

VIA EMAIL

March 27, 2023

Hon. Bryan Steil, Chairman
Hon. Joseph D. Morelle, Ranking Minority Member
House Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515-6157



RE: Full Committee hearing, “2022 Midterms Look Back Series: Government Voter Suppression in Luzerne County, Pennsylvania.”

Dear Chairman Steil and Ranking Minority Member Morelle:

The American Civil Liberties Union of Pennsylvania (“ACLU-PA”) respectfully requests that this written comment be submitted for the record to the House Committee on House Administration at the hearing entitled “2022 Midterms Look Back Series: Government Voter Suppression in Luzerne County, Pennsylvania,” scheduled for March 28, 2023.

At the November 2022 general election, approximately one-fifth to one-third of in-person polling locations in Luzerne County, Pennsylvania experienced paper shortages that prevented the use of their voting systems.¹ These kinds of errors have a profound impact on election day and the right to vote. Despite these challenges, the citizens of Luzerne County rose to the occasion. Poll workers immediately noticed the issue and arranged for mitigating measures, including obtaining more paper or setting up stations for voters to use emergency paper ballots.² Luzerne County election officials and party leaders worked in a nonpartisan manner to alleviate the unintended harm by jointly seeking an extension of polling hours to ensure that all voters who desired to vote would have the opportunity to do so.³

No one wants episodes like the paper shortage in Luzerne County to occur. And everyone wants adequate assurance that nothing similar will happen in

¹ Learn-Andes, J., “Luzerne County votes must use provisional ballots between 8-10 p.m.,” *Times Leader*, Nov. 8, 2022, <https://www.timesleader.com/news/1584552/polls-will-stay-open-to-10-p-m-due-to-paper-shortage>

² Conde, X, “Under national scrutiny over a paper ‘shortage,’ Luzerne County’s poll workers worked overtime to ensure people could vote,” *The Philadelphia Inquirer*, Nov. 9, 2022, <https://www.inquirer.com/news/luzerne-county-voting-election-paper-shortage-20221109.html>

³ Metrick, B. “Voting Hours extended in Pa.’s Luzerne County over ballot shortage,” *PennLive*, Nov. 8, 2022 <https://www.pennlive.com/news/2022/11/voting-hours-extended-in-luzerne-county-after-paper-ballot-shortage.html>

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the future. Quite frankly, mistakes and errors like this are a direct result of the severe underfunding for the administration of U.S. elections.

U.S. elections suffer from chronic underfunding

The plight of local elections offices struggling to run elections on shoestring budgets has garnered attention for a significant amount of time and certainly since the 2012 election.⁴ The COVID-19 pandemic and its impact also underscored the lack of flexibility in election budgets.⁵

By and large, local jurisdictions, mainly at the county level, but sometimes at the municipal level, run all elections – local, state and federal. Yet, the source of funding for those local election offices is primarily local tax revenues, rather than a funding source that is sustainably designed and is a shared responsibility among all three levels of government.⁶ The result is a lack of capacity and resources to ensure a smooth election.⁷ The lack of resources translates into, among other things, inadequate pay for election workers, both full-time and temporary. This, in turn, generates frequent turnover of election staff and inhibits the recruitment of professional, qualified staff. All of these factors create an environment that increases the chances of mistakes and errors that bring about unacceptable consequences and erodes trust in elections.

The difficulty of quantifying the gap in funding is magnified by the lack of reliable data about the actual cost of running elections.⁸ Estimates of adequate funding are generally developed by extrapolating from the few studies that attempt to measure both the year-round costs of running

⁴ U.S. Presidential Commission on Election Administration, *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, at 10, January 2014, <https://web.mit.edu/supportthevoter/www/> (“The most universal complaint of election administrators in testimony before the Commission concerned a lack of resources.”).

⁵ Pat Beall, Catharina Felke & Elizabeth Mulvey, *As Trump and Biden Battle, Election Officials Are Running Out of Time, Money for November*, PBS (July 14, 2020), <https://www.pbs.org/wgbh/frontline/article/covid-voting-mail-in-ballots-election-officials-running-out-of-time-money-for-november/?sf125413278=1> [<https://perma.cc/RH25-5Y3C>].

⁶ Stewart, Jr., C., “The Cost of Conducting Elections,” MIT Election Data & Science Lab, May 16, 2022 at 4. <https://electionlab.mit.edu/research/cost-of-conducting-elections>; Sellers, Joshua and Roger Michalski, “Democracy on a Shoestring.” *74 Vanderbilt Law Review* (2021) at 1088, <https://vanderbiltlawreview.org/lawreview/2021/05/democracy-on-a-shoestring/>

⁷ Sellers, et al, *supra* n. 6, at 1081 “Even in a world without bad faith, political meddling, or questionable motives, it is difficult to run elections well without sufficient financial backing.”); Election Infrastructure Initiative, “50 States of Need: How We Can Fully Fund Our State and Local Election Infrastructure” at 6, <https://www.modernizeourelections.org/50statesofneed> (“The cost of an election includes the personnel, equipment, and supplies needed to administer an election.”)

