Special Edition: Expert Predictions for 2015

While 2015 will not be a big year for elections—given that 46 states held their general elections last November and only Louisiana, Mississippi, New Jersey and Virginia will hold statewide elections this year—it is likely to be quite a big year for elections-related legislation.

Odd-numbered years always see an uptick in legislation, particularly in the year before a presidential election. Based on the number of bills already filed, it seems that legislators and legislative staff already have their plates full developing ideas to improve fairness, accuracy and efficiency for elections. In anticipation of a heavy year, The Canvass asked 13 national experts what they expect 2015 might bring in terms of elections policy and what advice they might offer to lawmakers. Their responses are listed alphabetically.

David Becker

Director of Election Initiatives, The Pew Charitable Trusts

At The Pew Charitable Trusts, we seek to move election reform beyond the partisan debate. In 2015 we encourage legislators and secretaries of state to take advantage of the momentum generated by the Presidential Commission on Election Administration to implement changes that will make the voting process more accurate, cost-effective, and efficient. Here are just a few ways we suggest that states may improve how they run elections:

- Take advantage of technological advances to offer online voter registration; use data-matching services such as the Electronic Registration Information Center (ERIC) to identify outdated registrations and eligible but unregistered citizens; and adopt a system that offers a seamless voter registration experience at motor vehicle and other state agencies.

- Work together to make polling place and ballot information accessible online where voters look for it most: search engines, news sites, mobile applications, and social media. On and before Election Day in November 2014, more than 31 million people looked up the official election information they needed—such as where to vote and who was on the ballot—using data from the Voting Information Project (VIP), a partnership of Pew, Google, and the states.

- Ensure the delivery of complete, accurate data for the Election Assistance Commission’s 2014 Elections and Voting Survey. These data will be the cornerstone of the next edition of our Elections Performance Index, which uses 17 indicators to evaluate how well states administer elections. We will spend 2015 preparing the index for release in early 2016.

We thank our colleagues nationwide for all of your work administering last year’s election. We look forward to kicking- starting an exciting new year working with state legislators, election officials, and secretaries of state to offer our ongoing analysis and technical support to make citizen participation in our democracy more efficient.

Craig Burkhardt

President, Republican National Lawyers Association

My hope is that during 2015 the leaders of credible national election management organizations like National Association of Secretaries of State (NASS) and International Association of Clerks, Recorders, Election Officials & Treasurers (IACREOT) determine to step forward and become the standards-setting organizations for voting technology.

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As a long-time participant in the conduct of elections, I believe the federally-centralized structure devised by Congress in the wake of Bush v. Gore is fundamentally incapable of performing this task. In a federal system, an entity like the U.S. Election Assistance Commission (EAC) is neither appropriate nor efficient at the task of establishing technical standards. It has reduced economic incentives to innovate and locked in a few incumbent manufacturers who have little incentive to innovate in absence of standards. With the possible exception of military equipment, the only accepted and rational manner of establishing industry standards in the United States has been to use “industrial consensus standards”—the process used to establish everything from common fire hose couplings to sophisticated electronic devices in bank ATMs. NASS and IACREOT should step forward, hire a consensus standard development organization like IEEE and get cracking.

Doug Chapin
Director, University of Minnesota’s Program for Excellence in Election Administration

High-profile legal challenges and controversies aside, 2015 will be a year when election officials will be focused on implementing big changes to the election process in states across the nation.

One area where this will be the most significant is voter registration, where states like Illinois will be moving to build out same-day voter registration under a new state law and others, like California, will be putting the finishing touches on a statewide voter registration database that will make registration easier to manage for voters and election officials alike. Similarly, states with online registration will continue to look for opportunities to emulate Delaware and now West Virginia in linking those systems to other agencies like motor vehicle agencies and social service providers. You will also see new states joining Electronic Registration Information Center (ERIC), the interstate registration exchange—which will create opportunities to identify new voters but will also pose challenges to states having to incorporate this data into their existing systems.

Another big topic to watch is the continuing push to upgrade voting technology—and find the money to pay for it. Virginia and Maryland have announced plans to seek state funds to obtain new machines, which puts an actual price tag on these upgrades and will force legislators to balance election modernization with other funding priorities. Similarly, states like Minnesota will be watching the spread of electronic poll books across the nation and weighing whether, how (and how much) to spend on joining the trend.

Finally, the move away from a “one day fits all” voting experience will continue. Colorado’s use of a “ballot delivery” system—where voters are mailed ballots and have the option to return them by mail, by dropping them off at designated drop-boxes or by voting them at vote centers—will get a long look in other states as well.

