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HOUSE OF REPRESENTATIVES

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TUESDAY, SEPTEMBER 14, 2021
2:00 p.m.

PUBLIC HEARING ON
BALLOT ORDER SELECTION RANDOMIZATION

BEFORE:
     HONORABLE RYAN E. MACKENZIE,
          MAJORITY SUBCOMMITTEE CHAIR
     HONORABLE MALCOLM KENYATTA,
          MINORITY SUBCOMMITTEE CHAIR
     HONORABLE SETH GROVE,
     HONORABLE DAWN KEEFER
     HONORABLE JEFF WHEELAND
     HONORABLE JARED SOLOMON
     HONORABLE BRETT MILLER (VIRTUAL)
     HONORABLE FRANK RYAN
     HONORABLE KRISTINE HOWARD
     HONORABLE BENJAMIN SANCHEZ
     HONORABLE JOE WEBSTER
     HONORABLE CHRISTOPHER M. RABB
     HONORABLE JOSEPH WEBSTER (VIRTUAL)

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Pennsylvania House Of Representatives
Commonwealth of Pennsylvania

INDEX

TESTIFIERS

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SUBMITTED WRITTEN TESTIMONY

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(See submitted written testimony and handouts online.)

P R O C E E D I N G S

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MAJORITY CHAIRMAN MACKENZIE: All right. Well, I
will call this meeting to order. This is our second of two
subcommittee hearings that we are holding today. This
subcommittee hearing is on the topic of ballot order
selection and randomization. This is an, I think,
important topic, and I think we're going to learn. I think
a lot of folks are going to learn a lot more about this
topic because it's not something that has come up very
often, at least to my knowledge, in previous discussions.
But as of late, I've seen that there is a growing interest
in this topic.

This topic has been gaining interest in many
states around the country as they've realized that current
laws may be providing an unintended boost or hindrance to
certain candidates based on unrelated factors like luck of
the draw or the parties -- whoever has the sitting governor
in those particular states.

The increased statistical evidence demonstrating
this impact has led to both reforms as well as lawsuits
against current practices. And in Pennsylvania, we
currently follow a two-part system. For primary elections
lots are drawn, and candidates are places on the ballot in
a random order through that method. Then for the general

1 election, the party of the current governor is listed first

2 of the ballots in all races. Other states have followed

3 similar methods, but most notably, California has recently

4 shifted to a more randomized system.

5   In this hearing, we hope to gain an insight into

6 both the impact of our current approach, as well as

7 practical implications that any reform would have on the

8 administration of elections. We're going to hear three

9 panels really today. Two are listed here. The first is

10 Professor Darren Grant. He's a professor at Sam Houston

11 University. We will then have a county election director,

12 Forrest Lehman, from Lycoming County.

13   And then finally, we're going to close with two

14 of our own members, Representative Solomon and

15 Representative Rabb, who have both, I guess, either

16 introduced or circulated co-sponsor memos on this topic.

17 So we will hear from them and their thoughts on that. So

18 with that, I will turn it over to the Democratic Chair for

19 any opening comments.

20   MINORITY CHAIRMAN KENYATTA: Thank you so much,

21 Mr. Chair. You know, we're two for two today in terms of

22 some really good substantive topics in front of us, and I

23 look forward to a robust conversation. I think exactly

24 what you said is spot on. We want a process that does not

25 advantage anybody, a process that allows people to come in

1   and vote as easily as possible, but also make sure that the

2   choices are presented in a way that's fair. And so look

3   forward to hearing from the testifiers today, and in

4   particular, my colleagues who've been bringing these issue

5   before all of us, so thank you, Mr. Chairman.

6   MAJORITY CHAIRMAN MACKENZIE: Great. Thank you.

7   So the first panel, as mentioned, we have Dr. Darren Grant,

8   and he is joining us virtually. And actually, before we do

9   that, why don't we just go around? Myself and the

10   Democratic chair have presented ourselves here in person,

11   but we'll go around with the other members.

12   REPRESENTATIVE WHEELAND: Thank you.

13   Representative Jeff Wheeland, 83rd District, Lycoming

14   County.

15   REPRESENTATIVE RYAN: Representative Frank Ryan

16   101st District, Lebanon County.

17   REPRESENTATIVE NELSON: Representative Eric

18   Nelson, 57th District, Westmoreland County.

19   REPRESENTATIVE KEEFER: Representative Dawn

20   Keefer, 92nd District, York and Cumberland Counties.

21   REPRESENTATIVE GROVE: Seth Grove, 196th

22   District, York County.

23   REPRESENTATIVE SANCHEZ: Ben Sanchez from the

24   153rd and Montgomery County.

25   REPRESENTATIVE SOLOMON: Jared Solomon, State

1   Representative in Northeast Philadelphia 202nd.

2   MAJORITY CHAIRMAN MACKENZIE: Thank you. And I

3   see Representatives Howard, Webster, and Miller joining us

4   virtually. All right. I will turn it over to Dr. Grant.

