authorized under California law and doing so would have me breaking the law.

Driving to work one morning, I hear a radio ad: “Election integrity is under attack in the U.S., including right here in San Luis Obispo County, but our elected Clerk/Recorder Tommy Gong is not concerned.” This was a low blow and undeserving based on my response to the local Republican Party. It was not a matter of “no,” but rather “I can’t.”

On May 4th, 2021 I prepared a presentation to the County Board of Supervisors on the county’s voting system, the stringent testing that it goes through during the certification process, and the use procedures and pre- and post-election audits that must be conducted to by counties when conducting elections. During the public comment period that followed, approximately 150 comments were made, primarily with pre-recorded scripted messages regarding the voting system with the misinformation circulated across the nation. A local newspaper performed its own investigation and found that a quarter of the speakers were not residents of the county. This was indicative when speakers mis-pronounced “San Luis Obispo,” which often occurs with tourists, not locals.

However, the low-point of the three hours of public comment was when a caller questioned if I was “a member of the Chinese Communist Party.” I stopped and asked my staff if that what was said? We were all stunned. I am a proud third generation American, have not stepped foot in China, and do not speak Chinese.

When I was in kindergarten, my mother warned me that others might call me names or make racist comments. Hearing this racism at the meeting made me think back to that time. When I ran for public office and was elected, I was the first Asian American to be elected to countywide office in San Luis Obispo. It brought me great pride and a glimmer that we were progressing as a society. When that comment was made, it brought me back fifty years ago, questioning if we actually made progress or not.

After hearing about some of threats of violence toward election officials across the nation as well as the increase in violent crimes toward Asians, that comment did prompt concerns for me and my family. The “mob mentality” that appeared to develop from that meeting concerned me even more. When I made it home the next day, I mentioned to my two sons to be aware of their surroundings. I feel fortunate that neither I nor my family were subjected to the threats that other election officials had received. No one deserves this type of treatment.

My two sons and I had performed “Taps” with our trumpets at Memorial and Veteran’s Day events for many years. After the fallout of the May 4th meeting, I was a bit apprehensive of participating at the festivities, but once we arrived the familiar faces that we would normally see welcomed us with open arms. After the ceremony, many veterans came up to us and thanked us for performing “Taps.” The woman who made the racist comment approached me, identified herself, apologized and shook my hand. There is hope for our republic.

Impact of Harassment, Intimidation, and Threats

I hope this personal testimony illustrates that intimidation tactics are not exclusive to the battleground states. Who would have thought that election officials in California would be subject to these harassment and intimidation tactics? (I should recognize that there have been challenges in other California counties as well, so my story is not isolated.) I was ill-equipped and unprepared for what happened in San Luis Obispo. Despite me knowing deep in my heart that all I did was above reproach with the highest of integrity, I felt alone and isolated when the avalanche of accusations was hurled at me. Nevertheless, I remain “unapologetic” in my defense of the county’s voting system and upholding the integrity of the election; I stand by the results of the election and that all of the processes and procedures were followed when conducting elections.

Local election officials in California conduct elections in a non-partisan, a-political manner; we stay above the fray of partisan politics displaying no partiality or favoritism. I took great pride when a local news editorial stated that in all the years interacting with me, it never had a clue as to where I stood on any particular issue or any candidate. That is what our profession demands when conducting elections. Our core values include high levels of integrity, honesty, ethical and moral behavior, impartiality, competence, professionalism, and accountability. We are a nation of laws, and we conduct elections under the rule of law, plain and simple.

The nature of election work is already a stressful profession as illustrated in my description of the changes for the 2020 General Election. All of the various processes and procedures are like components of an engine that must work together to function effectively. Since 2000, new requirements and regulations to enhance or improve election administration, have added more complexity without sustainable funding. During the great recession of 2008, budgets were slashed to its bare minimum, with little recovery to build back proper levels of funding in many jurisdictions.

Every election is inherently stressful, since there is an expectation that everything must be perfect. Everything typically is perfect, until it isn’t. Much of the success of an election is dependent on humans, and humans make mistakes. An honest mistake, no matter how small, is highly critiqued and scrutinized by the public. While it may inconvenience voters, delay results or the certification of an election, election officials are transparent with the public with what happened, what the remedy or solution is, then get the job done.

While government officials are to be held accountable for their actions, judgement, and decision-making, unsubstantiated claims related to voter fraud, voting machines, and wrongdoing during the 2020 Presidential Election have elevated the stress to new heights since. Segments of society subscribing to these conspiracy theories have been victimized by the mis- and dis-information circulating in mediums where they get their news. Much of it is emotionally-driven, devoid of facts, but to change one’s beliefs is extremely difficult. Most disturbing has been the aggressive nature and threats towards election officials.

