Special Edition: Expert Predictions for 2017

NCSL asked some of our favorite elections experts to share what they think 2017 will bring in terms of election legislation. Unlike previous years when we have asked this question, this time the answers had a great deal of overlap. The Electronic Registration Information Center (ERIC) was mentioned repeatedly, as was new technology (and funding for it) and the bipartisan Presidential Commission on Election Administration. Election security was almost universally a concern. Below are our respondents’ answers, lightly edited for clarity and length.

Senator Devin LeMahieu (R-WI)

Last session, the Wisconsin Legislature tackled a lot of important elections issues. We started by reforming our elections agency and creating new bipartisan elections and ethics boards. We also created a secure online voter registration system (now live at myvote.wi.gov), making Wisconsin one of six states to offer both online and same day voter registration. Other successes included updating our campaign finance law, joining the Electronic Registration Information Center (ERIC), and adopting recommendations by local election officials to streamline election administration.

Moving forward, I expect the Legislature to discuss our state’s recount laws. The Jill Stein recount briefly thrust Wisconsin into the national spotlight and it’s still fresh on the minds of election officials and state representatives. The recount results proved that Wisconsin’s elections are accurate and secure. While the Stein campaign is rightfully on the hook for the recount costs, the process was a monumental task for local clerks and election officials. The time and energy of our state and local governments should not be wasted by a candidate that lost by over 1.3 million votes and has no proof of any wrongdoing. I plan on introducing legislation that will preserve the right to request a recount but also to prevent unnecessary, baseless challenges.

Denise Merrill
Connecticut Secretary of State/NASS President

The National Association of Secretaries of State (NASS) represents 40 of the nation’s chief state election officials. Members were recently polled on their top election-related priorities for 2017. Here are some key issue areas where state election officials may be looking to work with their state legislators:

Cybersecurity: Although it’s important to point out that no credible evidence of hacking into ballot casting or counting was ever discovered or presented in 2016, there is no doubt that more can be done to help state and local officials secure election systems from very serious new threats that exist in the digital age. Reviewing resources, security protocols and technical support that is available are crucial to this process, along with promoting sound cyber hygiene practices and conducting election systems testing to identify and address risks and vulnerabilities.

Contingency/Emergency Planning: Cyberthreats are just one of many potential issues that state and local election officials aim to address in their election-related contingency planning. Post-election
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recount attempts in Michigan, Pennsylvania and Wisconsin raised legitimate issues about fail-safes for voting, such as recount procedures, post-election audits and back-up paper ballots. Planning for voting equipment issues, poll book problems, excessively long lines and claims or reports of voting machine tampering/failure also remain important issues for future contingency planning efforts.

Voting Equipment: Many states and localities want to replace or update their aging voting equipment, which is approaching the end of its useful life and may have increasing technical vulnerabilities as a result. Election officials are hoping to approach their state legislators for a commitment to funding such efforts. In turn, legislators might ask their election officials for cost estimates on purchasing new voting systems, as well as perspectives on the benefits of voter verifiable paper audit trails (VVPATs), which can be used for audits or recounts and may bolster public confidence in election results.

Adam Ambrogi
Program Director, Democracy Fund

From our vantage point at Democracy Fund, we feel legislators might want to prioritize the future of voting equipment in their states and look to improve their voter registration systems.

In 2014, the bipartisan Presidential Commission on Election Administration highlighted concerns that many jurisdictions were relying on voting equipment well beyond its natural life span. As the 2016 election played out, we were relieved the country avoided a widespread equipment meltdown. On this side of the election, however, we worry state and local officials could be lured into a false sense of security, believing their equipment can simply be bandaged and make it through 2020. Numerous reports, as well as our own conversations with election officials, reveal the need for new voting systems with even more robust features of accessibility and security. Jurisdictions—state and local—will have to consider how to pay for these upgrades.

There are also new innovations like electronic poll books that bring tremendous benefit to voters and officials in polling places, and yet some of this new technology may not even be authorized under some state law. It will be important for lawmakers to assess where election codes might hamstring technology solutions. Legislative races themselves function best when good equipment and processes exist and are fully operational.

Another issue taking off now is the improvement of state voter registration systems and management. During the last five years, more than 30 states have made online voter registration available. Additionally, many states have joined the Electronic Registration Information Center (or ERIC) where over 20 participating state offices work to share data to reach out to eligible unregistered citizens and find and remove the names of individuals who have moved or are eligible for removal. Legislators can take advantage of key learnings from those states, especially if the information reveals opportunities to improve the registration process for voters and save money.

Tim Mattice
Executive Director, The Election Center
(National Association of Election Officials)

Some of the issues that we noted last year will continue in 2017, perhaps in a more robust manner. These trends include an increase in online voter registration as well as an increase in automatic registration in many states. Accessibility issues in elections will continue to be a highlighted issue as baby boomer voters, voters who are very engaged, reach senior status, resulting in an increase of voters with mobility issues, low muscle motor skills, with vision problems, with cognitive problems and the ever-growing language difficulties. Those include not only non-English languages but also literacy issues and functional literacy problems.