5   DR. GRANT: Thanks, sir. Thank you for having

6   me. It's nice to be here. And I'm going to just kind of

7   testify following the written outline I gave you, and then

8   that maximizes the opportunity for you to ask your

9   questions. I serve as an economics professor at Sam

10   Houston State University in Texas. I've been tenured for

11   10 years. In theory, we have a hurricane over us right

12   now. In practice, I bicycled into work an hour ago.

13   I've been through Pennsylvania several times.

14   Familiar with the state. I have offered expert advice on

15   this ballot order issue in several states in the past

16   couple of years at the behest of Democrats, Republicans,

17   and Libertarians. I've been a professor for over 25 years,

18   and in that time since gaining my Ph.D. in economics, I've

19   published almost two dozen research studies in

20   (indiscernible) academic journals. Several of those

21   concern elections and voting.

22   Some of my voting research, along with some

23   current research that's ongoing explores both the

24   determination of candidate order on ballots. That is

25   ballots that are putatively randomized, but maybe not

1 actually randomized in practice. And then also the

2 effective ballot order on vote share.

3   Now, I will first discuss -- and I published a

4 study in the journal Public Choice on this topic in 2017

5 where I examined the effective ballot order on vote share

6 in primary elections in Texas for statewide office. And

7 Texas uses a system that is, in fact, not uncommon across

8 the country in primary elections, which is that candidate

9 order could be randomized at the county level.

10   And Texas has 254 counties, so that's a lot of

11 randomization, a lot of variation. And so you can conduct

12 a statistical analysis that's pretty solid from a research

13 perspective because that randomization process really helps

14 you there in terms of credibility. And look at the effect

15 of being first on the ballot relative to being second, or

16 third, or less.

17   Now, I did this for statewide office. So I

18 didn't look at, you know, elections for county clerk or

19 what have you. But there was still a reasonable amount of

20 variation in the offices that were being contested. We

21 had, you know, primaries for U.S. senator, governor, and

22 then we also had primaries for less visible offices, shall

23 we say, such as land commissioner, railroad commissioner,

24 comptroller, and positions on both of Texas' two supreme

25 courts. We've got a criminal supreme court, so to speak,

1   called the Court of Criminal Appeals and then the Supreme

2   Court, which focuses more on civil matters.

3   And the bottom line there is that there was a

4   ballot order effect observable and you know, statistically

5   significant by the standards of, you know, social science

6   research in virtually every race that I looked at. But its

7   size varied. And the positions where people were most

8   likely to be aware of the candidates, and maybe have heard

9   of the candidates, and learned about the candidates, this

10   ballot order effect was fairly small, but nonetheless, a

11   person who was listed first on the ballot might gain a

12   point or two, one percentage point or maybe two percentage

13   points in vote share compared to someone who was listed

14   last.

15   And so that means that if you had a two candidate

16   race, for example, then the candidate who was listed first

17   might get an extra point or two in vote share, and that can

18   make the difference in a close race.

19   Now, for these other state offices the ballot

20   order effect was quite a bit larger, and it wasn't unusual

21   to someone gaining four or five points in vote share from

22   being listed first instead of last on the ballot. And then

23   in these judicial races, it was pretty common for the

24   ballot order effect to be about 10 percentage points. And

25   that means that maybe in a race where people are otherwise

1   split, if a candidate was listed first on the ballot, they

2   get 45 percent. I'm sorry. They get 55 percent of the

3   vote, and their opponent would get 45 percent. But then if

4   you switch their ballot positions, it flip-flopped, and the

5   other guy would get 55 percent, and that first person would

6   get 45 percent.

7   In that study, I actually found one race where we

8   had two candidates. The two candidate judicial primary,

9   and both candidates had a last name of Green. One was Rick

10 Green, and one was Paul Green. And in that case, voters

11 were so doggone confused that the ballot order effect was

12 actually almost 20 percentage points. And whoever was

13 listed first tended to get about 60 percent of the vote,

14 and whoever was unfortunate enough to be listed second in

15 that county got 40 percentage points.

16   Now, those are primary elections. Also of

17 interest, perhaps of particular interest today, are general

18 elections, and I have some ongoing work on that topic. I

19 actually came up with kind of a set of results this summer

20 that's I'm comfortable with probably six weeks ago. So no

21 one's heard about them yet. You'll be the first. But this

22 research is going on with the co-author of Stanford

23 University and some others at the University of Wyoming.

24 And it's looking at the effect ballot order on vote share

25 in general elections for statewide office in Wyoming.

1   And Wyoming uses a system that's both similar and

2   different from Pennsylvania's. It does award first

3   position on the ballot to whichever party won the previous

4   cycle, but they do it at the county level. And they're

5   using the congressional race since they just have one

6   Congress person. And so they're looking back at who won

7   that particular county in the previous electoral cycle in

8   the congressional race. And so in some counties you have a

9   Democratic win. In some cases you have a Republican win,

10 but that can flip up over time. And so you're able to

11 tease out the effective ballot order.

12   And so that research find no effect. Nothing

13 significant, nada for the highest profile general elections

14 for president, U.S. senator. But in all the other races I

15 looked at U.S. House, governor, auditor, treasurer,

16 secretary, state, and superintendent of public education --

17 that's what they do in Wyoming -- there's an effective two

18 or three percentage points in vote share, which would favor

19 the persons listed first.

