

Legislative Response to the Governor’s Commission on Strengthening Utah’s Democracy: Reflections Two Years Later

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In December 2009, the Governor’s Commission on Strengthening Utah’s Democracy (GCSD) issued its final report to Governor Gary Herbert that included recommendations in areas of campaign finance, lobbying, and election law in hopes that the proposals would “bolster political participation” within the state. Commission formation and work product “was a response to a worrying trend. Utah has historically boasted robust voter turnout, but Utahns were at that time less likely to cast a ballot than citizens of 47 other states” (Governor’s Commission on Strengthening Democracy, 2009, p. 2). This article examines the Utah State Legislature’s response to the recommendations directly related to the voting process as demonstrated through five bills filed based on GCSD recommendations. We will also discuss the implications within a larger context of systemic encouragement and discouragement of varying group voting.

The bipartisan Commission was convened at the behest of then-Governor Jon Huntsman to address concerns related to voter participation in the state; the Commission was comprised of 20 commissioners with wide-ranging political acumen representing diverse professions and constituencies. The process for deliberation was thorough, despite the less than one year timeframe within which the Commission completed its work. The process utilized case studies, best practices implemented in other states, and proposals presented by commissioners to determine its final recommendations. The Commission convened monthly meetings at a variety of locations throughout the state in an effort to allow the public an opportunity to observe presentations and deliberations as well as to provide input.

At some level, the Governor was striking out in this enterprise on his own, as many in Utah’s majority party see voter participation as an individual choice upon which the government should not necessarily insert itself. As articulated by a member of the House Majority Leadership during a September 15, 2010, Interim Governmental Operations and Political Subdivisions Committee meeting: “The right to vote is also the right *not* to vote.” This argument has been used to recuse the government from overt responsibility to motivate voters to vote; Republicans, in general, predominantly argue that the voter has the onus of responsibility to ensure that they are “informed” as well as eligible to vote, while Democrats, in general, state that they wish to continue to protect the right of voters to vote by minimizing barriers whenever possible.

Media interest in the Commission’s work as well as public participation in open meetings gave credence, however, to the argument that minimizing

barriers to voter participation and validating voter voice through campaign and elections reform were issues ripe for discussion within the public policy sphere. The tension that exists within both legislative and executive branches as to the degree to which government should *encourage voting* (versus merely *facilitate* it) clearly influenced whether many of the Commission’s recommendations were implemented. These include placing a cap on campaign contributions, Election Day voter registration, establishment of an elections commission to adjudicate violations of election code, and requiring employment information for campaign donors.

ADOPTED GCSD RECOMMENDATIONS

Military recommendations focused on making Utah’s “voting system more accessible to overseas military voters” (GCSD, 2009, p. 12). The Utah State Legislature supported this recommendation in the 2010 General Session via Senator Ben McAdams and Representative Lynn Hemingway’s SB 216 Absentee Voting by Military Personnel Amendments. Although a laudable effort, federal requirements as prescribed in the National Defense Author-

ization Act (NDAA) were signed into law on October 28, 2009. The potential penalty of removing the State’s ability to oversee federal election processes may have provided the proverbial nudge, ensuring that these changes were implemented. Continued compliance with the NDAA as well as with National Voting Rights Act (NRVA) and Military and Overseas Voter Empowerment Act (MOVE) may also be tied to possible penalty. Committee and floor conversation on SB 216, however, affirmed a role for the government to improve ease for overseas voters (with special deference afforded to military personnel cited), and the bill passed with

no dissenting votes in both houses.

The Commission’s Automatic and Portable Voter Registration recommendations were also addressed in the 2010 General Session:

The Commission agrees with the National Commission on Federal Election Reform in 2001, which concluded: “The registration laws in force throughout the United States are among the world’s most demanding...[and are] one reason why voter turnout in the United States is near the bottom of the developed world.” (GCSD, 2009, p. 20)

The Commission organized its recommendations into what may be identified as two subcategories: already registered voters needing an easily portable registration status, and unregistered voters needing registration systems accessible to gain the status of “voter.”

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Representative Rebecca Chavez-Houck and Senator Scott Jenkins' HB 161 Voter Registration Amendments (2010) addressed the portability registration status and passed through the legislative process with relative ease. (Both legislators were members of the GCSO.) This bill authorized the administrative branch to compare change of name or address information in the statewide voter registration database with information submitted by a registered voter to a state agency. In essence, this option provides the government with a means to update information for the convenience of the voter who might change marital status or change residences, for example. Local elections officials saw potential efficiencies in keeping records current, and party officials saw a benefit in improving accuracy of voter information. HB 161 augmented Utah's compliance with the NVRA and the bill passed easily, with no opposing votes in either chamber.