It should be a busy year.

Mississippi Representative
William Denny (R)
Chair of Mississippi’s House Apportionment and Elections Committee and co-chair of NCSL’s Redistricting and Elections Standing Committee

All during my time as chairman of the House Apportionment and Elections Committee, which is about 15 years, I have been extremely sensitive to Section 2 and Section 5, with its preclearance requirements, of the Voting Rights Act. My committee is well-balanced with minority and majority representation. We have tremendous accord in that committee and we look with extreme sensitivity at every one of the bills that comes to our committee. We vet every bit of those bills before it goes to the floor.

Congress now is looking at something to rectify the U.S. Supreme Court’s decision that took Section 4 (the coverage formula in the Voting Rights Act that defined which states were included in preclearance requirements) out of the Voting Rights Act.

I think it’s a terrible idea to restore that but if Congress has to do something, why not include all 50 states in that requirement? Mississippi had been under that yoke for 48 years, one of 15 states that were included in preclearance requirements. And yet Mississippi has more elected minority officials per capita in our government than any state in the nation.

I think it is untimely now to try to go back and redefine the coverage formula in Section 4 of the Voting Rights Act. I think it ought to be left alone or, if the country believes restoring that provision is that important, then have that requirement for all 50 states.

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Susan Dzieduszycka-Suinat  
*President and CEO, U.S. and Overseas Vote Foundation*

As far as policy wishes, states should declare moratoria on changes to election procedures at least three months before voting begins. Last-minute changes create confusion and have the potential to shake voter confidence.

Since voter ID now seems here to stay, a wish of U.S. Vote Foundation would be for localities to at least make it more convenient and cost-free to acquire the proper ID.

While we are on wishes, we would be pleased to see partisan redistricting outlawed and both same day and online voter registration mandated. Aligning with the recommendations from the *Presidential Commission on Election Administration*, we wish for legislatures to earmark funds for the replacement of aging voting machines.

Rebecca Green  
*Professor and co-director, William and Mary Law School’s Election Law Program*

I think (and hope) 2015 will be the year of election technology. We’re already starting to see some states like Virginia and Maryland take steps to replace old voting machines. More states should make room in their budgets for new voting equipment in preparation for 2016.

The expiration dates for *Help America Vote Act*-era voting equipment dinosaurs are upon us. But I hope state legislatures think beyond voting machines as they imagine how technology might help elections run better. Technology investments can improve election transparency, voter experience and public confidence in election outcomes. Online voter registration portals and mobile apps to assist voters are only a few of the ways technology can be leveraged to fix many of the recurring problems we’re seeing before, during and after Election Day.

New Mexico Senator Daniel Ivey-Soto (D)  
*Vice chair of New Mexico’s Senate Rules Committee and co-chair of NCSL’s Redistricting and Elections Standing Committee*

What I hope to see is smarter use of technology. I think towards the end of 2015, with a reconstituted *U.S. Election Assistance Commission (EAC)*, we are likely to end up with a new set of voluntary voting system guidelines.

(Note: The EAC was without commissioners until December, and it now has a quorum for the first time in three years.) We will have a lot of other upgraded technological guidance as well, which will be very helpful.

At the local level, I’m hoping that we are going to get into more smart use of technology. For example, we have a couple of jurisdictions in New Mexico that have started using iPads to check voters in. As people are standing in line, poll workers will pull up each person in the system for verification; there will be a queue so that by the time voters get to the front of the line, the poll worker there does not have to go through all of the verification information. That poll worker would simply pull up on the system the person who has already been verified, get the ballot printed and get the voter moving on. This kind of smart use of technology can be little things but these little things, added up, can make a huge difference.

As for advice for legislatures, listen to your local elections officials. I can’t emphasize that enough. There really are so many verification processes, and there are so many checks and balances all the way through the elections process. When you start tinkering with things based on what may sound like good policy, if you don’t take into consideration the boots on the ground and how this gets implemented, you end up creating more problems.

Merle S. King  
*Executive director, Center for Election Systems at Kennesaw State University*

All legislators have a vested interest in well-run elections. Their credibility as servant-leaders begins with the confidence of their constituents that the election process that put them in office is fair, accurate and transparent. Like politics, all elections are local and ultimately they are conducted at the county or township level.

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But states have a significant role in election administration. That role is one of providing guidance, setting standards and facilitating good election practices. As legislators reconvene in the coming year, they should consider the following:

Election calendars are tight—especially going into a presidential election cycle.