20   These findings are consistent with a pretty large

21 literature in the United States that examine ballot order

22 effects. The handout that you may have received has these

23 studies listed. My findings are a touch stronger than this

24 literature as a whole. But the literature as a whole does

25 find, you know, sizeable ballot order effects in primary

1   elections, especially, but smaller but still positive

2   effects in general elections. And also these ballot order

3   effects tend to be stronger in less visible races where

4   voters may be less informed.

5   So when I testified to the Wyoming legislature a

6   few months ago, I said that the effect in the general

7   election was one or two percentage points. And then once

8   we got the data and ran the numbers, it turned out I was

9   just a touch light on that. The data's indicating two to

10   three percentage points.

11   Now, in addition to that, I have some additional

12   research that deals with the fact that ballot order can --

13   the determination of ballot order is not perfectly

14   observed. Ballot order can be manipulated by the person

15   who's in charge of, you know, determining that order. Can

16   be manipulated, and therefore, can be not determined

17   randomly across the entire state.

18   And to clarify what I mean, you know, Texas has

19   254 counties. And you know, most of those counties,

20   they're going to follow the law and draw numbers out of a

21   hat or what have you to determine ballot order. But you

22   know, some of these counties are small, and so there's not

23   a lot of visibility there. And even though candidates are

24   invited to the drawing, maybe they show. Maybe they don't.

25   Maybe there aren't contested primaries.

1   And so I've actually uncovered evidence in Texas

2 and in West Virginia that there are a few instances where

3 you can analyze the data statistically and see that not

4 everybody determined candidate order randomly on these

5 ballots. Most people did, but some people didn't. And so

6 you can just imagine the legal issues that could result if

7 non-random ballot ordered favored a particular candidate,

8 maybe determine the outcome of a primary election.

9   So I have developed some and published some

10 techniques that are designed to identify when that happens,

11 and I'm working some more general techniques to do the same

12 thing. The main takeaway from that research is just

13 because you say it needs to be randomized doesn't mean it's

14 always going to work out that way. You know, there

15 probably should be some sunlight, some way of kind of

16 observing the process just to make sure that things work

17 out the way that you want them to. So let me stop there

18 and then take any questions that you have.

19   MAJORITY CHAIRMAN MACKENZIE: All right. Well,

20 thank you, Dr. Grant. I appreciate that opening testimony

21 that you offered. And I think, you know, those numbers are

22 pretty staggering, some of what you presented there. And

23 obviously, even small numbers can swing races. And so we

24 are seeking fairness in all of these elections, and we want

25 to do away with as much of that benefit or you know, loss

1 that some candidates would receive from being places on the

2 ballot first as opposed to maybe further down on the

3 ballot.

4   So my first question, just to gain some general

5 perspective on this, how many states do it in a way similar

6 to where we do it where it's maybe just a lottery or

7 something like that, and that is consistent across the

8 entire races versus how many do different types of

9 variation? I'll get into the breaking down of the

10 different types of randomization. But how many do a static

11 method versus a randomized method?

12   DR. GRANT: Yes. It's a great question. And we

13 don't actually have a census of what each and every state

14 does. About 20 years ago, there was a paper that did go

15 through and roughly categorize the different regimes used

16 by different states. That's a little bit old, and even

17 then they weren't completely thorough in their kind of

18 census of what everyone did.

19   So speaking in more general terms, you find two

20 major systems that are used within the states and/or across

21 the states. And these are, you know, much more common in

22 primary elections. So one is a randomization system, and

23 so in that case you often randomize at the county level.

24 And so you've talked about that in Pennsylvania, and it's

25 not clear you're randomizing at the county level or

1   otherwise. But it's not uncommon for their to be

2   randomization at the county level. Is that what you do?

3   MAJORITY CHAIRMAN MACKENZIE: So in the primary

4   or general are you speaking about here?

5   DR. GRANT: In the primary.

6   MAJORITY CHAIRMAN MACKENZIE: In the primary it

7   could be. For statewide offices, it is drawn at the

8   Department of State, and so that is consistent and held

9   across the state, but then other primaries could be county

10   elections, you know, obviously done with their own methods

11   at county levels.

12   Okay. So that is a little different. So if I'm

13   going to characterize two main types. The randomization

14   technique often occurs at the local or county level, even

15   for statewide office. And so, you know, in Texas, in

16   Florida, in West Virginia, you have someone like Jim

17   Justice is the governor of West Virginia. So when he was

18   in the primary, then his position on the ballot was going

19   to be placed randomly in the primary within each county.

20   And what that means is, you know, Governor Justice gets a

21   boost in some counties because he's first on the ballot,

22   and then he doesn't get a boost. Somebody else gets the

23   boost in other counties.

24   And so it tends to average out. West Virginia

25   has 55 counties, so there's a, you know, decent amount of

1   kind of averaging out there. Florida has 67 counties, same

2   kind of deal. And so that tends to average out. Texas has

3   254 counties. You also got a lot of averaging out there.

4   Although I will stipulate that it's not perfect because

5   some counties have much more population than others. And

6   so, you know, there's really about 10, 12 counties in Texas

7   have a whole lot of people.