CONTINUED OPPORTUNITIES AND CHALLENGES

The GCSO's recommendations for establishing Election Day registration, however, have not fared as well within the legislative process. HB 244 Provisional Ballot Amendments for Unregistered Voters (sponsored by Rep. Chavez-Houck in 2010) modified the Election Code to require a county clerk to count a provisional ballot of an unregistered voter under certain circumstances. This bill failed to be released from the House Rules Committee. In addition to providing an opportunity for unregistered voters who may have inadvertently missed the voter registration deadline to have their provisional ballot counted (once the voter's eligibility was verified), the bill attempted to provide a "failsafe" for students and other new registrants who submitted their registration to a third party organization (i.e., student voter registration drive effort) with the belief that their registration had been submitted and accepted by their county clerk.

Another attempt to review the proposal during the September 2010 Interim Government Operations and Political Subdivisions Interim Committee unveiled a seemingly strongly held belief by many in the majority party that voters should exercise diligence in ensuring that they register on time and that their registrations are recorded by the County Clerk. In essence, many Republicans on the committee felt that wasn't the government's job to make sure a voter's registration was submitted in a timely manner. Lawmakers also asked if it would be more prudent to instead penalize those third parties who gathered registrations on behalf of voters and did not follow through with submitting those registrations in a timely manner. Even more perplexing by those who see voting as a "right" versus a "privilege" is the argument articulated by some on the interim committee that voters should make an effort to earn their right to vote.

Efforts to provide a limited "failsafe" in draft legislation during the 2011 session resulted in a stalemate between the bill's sponsor and a number of the county clerks in the state. Proposed language would have required a sworn affidavit as to the date and location of the reported voter registration submission (upon threat of penalty). This caused some clerks and the bill's sponsor concern as to impeding rather than expanding voter access (Cooper & McGinty, 2012). The bill was therefore not considered in either the 2011 or 2012 General Sessions.

In fairness, there have been a number of pieces of legislation that have passed since the Commission issued its recommendations that, while not part of the Commission's work, will expand voter participation and access (as proven by implementation of similar laws in other states). These include allowing county clerks to provide centralized Election Day voting centers (HB 130 by Rep. Chavez-Houck in 2011) and a study on expanding use of vote-by-mail processes (HB 172 Rep. Steve Eliason in 2012). In addition, there has been much rigor in improving administrative efficiencies in our

elections processes, as championed by the Lt. Governor Greg Bell's office. These efforts have garnered a preponderance of support from legislative committees which have oversight on those processes. These changes include continued support of the state's online voter registration system, shoring up of municipal initiative processes, clean-up and technical changes that align policy with practice when it comes to campaign finance reporting, augmenting party reporting of campaign contributions, and many other improvements.

NEXT STEPS

As mentioned previously, there seems to be a conflict of conscience among elections officials and the policy makers who consider legislation guiding the process as to what extent governmental institutions are responsible for facilitating citizen participation in government. Public information campaigns to inform voters of the process, related deadlines, and improving access to voting locations seem to be supported fairly wholeheartedly by both legislators and elections officials. The point at which the decision to vote becomes the total responsibility or right of the voter as a determination is less clear. Yes, the voter decides whether or not he or she chooses to vote, but if, for example, a citizen who is an unregistered voter decides the morning of Election Day that he or she wants to participate in the process, at present, Utah law prohibits them from participating in that day's election. Has that individual's right been hampered and is that fair? Some would say that the voter is not taking their right seriously enough and must be penalized for their delay; others argue that their right is paramount

and should be honored through Election Day.

According to the advocacy group Liberty Tree: Foundation for the Democratic Revolution,

Most Americans believe that the "legal right to vote" in our democracy is explicit, not just implicit, in our federal Constitution. In fact, the federal Constitution recognizes *each state's* guarantee of voting rights, and furthermore, guarantees equal protection of those rights. Additionally, the federal Constitution provides for elections for the U.S. House and Senate, and repeated amendments to the Constitution have affirmed that the right to vote belongs to all citizens regardless of race (15th Amendment) or sex (19th Amendment), and to all citizens over the age of eighteen (26th). (Liberty Tree, 2008)

Liberty Tree, as well as other organizations, has advocated for a Constitutional amendment that clearly delineates a Voter's Bill of Rights which would strengthen many of the policy implications of the NVRA, and a number of states have taken that responsibility upon on themselves, establishing state Voter Bills of Rights in the absence of a federal call.

The scope of that debate is too extensive for further elaboration here, yet this ongoing tension will continue to color implementation of public policy related to participatory democracy here in Utah. It is the authors' contention that the recommendations of the GCSO should be further explored and championed. Perhaps the work of the Commission continues via its recommendation to establish a State Elections Commission, which could then continue to delve into these issues and provide counsel and perspective to lawmakers. Given national debate related to recent legislation adopted in states across the country that is couched by some as movement to *suppress* voter access versus improve voter access (i.e., voter ID laws) (Cohen, 2012), we assert that Utah would be well-advised to continue the work of the Commission in some form or fashion, in an effort to diffuse voter suppression efforts and to augment accolades that make the state a leader in other aspects (i.e., using technology to improve voter participation) for citizens who wish to exercise their franchise.

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