The smaller the county, the more vulnerable it is to mis- & dis-information. The largest of counties have communication teams; smaller counties might only have the local election official as its only press contact. While the number of registered voters might be relevant to the size and scale of a county’s operation, responding to mis- and dis-information requires the same levels of

engagement regardless of a county's population. Noted is that most election jurisdictions do not have a budget for extensive voter education and outreach, much less debunking baseless claims regarding an election.

I know my work plays a very small part of the overall democratic process for our great nation, but I take great pride in it and I have much respect for local election officials and poll workers. We are on the frontlines, boots on the ground, among the most exposed to these threats and intimidation. While some cases have been well-reported, perhaps this is only the tip of the iceberg as others have not been so forthcoming so as to bring more attention to them and more exposure and condemnation. Harassment, intimidation, and threats to election officials and their family members are unacceptable and should not be tolerated.

Action Items

Restore Public Trust in Elections

The fallout of misinformation questioning the validity of the election has challenged the foundations that democracy rests on, resulting in mistrust in the election process by the public. Democracy and elections provide the means for the peaceful transfer of power. Rebuilding public trust in elections is of paramount importance and must be done in variety of ways.

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Sustainable Funding Stream. Congress needs to establish a steady funding stream for elections to support this critical infrastructure. While much appreciated, late arriving, one-time grant funding is only a stop gap measure to emergencies such as the COVID pandemic. To effectively utilize funding, it must be provided well in advance of a major election and on an ongoing basis.

Alternatively, consider reimbursing election jurisdictions for the federal government's share of election costs. California counties charge jurisdictions such as cities, school districts, and various special districts for their proportionate share of the election when they are on the ballot. Presently, neither the federal or state government pay for their share of election costs. In this way, ongoing sustainable funding can be provided to local jurisdictions.

Specific Earmarks for Voter Education and Outreach. With mis- and dis-information regarding elections circulating, funding for extensive voter education and outreach programs are necessitated to rebuild trust in elections. County jurisdictions could also partner with the media and community-based organizations to build networks that can spread the message of trusted sources of election information. In addition to education about the election process, effort is needed for news and media literacy to equip the public with skills to decipher between fact and fiction.

In regions where county jurisdictions share the same media market, election officials can join forces in developing key messages and pool resources for combined outreach and advertising efforts in the region. In the San Francisco Bay Area, eleven counties have formed the Coalition of Bay Area Election Officials as a model for collaborating on unified messaging regarding election processes and procedures to the media. Funding for this effort would allow the coalition to amplify its message and initiative to build public trust in elections.

Additional programs and funding to train and equip election officials regarding mis- and dis-information awareness and response strategies would be invaluable. With the hyper-focus on the validity of elections, it is critical to provide the tools and training to election officials well in advance of the next major election cycle. These trainings could be provided by the Cybersecurity and Infrastructure Security Agency (CISA), the Election Assistance Commission, respective secretaries of state offices, and/or non-profit organizations specializing in this arena. Public information officials and formal communication plans are needed for public relations efforts to advocate for election offices and the integrity of the election.

With the recognition that much of the distrust of election is beyond fact and based on strongly-held beliefs, much of the healing of our nation is beyond the scope of local election officials. This is a larger, societal issue. Civil society engagement is also necessary, as proposed by the non-partisan, non-profit Election Official Legal Defense Network, led by prominent election legal experts Ben Ginsberg and Bob Bauer along with David Becker, executive director for the Center for Election Innovation and Research. The engagement of business leaders, faith leaders, and academic institutions on a local level will help to slowly shift the attitudes towards fair play, acceptance of results, and elections in general, the backbone of our democracy. Funding all of these programs will complete the multi-pronged approach needed to rebuild public trust in elections.

Protection for Election Officials and Workers. The harassment, intimidation, and threats of violence to election officials have become a significant concern. The establishment of the Justice Department's Elections Threats Task Force by Attorney General Garland is much appreciated, giving election officials a way to report suspected threats or violent acts to their local FBI office and Election Crimes Coordinator. As individuals are prosecuted and sentenced, it is hoped that it will deter others from doing the same in the future. Additional public safety measures to protect election officials, whether it be on a federal, state, or local level will continue to deliver the message that these actions are unacceptable.

Conclusion

I am truly grateful for the opportunity to share my experience as an election official in 2020. Democracy is fragile and it took a hit in 2020. We must do what we can collectively to restore trust in election and the democratic process of choosing our leaders. Our republic depends on it.