8   So if you're lucky enough to be placed first in

9   those counties, you're definitely getting a boost. So for

10   local office, if you're running for county coroner, if you

11   have that office, then it's a one and done. And if you

12   happen to be placed first on the ballot, then that's it

13   because it's only -- the race is only happening within that

14   county. But if you're talking about statewide office, you

15   know, like governor or Supreme Court justice. Then this

16   averaging out effect tends to occur. So there's definitely

17   some randomization occurring. You also will see it in

18   local races -- California, and Illinois, and elsewhere.

19   The other system that I think that's pretty

20   common is a rotation system. And so that is often done at

21   the precinct level. And so you know, you pick someone

22   who's first. Maybe you start in alphabetical order. But

23   then you just rotate across precincts. Wyoming does that

24   in their primary elections. North Dakota does that in

25   their primary and general elections, I believe. California

1   does it in their -- not in their local races, but in their,

2   you know, statewide races. They will rotate across

3   assembly districts, I believe. And so you will see these

4   rotation systems occurring, as well.

5   So those are the two most common. There is a

6   real variety out there in the systems that you see, though.

7   You've mentioned a slightly different randomization system

8   that you use in your own state. And some places it's done

9   at the whim of the person conducting the election. I

10   believe in Utah, they just get to do whatever they feel

11   like.

12   And then there are different kind of permutations

13   of those systems that occur. Sometimes it's an

14   alphabetical order system that occurs. Although I think

15   states have been moving away from that. Sometimes it's an

16   alphabetical order system with a randomly drawn alphabet.

17   Well, that really amounts to a randomization system.

18   So I think the bottom line is you do have a real

19   variety of systems across the state, but there are these

20   two themes of randomization or rotation, both of which are

21   designed to address this issue of not -- trying not to

22   give someone a systematic advantage in terms of ballot

23   position.

24   MAJORITY CHAIRMAN MACKENZIE: All right. And

25   I'll ask one more follow-up before I turn it over to some

1   of my colleagues. So my gut reaction says that out of

2   those options, randomization at a county level and rotation

3   being what you said was at a precinct level, it would seem

4   that rotation would do away with the most amount of

5   variation coming from ballot position because you're

6   dealing at the smallest level. Is that correct?

7   DR. GRANT: That's correct. Randomization, you

8   know, is both -- tends to be, though, at a larger

9   jurisdiction, as you just mentioned. And then also, isn't

10   as failsafe as rotation in terms of evening out ballot

11   position. It's always possible for a coin -- you flip a

12   coin it could come up heads 10 times. It can happen. But

13   if you're rotating, it's like heads, tails, heads, tails,

14   head, tails. I mean, you're going to have five heads and

15   five tails. And so it definitely is a more even system in

16   that respect.

17   MAJORITY CHAIRMAN MACKENZIE: Okay. Thank you.

18   I'll turn it to my Democratic Chair for his question.

19   MINORITY CHAIRMAN KENYATTA: Thank you so much,

20   Professor. My question is about how this works. And I'm

21   hearing about California, which I know has really robust,

22   obviously, mail-in options for folks to vote that way. And

23   so can you talk about how that is happening and how you've

24   seen that play out in different states for folks who are

25   mailing in their vote? Because obviously, they're just

1   getting one piece of paper that you're not going to

2   randomize.

3   DR. GRANT: Sure. And I will tell you I have

4   talked to county clerks in Texas and in West Virginia. You

5   know, I tend to call the ones in small places. So you

6   know, these are people that -- you know, county jobs are

7   absolutely respectable jobs, and the people who fill them

8   are esteemed by the community. At the same time, they're

9   not just overpaying you a ton. And there's a ton of work

10 to do. And so you appreciate that, the dedication of these

11 people.

12   And so you know, there's guidelines that's put

13 out by the Secretary of State or whoever it is. You know,

14 here's the laws, here's the rules, here's how we do it.

15 Now, they're going to follow. They all have been trained

16 umpteen times probably on these rules. And so you know,

17 the rules going to be safer for Texas. And similarly for

18 West Virginia, there's some point in time at which you've

19 got to have a sample ballot ready.

20   And in West Virginia they actually have a

21 website. You can go up and look at sample ballots for

22 anything. That's available so many days before the

23 election. Probably several weeks before the election. In

24 Texas, it's no so systematic. But you know, you can go up

25 to most counties' websites if, you know, if they have

1   websites. And some of them it's pretty low-key stuff. But

2   and you can go up, and you can pull that sample ballot

3   down. And you probably got to put the sample ballot right

4   there in the courthouse and tape it on the door or what

5   have you.

6   So there's a sample ballot that's prepared in

7   advance. And remember, these are randomized at the county

8   level. And by that I mean that within the county whoever

9   won that drawing they're listed first across the entire

10   county. So you know, back when Beto O'Rourke was in a

11   primary against a couple other people, you know, in some

12   counties he's going to be listed first on the ballot in

13   that entire county. And then in other counties he's going

14   to be listed third on the ballot in that entire county.