With the likelihood of no federal funding to assist in the purchase of new voting systems, resources allocated toward new systems will be a critical issue for many jurisdictions for the next couple of years at least. As we move toward an increase in technology not only in voting systems but also in election operations, and with the shortened lifespan of advanced technology, the issues of maintenance and longevity must be factored into the equation.

Then there’s the issue of cyber security. Election officials have been dealing with the notion of “security” in their operations for years. However, the new reality of cyber security will not only impact the systems that are in place now but all of the advanced technology systems that are being explored and tested involving the internet and the potential for hacking and intrusion in one form or another. With the recent announcement of the Department of Homeland Security designating election systems as “critical infrastructure” a whole new formula for discussion and debate will certainly be played out in 2017 and beyond.

Election administrators in the United States remain the gatekeepers of democracy and they do that job with integrity and a genuine conviction for fair and transparent elections despite the challenges that confront them.
Alexis Schuler and Samuel Derheimer  
Senior Director and Senior Manager, The Pew Charitable Trusts

As part of its mission to support American democracy, The Pew Charitable Trusts works directly with election officials and private sector partners to create tools that make voting easier, more efficient, and less costly. Two tools that played an outsized role in 2016 and will continue to affect election administration in 2017 and beyond are:

The Voting Information Project (VIP), a partnership among Pew, the states, Google, and many other companies, provides voters with official information about the election process where they look for it most—online. Through partners such as Facebook, LinkedIn, Etsy, Instagram, Mozilla, AOL, Twitter, AT&T, and Foursquare, VIP delivered crucial voting information more than 100 million times in the days leading up to the election.

The Electronic Registration Information Center (ERIC) houses a sophisticated data-matching process to inform states about voter records that may be out of date and about eligible but unregistered citizens. It was begun with assistance from Pew and is now governed and funded by its member states, which have increased from seven in 2012 to 20 plus the District of Columbia today. Independent researchers found that ERIC states outperformed non-ERIC states on several key metrics of election administration, including voter registration and turnout rates.

November’s election was a long and hard-fought exercise in democracy, illuminating deep differences on how best to keep our country moving forward. The robust public debate will not end simply because the election is over. The good news is that, thanks to tools such as VIP and ERIC, for many Americans the ability to express their preferences through the ballot was easier and more efficient this year than ever before.

Tammy Patrick  
Fellow, Bipartisan Policy Center

After every presidential election there is an opportunity to review and revise election statutes and 2017 will be no exception. After the 2012 cycle and the establishment of the bipartisan Presidential Commission on Election Administration (PCEA), the nation experienced an increase in states adopting online registration, expanding voting opportunities with early voting and no-excuse absentee, allowing interstate data-sharing of voter rolls to increase the accuracy of the lists, among many other recommendations that were adopted.

This legislative session we expect to see continuation of those considerations as well as renewed attention to the replacement of aging voting equipment across the country. It is possible that the recent Department of Homeland Security designation of election administration as critical infrastructure will bring with it resources, but it remains to be seen who will pick up the tab in the end.

One major area of concern is around vote by mail and absentee voting, particularly prescribed due dates, envelope design requirements that complicate the return of voted ballots, and postmarking. In 2015 the United States Postal Service (USPS) delivery standards changed. However, the majority of states have not modified their dates for when a ballot application can be made, nor the considerations for its timely return.

Allowing voters to drop off ballots at drop-boxes and at the polls, in addition to increased education of the electorate, can mitigate some of the negative impact of changes in the mail system. Additionally, using postmarks and ballot tracking data for ballots that come in after Election Day can assure that the ballot was submitted in a timely manner and allow that citizen’s vote to be counted.

States like Iowa and Ohio are leading the nation in this area and provide model legislation and direction. Resources are available for legislators on this issue in The New Reality of Voting By Mail.
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Doug Chapin
Director, University of Minnesota’s Program in Election Administration

2017 brings state legislatures a series of challenges they’ll need to face in the field of elections.

The first is the changing federal landscape. For the last eight years, the federal government has been under Democratic control, with an attendant focus on guarding voting rights and resisting many state efforts to enact changes to the voting process. The 2016 election results could set up conflicts with states who view the concept of voting rights more expansively than the incoming GOP Administration.

The second is the continuing interest in registration reform. With online voter registration now the default for most states, the focus is likely to shift to further registration improvements like interstate data exchanges and automatic voter registration. That will challenge states to identify both costs – and savings – associated with such reforms.

The third is an evolving understanding of the voting process. The so-called Colorado model, in which every voter is mailed a ballot and allowed to choose how to return it—by mail, by dropbox or in person on or before Election Day—is being tested in several California counties and may begin to gain backers in other states as well. Expect to see this discussed on more state capitols across America.

