

Wednesday, September 4, 2013

TO: The President's Commission on Election Administration

FROM: Steve Richardson and Greg Moohn, Virginia Independent Voters Association

RE: Testimony on voting experiences for public hearing in Philadelphia, PA

Thank you, Members of the Commission, for this opportunity to contribute to the discussion of what "best practice" would look like for a typical election in the U.S. We're here on behalf of independent voters in Virginia and IndependentVoting.org. You've heard from quite a few Independents in Florida and Colorado, so you know we're here not to talk about *barriers to casting ballots* but rather *barriers to participation in elections*. Every voter should have full access to the democratic process; unfortunately, our system is not delivering it.

You've done an impressive job of organizing a listening tour and assembling numerous experts on election administration. But the Objectives and Scope of Activities are too narrowly focused. By focusing on efficiency – improving the way elections are conducted – rather than effectiveness – whether elections are achieving what they are supposed to – this Commission will miss a rare opportunity to address issues that touch *every* American.

We do not want to minimize the importance of sound administration. However, barely half of all those eligible bother to vote, even in a presidential election, and almost 40% of them decline to associate with either of the parties that control elections. Tens of millions of Americans are not participating, and the barriers this Commission is considering will account for a tiny fraction of them. The real problem is that voters don't think their vote will count even if it's counted. Most votes don't matter because the system reflects partisan preferences that constrain voter choice.

For example, even in Virginia, where we do not register by party, major parties enjoy advantages built into the process. Primary elections for major party candidates are publicly funded, but anyone voting in the primary must choose one of the two major party ballots. For Independents, this means choosing which race is most important, because it is not possible to help nominate all of your favorite candidates unless they're in the same party. A real open primary, by contrast, allows voters to choose any candidate in any race (e.g., California's "Top-Two" system).

Virginia's primary is considered "open," but our elected officials have demonstrated they have no intention of allowing non-partisans to fully participate. In 2008 and again in 2012, the Republicans – clearly concerned about Ron Paul's challenges to the party favorites for the Presidential nomination – announced voters would have to sign a "loyalty oath" to receive a primary ballot. This (unenforceable and unconstitutional) oath, a pledge to support the nominee in the general election, was supposed to prevent others from "crashing" their primary. But in both cases it was withdrawn, within days, due to backlash from members of their own party.

This year, in which we're electing a new governor, the Republicans opted to nominate their candidate by convention, forgoing a primary election because they were afraid the Lieutenant Governor, a moderate, might beat the Attorney General in an election open to all voters.

Why can't we just wait for the general election? Because at that stage of the process, non-partisans are forced into the role of "swing" voters – choosing between only those candidates deemed acceptable to the major parties the rest of us have chosen not to join. Minority party voters are no better off than Independents because their candidates never had much of a chance and they did not get to choose among the viable candidates, either. Voters should pick the candidates, but in most races today party leaders do the choosing. The only way to put all voters and all candidates on even footing is to have just one primary ballot.

Members of major parties – who enjoy the advantages of incumbency, including control of the rules governing elections – argue that they have "earned" publicly funded primary elections by virtue of voter support; others are free to start their own party, gather signatures, and "qualify" for similar treatment. They also argue that they should be allowed to choose their own candidates without interference by opponents and Independents. These views are reasonable from a partisan viewpoint but completely unacceptable for a system of government by the people and for the people. A truly democratic system would encourage maximum participation. Closed primaries do the opposite.

Therefore, we encourage you to recommend to the President an extension and expansion of your Charter to include *systemic issues that limit participation in the democratic process*. We look forward to your final report and hope to see you in another round of hearings that explore these issues in greater detail.