15   So the county clerk or whoever is the elections

16   administrator is going to set up those sample ballots. And

17   then they got the names on them right there. And then, you

18   know, the actual ballot's going to, they got to match those

19   sample ballots. And so then you had a mail-in election,

20   that wouldn't cause any particular problem because those

21   ballots have already been ordered, been determined. It's

22   been published, you know, weeks in advance. And then you

23   get those ballots printed. And if you get them in the mail

24   or what have you, that doesn't really pose an obstacle.

25   MINORITY CHAIRMAN KENYATTA: All right. Thank

1   you.

2   MAJORITY CHAIRMAN MACKENZIE: Yeah. And I would

3   just note that, you know, obviously, we have always had --

4   or at least since the 68th Constitution here in

5   Pennsylvania that I'm aware of -- I won't speak to before

6   that -- but we had absentee ballot voting. We now have

7   mail-in voting. And those ballots do go out both in

8   primary and general elections where there are precinct-

9   specific ballots. So in a primary there would be ballots

10   going out for at the smallest level that I'm aware of in

11   Pennsylvania is, like, Republican or Democratic county

12   Committee people are elected at our precinct level. And so

13   therefore, the county board of elections are sending out

14   precinct-specific ballots already. So I would assume that

15   would continue with any kind of change in the process.   I

16   will next go to Representative Keefer.

17   REPRESENTATIVE KEEFER: Thank you, Mr. Chairman.

18   Mr. Grant, so coming from a county where they have a --

19   they're very challenged. They couldn't print enough

20   ballots, figure out how to make ballots to print just in

21   general for the last election that I had creating four-hour

22   lines. This seems a little overwhelming for at least my

23   county. And so do you see a trend of this? Like, do you

24   see as more information or more states are using this

25   methodology, do you see this growing as a trend anywhere

1   nationwide?

2   DR. GRANT: There has been some movement toward

3   a -- how would you put it? A more randomized -- there's

4   more randomization, more rotation over time. I think there

5   is some movement in that direction. And most recently,

6   probably, it's the State of New Hampshire, which moved to

7   a -- I think it's a municipal level randomization system in

8   general elections.

9   And so I do see some movement in that direction,

10   and I do appreciate -- so I live in a -- kind of a union-

11   sized county. If you take the prisoners out -- and we've

12   got a lot of prisoners -- we're running a little over

13   50,000 people in the county. So I do see the challenges

14   that, you know, our local officials have to deal with in

15   terms of staffing, and volunteers, and you know, people

16   doing those kind of thankless jobs in county government.

17   People, you know, they rarely thank you, but boy, they know

18   how to complain.

19   And I do think that -- you know, I've seen

20   numerous county clerks and election officials both in Texas

21   and in West Virginia, you know, manage to cope with these

22   things pretty well. In Texas, we not only have county and

23   city positions on the ballot, but we have school districts

24   that just kind of -- they just draw those lines at random,

25   as far as I can tell. And then we have emergency service

1   districts. You know, but community wants to set up water

2   or whatever.

3   And so there's just lines going all over the

4   place. And yet, you've got enough time, and you know, it's

5   fairly systematic at the state level in terms of the state

6   level support for the process that, you know, it definitely

7   takes work. There's no two ways about it, but it does seem

8   to be, you know, something that these officials are able to

9   handle pretty well. Just in my experience interacting with

10   it.

11   REPRESENTATIVE KEEFER: Right. In Pennsylvania

12   we have over three thousand municipalities and you know,

13   school districts, and you know, committee people. And it

14   changes all the -- you, know all the -- just in my county

15   alone or last election there was 1,400 different ballots

16   that they had to print already to do that. I think we're,

17   like, the eighth largest county in the Commonwealth of

18   Pennsylvania. So we have about half -- just under half a

19   million people in the county. So just trying to figure

20   out, you know, how those counties would navigate it. But

21   thank you. Thank you, Mr. Chairman.

22   MAJORITY CHAIRMAN MACKENZIE: Thank you. Next up

23   we have Representative Wheeland.

24   REPRESENTATIVE WHEELAND: Thank you, Mr.

25   Chairman, and thank you Professor for participating today.

1   How's the wind out there? Little breezy?

2   DR. GRANT: It's actually just fine, and I

3   bicycled in here to the office about 90 minutes ago. It's

4   been a letdown, but a letdown in a good way.

5   REPRESENTATIVE WHEELAND: That's good to hear.

6   DR. GRANT: Yeah.

7   REPRESENTATIVE WHEELAND: You've discussed that

8   your research finds statistically significant benefits for

9   candidates listed first on the ballot, particularly for low

10   information down ballot races, perhaps up to ten percent

11   benefit. Can you compare that 10 percent benefit to the

12   impact of other facets of an election that is like other

13   events? Poor performance at a debate, a scandal of some

14   sort? Is there anything in your research that has -- is in

15   comparison to the ballot location? Have you done any

16   research on other factors?

17   DR. GRANT: You know, I have some, although I

18   haven't looked at the effects of individual other factors

19   in kind of a determined enough manner to comment from my

20   own personal researching findings on that issue.

21   Obviously, one thing that comes to mind is campaign

22   spending. And you know, there y'all have a body of

23   knowledge yourselves from experience. But in, let's say,

24   the governor's race in Texas, one percentage point, how

25   much money would you have to spend in Texas to get one

1   percentage point more of the vote in the general election?