The last—and likely most important—is the need to upgrade and/or replace old voting technology. Legislatures seeking to make these upgrades will be faced with two difficult approaches: find money to replace existing machines using the current precinct-based voting model, or reduce equipment costs by rethinking the process to allow for more non-precinct voting. Either way, legislators will need to step outside of their comfort zones (fiscal, political or both) to identify the best way forward.

The Future of Elections

In the historic setting of colonial Williamsburg, please join us for NCSL’s The Future of Elections: Technology Policy and Funding Conference, June 14-16. We’ll bring together legislators, legislative staff, election officials, and election administration experts from across the country to share ideas about how to update our voting infrastructure in an era of limited resources and heightened security concerns. The conference is free for legislators and legislative staff.

Register Today!
The Election Administrator’s Perspective

Mina Cook is the Elections Administrator in Hunt County, Texas. Hunt County is home to 86,000 residents and 52,000 registered voters. The Audie Murphy/American Cotton Museum in the county seat of Greenville attracts visitors from all over the world. The Canvass spoke with her on January 9.

- This past year especially there was so much talk in the media and on TV about voter fraud and rigged elections that it really takes a toll, when you and your staff are working so hard to do a good job and have a successful election. It really upsets me when a voter comes in and says things like that. Every opportunity I have, I take them aside and explain what we do. Most of the time they leave with a much better understanding of the process, and understand that we are working to do the job to the best of our ability and aren’t doing any funny business.
- It is tough [to find election workers]. We normally choose workers from the precinct in which they live, but sometimes we can’t find anyone. Sometimes I have to ask other people who are already working if they know someone who would want to help.
- Consider that Texas and the U.S. had to change voting equipment due to the HAVA act of 2002. I can’t speak for the rest of the country but here in Hunt County, the voting equipment we bought with those federal funds is going on 12 years in service. And we aren’t sure where we are going to find $1 million-plus to get new equipment.
- My top topic is the ID issue in Texas. It has been a big deal over that last two or three years. Hopefully this upcoming session, the legislature can firm up the law so the voter knows what they need to bring with them to vote.

Read the full interview with Mina Cook.
Worth Noting

- The U.S. Vote Foundation’s 2016 Election Day Voter Experience Survey is out. Of the 12,000 voters surveyed, 76 percent were satisfied or very satisfied with their experience. Beyond that general question, the survey drills into details. One notable detail: for the first time ever, over half of overseas voters received their ballots electronically.

- Another report on the election came from the Organization for Security and Cooperation in Europe (OSCE), which sent 295 observers from 44 countries to watch the U.S. presidential election. It says that the election was “highly competitive and demonstrated commitment to fundamental freedoms of expression, assembly and association” and “were administered by competent and professional staff.” Read the report for areas highlighted for improvements.

- Congratulations to Charles Stewart III. He recently announced the creation of the MIT Election Data and Science Lab. For years, election geeks have been asking for more data on elections, and more help on using it. This new lab will help with both.

- The Council of State Governments’ Overseas Voting Initiative has released reports from two subgroups. The Policy Working Group earlier released its report, Overseas Voting: Strategies for Engaging Every Voter. Recently the Recommendations from the CSG Overseas Voting Technology Working Group was released. Together, these two reports provide excellent underpinning for lawmakers who care about military and overseas voters—which is to say, all lawmakers.

- NCSL has created a webpage on alternative voting methods, such as ranked choice voting (aka instant runoff voting). With Maine voting in November to become the first state in the nation to use ranked choice voting, bill introductions this year indicate that new systems may come under more serious consideration. Until Maine’s move, RCV has been permitted in a handful of municipalities only. Check out FairVote’s RCV webpage as well.

- In the midst of the post-election wrap-up in December, readers may have missed the release in the federal register of new jurisdictions that must provide ballots and all election materials in languages other than English. These jurisdictions are established under a formula set in Section 203 of the Voting Rights Act. For the first time, Georgia, Idaho, Iowa and Oklahoma will have at least one such jurisdiction.

- NCSL’s blog has good stuff on public policy all the time; here we are on critical infrastructure, ranked choice voting, and maps colored by legislative districts.

- If you love a good podcast, check out NCSL’s brand new one, Our American States. The first episode is a “state of the states” rundown with our executive director, Bill Pound, and the second is on what states can learn about education from looking outside our borders. Pretty wonky, but pretty easy listening for a long run or commute.

The big news for NCSL’s elections team is that Dan Diorio is now a dad. Jack Martin Diorio, all eight pounds of him, arrived on Jan. 11. Dan is taking a few weeks off to help get the new family off to a good start.

On the professional front, we’ve had a surprising number of requests from legislators and legislative staff on: ballot selfies, permutations on voter registration, ranked choice voting, bills to require presidential candidates to disclose their taxes before getting on the ballot, straight ticket voting and more. Next month we’ll share what we’ve learned.

Keep the questions coming—they’re our bread and butter.

—Wendy Underhill, Dan Diorio and Amanda Buchanan