⁸ Sellers, et al., *supra* n. 6 at 1081; Katy Owens Hubler & Wendy Underhill, *Election Costs: Who Pays and with Which Funds?*, NAT’L CONF. OF STATE LEGISLATURES (Mar. 2018), <https://www.ncsl.org/research/elections-and-campaigns/election-costs-who-pays-and-with-which-funds.aspx> [<https://perma.cc/BGP4-TSK4>] (“No one knows how much it costs to run elections in the United States.”); see Zachary Mohr, Martha Kropf, JoEllen Pope, Mary Joe Shepherd & Madison Esterle, *Election Administration Spending in Local Election Jurisdictions: Results from a Nationwide Data Collection Project 2* (July 26–27, 2018) (unpublished paper from 2018 Election Sciences, Reform, and Administration Conference), <https://esra.wisc.edu/wp-content/uploads/sites/1556/2020/11/mohr.pdf> [<https://perma.cc/PLM6-XHVB>] (“While U.S. policymakers have provided for more centralized data concerning voter turnout, provisional votes and registered voters, no scholars that we know of have unearthed cost data in a systematic way nationwide.”).

an elections office and the cost of holding an election itself.⁹ The annual cost necessary to run elections nationally, by any calculation, is in the billions of dollars¹⁰ and the general consensus is that local sources of funding fall short of providing enough money.¹¹

Neither state governments nor Congress have stepped in to remedy the inadequacy of election funding. Instead, during the 2020 election cycle, private donors provided an influx of cash to assist jurisdictions who needed to pivot to safer methods of voting, like mail voting, and who needed personal protective equipment (PPE), larger spaces, and more equipment, among other pandemic-related needs.¹² The use of private funding caused controversy and sparked claims of partisan interference. As a result, many jurisdictions have enacted laws banning private funding for elections, and only one state, Pennsylvania, appropriated a one-time payment of significant funds to attempt to close the gap in funding.¹³

Congress has not developed a plan for long-term investment in election infrastructure. Rather, Congress has acted episodically, and primarily in response to severe crises that were too significant to ignore.¹⁴ As the MIT Election Data and Science Lab has noted, Congress acts as the “insurer of last resort” but that role does not permit the proper planning or uniformity in the administration of elections across the country.¹⁵

Adequate resources would have made a difference in Luzerne County and hundreds of counties like it during the 2022 election cycle. With enough money, counties can afford to recruit, hire, pay and train their full-time elections staff. That staff will have the capacity to write procedures manuals documenting all election processes and ensuring the proper accountability measures to prevent mistakes. Such risk management planning cannot occur when the elections office lacks staff or when its directors have responsibility for other administrative functions. Moreover, adequate funding would have allowed Luzerne County to purchase the proper equipment and supplies, like paper.

Threats and harassment towards election officials causing mass exodus

The other factor that has created instability in election offices across the country, not just in Pennsylvania or Luzerne County, is the pervasive and unrelenting attacks levied against election officials baselessly accusing them of malevolent actions, fraud, or breaking the law, among other

⁹ Stewart, *supra* n. 6 at 3.

¹⁰ *Id.*; Election Infrastructure Initiative, “50 States of Need: How We Can Fully Fund Our State and Local Election Infrastructure” at 9-1 (estimating that 10-year amount of funding needs is more than \$53 billion)

¹¹ Sellers, et al., *supra* n. 7 at 1082; Stewart, *supra* n. 6 at 3 (“[A] consensus exists within the election administration community that elections are underfunded nation-wide, even if they are more underfunded in some places than others.”)

¹² Stewart, *supra* n. 6 at 7.

¹³ Caruso, S., & Lai, J., “Pa. lawmakers agreed to a big election funding deal — with strings attached,” *Spotlight PA* July 8, 2022 <https://www.spotlightpa.org/news/2022/07/pa-election-funding-private-donation-ban-budget-deal/>

¹⁴ Stewart, *supra* n. 6 at 5.

¹⁵ *Id.* at 1.

things. These attacks have caused an exodus of experienced election administrators who do not wish to put themselves or their families at risk of hate mail, death threats, or other attacks.¹⁶

The driving force behind these attacks on election officials is the persistent and false narrative of cheating in elections. Front line elections workers are bearing the brunt of the dissemination of these false narratives which have also caused a crisis of confidence in our election infrastructure. Until these narratives are stopped, localities will continue to experience frequent turnover in election staff and will struggle to recruit and hire the professionals necessary to smoothly run the mechanics of our democracy. The consequence of that turnover is an increased likelihood of mistakes that impact the running of elections.

Congress can and should act to address election funding needs

Congress can and should address the significant funding needs for effective election administration across the country. For Fiscal Year 2024, President Biden proposed \$5 billion over ten years in election assistance funding to help states and localities administer the voting process, expand voter services, hire staff, and upgrade technologies. This funding would go to the Election Assistance Commission to distribute grants for state and local needs. Congress should approve this funding at the requested level.

In the current atmosphere in which election officials are falsely accused of wrongdoing and exposed to threats and harassment, funding to increase the safety of election officials just trying to do their jobs is vital. Dedicated funding for this purpose could help provide election officials with more secure facilities and increased personal safety measures, for instance. Congress should also approve dedicated funding to help states, localities, and election officials effectively combat election disinformation.

These recommendations are only a start towards the true goal of sustained investment in election administration infrastructure. Only with consistent, ample investment will the country be able to approach parity among all jurisdictions for free and fair elections and move towards eliminating mistakes and errors that harm voters.

Thank you for your consideration.

Respectfully submitted,



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¹⁶ Waldman, M., "Attacks Against Election Officials Are Taking a Toll," March 15, 2022
<https://www.brennancenter.org/our-work/analysis-opinion/attacks-against-election-officials-are-taking-toll>