2   I don't have to tell you that's going to be a very, very

3   large number. And 10 percentage points in a state, you

4   know, State of Texas Supreme Court or Court of Criminal

5   Appeals elections.

6   So if you run -- and I'm talking about one of

7   nine positions on the state Supreme Court, which would be a

8   big deal in any state. And you know, in the State of

9   Texas, the budgets of those people when they're running in

10   the general, they tend to run around $300,000. I mean, for

11   the entire election. You can look up, of course, all this

12   stuff online. And you can look up how much money they got

13   and where it came from. So literally, a ten percentage

14   point effect, there is no financial equivalent because

15   those candidates are never ever going to raise the kind of

16   money that would even get them a 1enth of the way to 10

17   percentage points more in vote share.

18   In terms of other events like debate performance

19   and what have you, I can't speak authoritatively from my

20   own search.   I mean, we do kind of watch the polls wander

21   around, you know, in comparison to things. And so I don't

22   know that I can add to that. But certainly, in terms of

23   campaign spending these types of effects could be fairly

24   significant. I hope that answers your question as well as

25   I can do given my exact knowledge base.

1   REPRESENTATIVE WHEELAND: Okay. Well, thank you

2   very much. That was helpful. Thank you.

3   MAJORITY CHAIRMAN MACKENZIE: Thank you. Next up

4   we have Representative Solomon.

5   REPRESENTATIVE SOLOMON: Thank you, Mr. Chairman.

6   I just wanted to follow up on the question you had asked,

7   because I wasn't sure there was an answer. Professor, in

8   terms of the number of states that either randomize or

9   rotate, you said there was old research, do you have that

10   number or no?

11   DR. GRANT: I do have that paper. I don't have

12   it right in front of me. So I did not give you an exact

13   number because I do not have that tabulation in front of

14   me. I could with about four minutes pull that thing and

15   run through it, or I could send that citation to a staff

16   member, perhaps, who could then pull that paper for you.

17   Again, it's a little old, but it does do something of a

18   census across the different states. I did not give you an

19   exact number cause I do not have an exact number.

20   REPRESENTATIVE SOLOMON: Okay. Yeah, if you

21   could follow up on that, Professor, that would be great.

22   And I wanted to ask you just kind of in general what the

23   number one position means in being the number one candidate

24   on a ballot, but also in other contexts. So I would

25   assume, Professor, like, if you have a power ball

1   situation, like, that's completely randomized where it

2   doesn't matter which number is drawn first, right, because

3   you need to get all the numbers to win. But then as being

4   a candidate, for instance, sometimes candidate will like to

5   speak first at a political event. Or you watch American

6   Idol, and does the first candidate who's up have any

7   particular advantage from the other two, three, or four

8   that follow? And how are those situations different from

9   the ballot position scenario?

10   DR. GRANT: That is a fantastic question, sir.

11   And believe it or not, some of the research I'm working on

12   right now, there's the abstract, and it talks about

13   American Idol in addition to the ballot context. So I

14   think you asked -- there were kind of two questions there.

15   Let me answer the second one about how it differs from

16   American Idol. And if you don't mind, I might ask you to

17   go back and restate the first one because your mic came in

18   and out a little bit.

19   But your question about, say, how about American

20   Idol compared to the ballot situation is a good one, and it

21   gets at a point that psychologists have been exploring,

22   which is the sequencing effect on decisions. And it turns

23   out that there are two types of sequencing effects.

24   There's a primacy effect -- sometimes it's called -- which

25   is where it's advantageous to be first. And then there's

1 what's sometimes called a recency effect where it's

2 advantageous to be last.

3   Now, in my own opinion -- and I'm not a trained

4 psychologist, but in my own opinion, having looked at this

5 research, we don't have a fully convincing thoroughly

6 supported by evidence reason for exactly why all these

7 things occur. However, in American Idol, specifically,

8 there's evidence that it helps to be last, to be the person

9 who performs last on the program. And this also is

10 supported by evidence in other competitions such as figure

11 skating competitions, where it's also beneficial to be

12 last.

13   In contrast, if you are doing food tastings, it

14 helps to be first. And in the ballot order context, you

15 know, my research and pretty much all of this research,

16 it's kind of open-minded in the sense that it doesn't -- it

17 allows -- if there was an effect of being listed in the

18 middle, my research design wouldn't obscure that; it would

19 display that. So my research design is agnostic as to what

20 I'm going to find. And then what comes out of the data is

21 an advantage to being listed first.

22   The thought that is probably most common among

23 people who study this issue is that maybe there's something

24 about a kind of what's called a satisficing procedure going

25 on where rather than, you know, looking at all six

1   candidates and kind of juggling them all in your mind, you

2   go through sequentially, and as soon as you hit one that's

3   okay by you, you just pick that. And so whoever's up there

4   first, they get first dibs at being acceptable, and so

5   that's what gives them that primacy effect.

6   So in fact, the psychological kind of basis for

7   what's going on here is not perfectly understood, but this

8   issue of sequencing effects does show up in all kind of

9   decision-making, not just votes. And I hope that answers

10   your second question. And then you're welcome to follow up

11   on that or to restate your first just because some of that

12   didn't come through.

