

# ROLL CALL

## Next Phase of Election Reform: Start With Facts

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As the general counsel to the Obama and McCain campaigns, we had our disagreements — a fair number of them, as a matter of fact. But we share a deep commitment to fair and well-run elections in which all qualified voters have the opportunity to vote, and all the votes that they cast are accurately counted.

Looking back on the 2008 elections, we have no doubt that reforms in the administration of elections in this country are needed if we are to meet these standards. We also believe such reforms can be achieved, with potentially transformative success for the American voter.

It may be news to many readers that reforms are still needed. The media widely reported a smooth election, and in some places, those reports were accurate. The problems — and there were many, scattered across the country — received comparatively little attention because the outcome of the voting was clear.

State voter registration lists suffered from various levels of inaccuracies, there were controversies over registration drives, the lines for early voting almost overwhelmed the system in some states, and absentee ballots often reached voters too late to be cast, especially for armed forces members overseas.

And on Election Day, there were many reports of more long lines, inadequate ballots, malfunctioning machines and voters turned away because of registration issues across the country.

If the election had been close, there would have been legal controversies over counting hundreds of thousands of absentee and provisional ballots in key states.

Understandably, Americans seem to care about these problems most when, and sometimes only when, elections are close. Even when these problems receive the attention that they deserve, there remains a major obstacle to rational dialogue and effective reform: the absence of reliable, comparative data on how our election system is performing.

If these debates are to move forward in the face of much partisan mistrust and reflexive disagreement, we need some factually grounded agreement on where we are now. Only then will we have some sense of what kind of solutions are likely to succeed.

Data provide the reality check that forecloses the most extreme positions. Unfortunately, our state and local governments do not generate, let alone make public, the most basic information on how well the system is working. Many states cannot tell you how many people showed up to vote on Election Day. Other states have no idea how many voters are registered or how voters cast their ballots. What little data we have suggest that jurisdictions have widely variable numbers of provisional ballots and markedly different ballot discard rates. Even here, however, we lack enough information to figure out why that is so.

It is essential that the data collected is distilled into a useable form. Voters need a readily accessible metric to hold their government accountable for missteps and reward those who perform well.

Policymakers need solid, comparative data to referee the inevitable fights that take place between reformers, parties, candidates and election administrators over whether the system is working. Election administrators need a strategy for sorting through widely varying local practices to identify the best ones.

A critical step toward the production of this data is the Democracy Index, proposed by Heather Gerken of Yale Law School, which would rank states and local election systems based on performance. Such an index would function like a U.S. News and World Report ranking for colleges, pulling together basic information that matters to voters: How long were the lines? How many ballots got discarded? How often did machines break down?

This is the kind of solution that should attract strong bipartisan support. Rather than adopting a top-down, command-and-control

approach, it relies on a market-based solution, looking to “sunshine” — the plain light cast by the facts — to motivate responsible officials to do better. Rather than mandate uniform national standards, it takes advantage of local variation to spot and surface good policy.

What’s most attractive about a proposal like Gerken’s is that it should lay the groundwork for well-reasoned reforms. With better data, we should be able to avoid fruitless discussions about the things that don’t matter and focus on the things that do. Reliable performance data, in our view, would make visible the costs associated with our current registration system, potentially moving us toward a system of automatic voter registration by states, which in turn would help eliminate the conflicts over the role of private registration activity.

Reliable performance data would, we also suspect, help advance discussion of the role and rules for early voting and give election administrators the ammunition that they need to fight for the resources that they have so long done without.

Agreement on these issues will not always be easy. But good data offer a shared starting point for discussions about the future path of reform.

When President Barack Obama and Secretary of State Hillary Rodham Clinton were Senators, both proposed bills that would make the Democracy Index a reality. The problems that we saw during the 2008 elections confirm the importance of passing just such a bill and giving at long last a strong factual foundation to the urgent business of reform — and a strong incentive to elected officials, administrators and parties to get on with the hard work ahead.

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