Carter-Baker election reforms imperiled by its partisan voter ID mandate

By Richard L. Hasen

LOS ANGELES - The United States is in desperate need of serious election reform. We had an election meltdown in Florida in 2000, and a near-meltdown in Ohio in 2004 that was narrowly averted. Fortunately for the country, there were too many voters separating candidates Bush and Kerry in Ohio to make election litigation over the state’s many problems worthwhile. Nonetheless, voter confidence in our election system is declining. And in the increasingly polarized US electorate, the possibility of another razor-thin presidential election ending up in court in 2008 is far from negligible. Indeed, the number of election cases in courts have more than doubled in the period since 2000 compared with the period right before 2000.

From this perspective, the National Commission on Federal Election Reform headed by former President Jimmy Carter and former Secretary of State James Baker looked perfect: a high profile, bipartisan effort to identify ways to fix America’s decentralized, increasingly politicized, and underfunded election system. Unfortunately, by taking sides in a fight over voter identification requirements, the Carter-Baker Commission squandered its political capital, perhaps even setting back the cause for reform. That is unfortunate for the country.

There is much good in the Carter-Baker report, issued Monday. Most important, the commission recommended a move toward nonpartisan election administration. (The US is one of the few democracies that use partisan election officials to run their elections.) Carter-Baker endorsed a suggestion I offered in testimony to the commission that states remove election responsibilities from partisan elected secretaries of State, placing them instead in the hands of professional election administrators appointed by governors and approved by a supermajority vote of state legislators. The supermajority requirement ensures that there is true bipartisan support for the election administrator. At the very least, state election officials should promise to abide by a code of conduct that keeps them out of the business of campaigning for other candidates or ballot measures.

The commission also correctly recommended ways to improve voter registration, including the requirement that states take proactive roles to register voters. Registration reform could significantly lower the chances of post-election meltdown, my study of the post-2000 election litigation shows that many of the court cases involved problems with registration rules.

But the commission blew it by taking a strong partisan position requiring voter identification at the polls. The recommendation is aimed at preventing voter fraud, but doesn’t properly target that problem. Here is what we know: Some voter fraud (probably not much) occurs on the local level; some voters cast ballots twice, in two separate states; and the bulk of fraudulent voting appears to occur through absentee ballots. Requiring voter identification at the polls addresses only the first (and least significant) of these problems. In addition, voter IDs tied to drivers licenses (as the commission suggests) will place an onerous

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burden on the poor and those (especially the elderly) who lack driver's licenses.

National voter identification is needed to prevent real fraud (especially through absentee voting and double voting across states) and to keep public confidence in the election process. But it should be coupled with a government-mandated voter registration plan, so that both Democrats concerned with voter access and Republicans concerned with voter integrity can get on board with the proposal. When someone registers to vote, the state should collect a thumb print that can then go in voter rolls and on every absentee ballot (in such a way to assure secrecy of voting). The voter IDs should be free to everyone, and any voters who show up without their ID should be able to vote by giving a thumbprint.

The commission compounded the problem with its voter ID endorsement by appearing to stifle dissent. It prevented commission member Spencer Overton from publishing a 597-word dissent, imposing a cap of 250 words. In response, Professor Overton has set up his own website (www.carterbakerdissent.com) to disseminate his important objections to both the voter identification recommendations of the commission and to the process by which the commission reached its decision.

If the Carter-Baker commission report is dismissed as a failure, and election reform issues are swept under the rug until 2008, it will be too late to fix problems in time to avert a potential election meltdow. Like dealing with hurricanes or earthquakes, advanced planning is the key to avoiding disaster.

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