Changes to process or technology have to be sandwiched into very small time slices. Don’t propose significant changes to election procedures prior to a major election cycle.

Talk with state, local and municipal election officials before finalizing legislative initiatives. There is significant partitioning of knowledge in election administration—not everyone at the state level knows the implementation details of an election and not everyone at the local level has a statewide perspective.

Evaluate the unintended consequence of each proposed piece of legislation. Think of election processes as a spider web—each time a strand is plucked, the entire web vibrates and moves. Fixing one problem may create two others.

Assess the state of election technology in your state. Many existing voting systems are at the end of their life span and replacing them will be an operational and financial imperative in coming years.

Doug Lewis
Executive director, The Election Center (National Association of Election Officials)

Clearly the trend to online voter registration will continue. My estimate is that within the next five to six years, we will be at 40 or more states, and within 10 years all states that have a voter registration process will have online registration, excepting North Dakota, which does not have voter registration.

Accessibility issues in elections will become a tidal wave over the next 10 to 30 years. As the most engaged voters (those 45 and up) reach “senior” status, we will have significantly greater needs to find ways to serve voters with mobility issues, with 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.

Finding ways to fund the ever-shortening life cycles of either voting equipment or voting software will be one of the most important factors facing us in the near term. We may already be at a crisis point in the age of voting equipment and software. Life cycles of any kinds of advanced technology is much shorter in every segment of society, and election administration is not exempt. But legislatures and local government officials have not adjusted to the new realities. Waiting for another disaster in elections is not a good way to prepare for this new reality.

The continuing trend of election lawsuits as a political strategy to force court-ordered election policies that are favorable to one party over another is dangerous to the health of democracy. I would hope that we can find ways to prevent “gaming” the election process. Process is more important than partisanship. If there is a way to enable legislation that judges would honor which mandates that only the most egregious situations (narrowly defined) would affect a current election cycle. All other judicial rulings would apply to future elections but not the current one. Fair elections require time to figure out practices and procedures to safeguard all voters, not just segments of voters.

John Lindback
Executive director, Electronic Registration Information Center (ERIC)

I expect 2015 to become a “Year of the Upgrade” for elections technology in many state and local governments, particularly technology related to voter registration. It’s an “off-year” for elections in most states, which serves as prime time for making the transition from old to new technology. Elections offices will be motivated to make changes prior to the big presidential election year in 2016.

Look for more states to implement online voter registration as a way to improve access to registration for new voters and improve the process for elections administrators. Look for more states to join the Electronic Registration Information Center (ERIC) in order to improve the accuracy of voter registration records and improve access to voter registration for all citizens. Look for more states to try and automate motor voter-related voter registration activity at motor vehicles offices and public assistance agencies.

In regards to voting technology, look for progress to be made at the U.S. Elections Assistance Commission (EAC) on standard setting for new voting systems. The recent confirmation of appointees to the EAC should revive a process that’s been dormant for too long.

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Tammy Patrick  
Senior advisor, Bipartisan Policy Center; member of the Presidential Commission on Election Administration

Over the last decade, states have introduced an ever-increasing number of bills relating to the administration of elections—some incorporated the input of their own local and state administrators, but many did not.

I am hopeful that this trend is changing so that the professionals on the ground will be consulted on how to improve the process.

This does seem to be occurring in regard to voter registration modernization efforts and the expansion of voting opportunities beyond “just Tuesday.” The expansion of online voter registration across the country is encouraging. Many states are expanding it to include increased efficiencies within state agencies and their voter registration rolls to improve accuracy, access and integrity.

State legislatures can help by easing limitations and funding innovation and technology. Statutory language that restricts the local administrator from using certain facilities as polling places or is overly prescriptive is severely limiting how elections can be administered.

I, and the bipartisan Presidential Commission on Election Administration, would like to see states allow for flexibility at the local level and allow for 16- and 17-year-olds to work at polling places.

Additionally, states could review statutory requirements for ballot formats with known usability science, ensure that military and overseas voters are treated equally and considered fully active registered voters, and implement school in-service days on Election Day so that school buildings can continue to be used as polling places without security concerns.

Voting equipment is aging and needs to be replaced in the near future in many states. Legislators should be considering how the equipment in their states will be purchased and review the efficiencies of other voting technology such as electronic poll books, vote centers with ballot-on-demand capabilities, mobile apps with ballot information and polling place locations and ballot tracking for votes cast by mail. There is a cornucopia of technological solutions to many issues in election administration. Many are homegrown at the local level, but there is still a bottom line cost for initial implementation.