13   REPRESENTATIVE WHEELAND: No, that was a very

14   thorough answer, Professor. I appreciate that. The first

15   one was just like -- I was just using an example of, you

16   know, the Pennsylvania lottery. Is that kind of the

17   ultimate randomization that you would look to or no?

18   DR. GRANT: Well, and you won't see it here, but

19   part of the research I'm working on involves the power bowl

20   lottery. And so I would say the lottery is a little

21   different because there you have kind of a -- I mean, it's

22   a pretty low-probability thing to hit that lottery, and you

23   kind of got to hit all the numbers. So I wouldn't draw too

24   close a tie between that and the randomization system I'm

25   talking about. If that's what you're thinking, I would

1   discourage you from making that tie too closely.

2   REPRESENTATIVE WHEELAND: Thank you.

3   MAJORITY CHAIRMAN MACKENZIE: Thank you. And

4   just to follow up on that. So obviously, your data and

5   your research so far has shown the benefit of being first,

6   that primacy effect, have you seen in any races where there

7   are more than two candidates, multiple candidates on a

8   ballot that there is any kind of benefit or recency benefit

9   for being last? You know, even if the biggest benefit is

10   maybe being first, but is there any kind of benefit to

11   being last in elections?

12   DR. GRANT: Two answers to that. The short

13   answer is in my own research, no. In other people's

14   research occasionally. In my own research, it's kind of

15   the biggest bump being listed first compared to last, and

16   then there's a notably smaller, but still some bump for

17   being listed second maybe out of five candidates, let's

18   say. And then after second, there really isn't much bump,

19   but there's no -- you know, being in third position, or

20   fourth position, or fifth position, doesn't seem to be any

21   difference.

22   So I personally am not seeing a recency effect.

23   It has happened probably a couple of times. There's

24   probably around 14 studies now of the United States, you

25   know, ballot order effects in the United States and

1   probably a couple of those, say two, that have found some

2   evidence of a recency effect. So it's not common, although

3   it has happened on occasion.

4   MAJORITY CHAIRMAN MACKENZIE: Okay. All right.

5   Well, thank you. Next up we have Committee Chairman Grove.

6   REPRESENTATIVE GROVE: Thank you. Thank you so

7   much for your time this -- or this afternoon, Professor.

8   Just can you give me a brief description of just kind of

9   your research design and methodology? I'm just interested

10   in how you kind of set that up just for my own kind of

11   research background.

12   DR. GRANT: Sure. So in (indiscernible) and the

13   Wyoming analysis is ongoing, and it's more complex. But

14   the Texas analysis is published and a little more

15   straightforward. So in most races in that analysis, when

16   you first kind of look, and you see if there's any evidence

17   that ballot order hasn't been randomized across the state.

18   And it's not unusual in some of -- you know, most of these

19   races, some of the lower profile races. Nobody goes in

20   there and says, boy, I can't -- I just wait to manipulate

21   ballot order, you know, or land commissioner. That just

22   doesn't really happen.

23   So then you look there, and maybe there's two

24   candidates, and you know, it's pretty much a coin toss.

25   And so you're like, okay, and maybe you look at it a couple

1 other ways, you know, bigger counties and more rural

2 counties, taking this person over that person, and kind of

3 poke around at it. And no, it really does just seem to be

4 just randomized across these two candidates.

5 Okay, great. So now, you know, you're kind of in

6 the position like they're doing for these clinical trials,

7 well, where, you know, you either get the drug or a

8 placebo, and it's done at random. You know, and that's

9 what the FDA does for every drug. We don't have to deal

10 with present controversies. We just look at any old drug.

11 If you're going to be -- you know, go through the FDA

12 approval process, they just want to make sure that you're

13 randomizing who gets the drug compared to who gets the

14 placebo so that you got kind of an even-handed research

15 design. Let's put it that way.

16 So then in that situation, then you look at the

17 vote shares across counties, and you can compare the vote

18 shares in counties that had, you know, one candidate --

19 where, say, Candidate X was listed first compared to the

20 other counties where Candidate X was listed second and the

21 other person was listed first. And there you got a

22 difference in the vote shares. That's your estimate of the

23 ballot order effect.

24 And then you don't stop there because you're an

25 economist, and so you're a little OCD, maybe a little too

1 OCD for your own good. So then you gather some what we

2 call control variables. And I gathered maybe 10, 11

3 control variables, you know, education aides, measure of

4 the agricultural production to see if you're looking at

5 real agricultural counties and race stuff. You know, how

6 many people own their own house, which is really important

7 for voting.

8   And so then you come back at it again, and you

9 say, well, hey, could this difference across these counties

10 be explained somehow by these other factors? And then you

11 hit it with that, and by golly, nothing changes. And so

12 then you say, yeah, this difference between when this

13 person was listed first and listed second, that difference

14 is my estimate at the ballot order effect.