Pam Smith  
President, Verified Voting

Voting equipment was once “cheap and durable.” Then came “expensive; wears out quickly.” In either case, systems were not always reliable, were rarely accessible and often un-auditable. No longer acceptable; today stakeholders expect reliable equipment and outcomes.

Next generation systems must be: easy for voters and poll-workers to use, available even in unexpected contingencies, genuinely, readily auditable for trustworthy results and affordable.

While recovery from the longtime logjam on new voting system standards isn’t instantaneous just because the U.S. Election Assistance Commission (EAC) now has a quorum, in 2015 we’ll see significant movement in the right direction. The flurry of new voting system designs making progress in places like Los Angeles County in California, Travis County in Texas and elsewhere bode well for being able to fulfill on both reliability and affordability.

This year will also see improvements in data standards, bringing greater interoperability of election hardware and software components from different sources, and that will measurably affect cost. To support these improvements, lawmakers should require legitimate audit trails (voter-verified paper ballots), carefully curated with rigorous ballot accounting; and enable robust post-election audits. What lawmakers need to know: smart money’s on evidence-based elections, not Sony hack-era Internet voting.

Wendy Weiser  
Director, Democracy Program, Brennan Center for Justice

The most noted election law trend over the last few years was a wave of controversial laws making it harder to vote. Between 2011 and 2014, 21 states put in place new voting restrictions, though some were blocked by courts.

In 2015, litigation over several of these laws will come to a head. Two petitions pending before the U.S. Supreme Court (out of North Carolina and Wisconsin)—and two more coming down the pike (out of Texas and Kansas/Arizona)—will likely set the legal ground rules for restrictions on voting access for years to come. In the meantime, I don’t expect to see as strong an effort to roll back voting rights this year. (cont. on page 6)
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Instead, I expect continued growth of a less noted but more robust trend—legislation to improve and make the voting process more convenient for voters. The most effective and popular reforms have been to modernize the voter registration process—harnessing technology to make the system more accurate, accessible, secure, and less expensive—and to expand opportunities to vote before Election Day.

Both of these reforms have won widespread bipartisan support in the states and were top recommendations of the bipartisan Presidential Commission on Election Administration. In the last two years alone, eleven states passed laws modernizing voter registration (through online registration, electronic registration and updates at state agencies, or Election Day registration), and four passed laws expanding early voting (bringing the number of early voting states to 33). The number of positive reform bills has dwarfed—and likely will continue to dwarf—the number to cut back on voting rights. Also critical will be efforts to replace voting machines that are reaching the end of their useful lives.

In short, the wave of the future is a more streamlined, efficient, and customer-friendly voting process, hopefully without acrimonious and retrograde fights over access to the ballot box.

NCSL Conference Will Examine Elections Technology
NCSL is pulling together sharp elections policy minds to examine technology-related issues during a conference June 3-5 in Santa Fe. The gathering is geared toward legislators, legislative staff, election officials and experts in the fields of voting, technology and security.

Sessions will cover voting technology 101; a report on NCSL’s Elections Technology Project; recommendations from the Presidential Commission on Election Administration; the impact of legislation on voting system design; alternative voting methods and implications for technology; testing and certifying voting systems; the use of technology for post-election audits, recounts and resolving disputes; and what is pushing change in the way ballots are cast.

For more information, contact Katy Owens Hubler at (303) 856-1656 or katy.owens.hubler@ncsl.org

From NCSL’s Elections Team
You’ll notice that The Canvass is a bit different this month. We’ve foregone the usual features such as “Worth Noting,” “One Big Number” and “From the Chair.”

Instead, this issue is devoted to the perspectives and predictions of some of the luminaries of the elections world. In re-reading their contributions, I see a number of commonalities: online voter registration and other registration projects are hot; observers are concerned about security and serviceability of voting equipment; voters, particularly those with disabilities or serving in the military, need to be considered at every step of elections policymaking; funding is an issue; a desire to connect election practitioners with policymakers; and a shared interest in running elections with an eye on best practices and not on politics.

This issue is a bit different in another way, too. It is the last issue produced by Michael D. Hernandez. He will be moving to Los Angeles to make his way as a screenwriter. NCSL wishes him the best of luck!

Here’s to a productive legislative year!

Wendy Underhill, Michael D. Hernandez and Katy Owens Hubler