15   And then, you know, the statistics, there's

16 people that works on the formulas to tell you how precise

17 you want to treat those estimates. And you know, we were

18 in Delaware where there's only three counties, then you

19 wouldn't get estimates that were worth anything. But you

20 come into Texas, you got 254 counties. Then you got

21 something. And so those formulas tell you, yeah, okay,

22 here's your estimate. And you know, maybe got a little bit

23 of like, statistical, like, random error in it. But it's

24 not very big, and so you can kind of hang your hat on that

25 estimate.

1   So that's kind of an informal presentation.

2   You're welcome to probe further if you want, but I figured

3   I'd start there.

4   REPRESENTATIVE GROVE: Yeah, no, that's

5   interesting. Did you, like, look at incumbents versus

6   challengers or campaign spending of one candidate over the

7   other, or you know, I mean -- York County where I'm from

8   from Pennsylvania, there's literally areas where if you

9   have -- if your family hasn't lived there for, like, eight

10   generations, you're not considered from there. So do any

11   of those -- and I'm thinking of this, like, very local

12   races, right? You have a certain last name that's prolific

13   in those areas. Did you kind of look at that kind of

14   genealogy or anything like that, also?

15   DR. GRANT: You know, I'll tell you, sir, where

16   I -- I mean, I definitely know what you're talking about,

17   and I've actually seen that most strongly in Wyoming, where

18   there was one race, I don't know, 30 years back or what

19   have you, and the county had always been -- and I can't

20   remember if it always been Democratic or always been

21   Republican. Wyoming's actually flipped around a lot. But

22   you get some of these little counties, and by golly, this

23   one candidate overperformed by about 35 percentage points.

24   And so we dug into it, and sure enough, they were from that

25   area. And so even in a general election, it just caused

1   people to vote for that person.

2   But you are also correct. That is a local

3   phenomenon. And I only studied statewide races because

4   that's really where you got all 254, you know, counties or

5   coin flips. And I also did not -- I did not account for --

6   well, let me rephrase that. I did not separately account

7   for being an incumbent because it's kind of already baked

8   in there.

9   So in the last primary for governor, you had the

10 incumbent. And you may have heard of this guy by now,

11 Greg Abbott, running.   And then you had some other people

12 who really weren't well-known, including some guy whose

13 literal name on the ballot was (indiscernible) in capital

14 letters. And so you don't have to separately take out

15 the -- and recognize the fact that Governor Abbott was the

16 incumbent. It's already baked in there. Governor Abbott's

17 going to have a certain kind of popularity level, general

18 popularity level on account of how people perceive him and

19 what he's done in office, et cetera, et cetera, et cetera.

20   And the same things this (Indiscernible) person.

21 And so everything that has to do with that person is kind

22 of already baked in there. And then you're looking at how

23 those vote shares differ across the counties based on being

24 first or section, which is determined at random.

25   Now, the campaign spending could vary across

county. And so but it's very difficult to parse out the

spending by county. I can tell you where the money comes

from. I can't tell you exactly where to spend. And you

pay for ads. You know, you pay an ad agency somewhere in

Dallas or what have you, you know, and they make the magic

happen.

So I did not account for spending separately, but

because of the randomization, that kind of addresses this

issue because the randomization is happening -- you know,

they're first or second on the ballot at random. And so it

shouldn't have any systematic relationship with campaign

spending. So that may be more in the weeds than you

(indiscernible) looking for, but the bottom line is, you

know, I did think about both of those things, even if I

can't go out and put a number on it and throw it into the

analysis.

REPRESENTATIVE GROVE: Fascinating. Like, if

you're a candidate, you're looking at your strong

positions, maybe your candidates from -- like, your

opponents from western Texas. You're going to put your

resources in Eastern Texas. You might not have as much,

you know, volunteers, operations out there. So yeah, okay.

That's it. Thank you.

DR. GRANT: (Indiscernible - away from

microphone) it does come in handy because you -- it is

1   legitimate to be concerned about some of those -- all those

2   things. And so it just sure is wonderful to know that

3   whether your first and second on the ballot is random, so

4   it's probably not related to any of that in a systematic

5   way. And that alleviates those concerns that your

6   estimates are, you know, polluted in a sense.

7   MAJORITY CHAIRMAN MACKENZIE: Great. Thank you

8   again.

9   Representative Nelson?

10   REPRESENTATIVE NELSON: Thank you, Mr. Chair.

11   And I appreciate the testimony. And just kind of in

12   summary from your starting testimony, the acknowledgment

13   through your research and the research of others that, you

14   know, major headliners might be one percent due to ballot

15   orders, and then a little bit further down the ballot are

16   races that with lower-level tier candidates that could be

17   as much as three percent.

18   In the acknowledgement that there is an order

19   advantage, if we look to address this issue, it really

20   focuses on the randomization process itself, the selection

21   process. And you know, coming from industry, I'm familiar

22   with the random drug test. And I cited the example in

23   preparation for today of the random winner of the 50-50

24   that just maybe happens to be a family that really needs

25   that, you know, those dollars.

1   So you can have randomization for good, but also

2   for bad. And in your research are there some best practice

3   methods, so -- as a earlier representative said, too much

4   randomization, I don't know that our counties can

5   effectively handle because they've demonstrated significant

6   of stumbling when it comes to printing ballots and getting

7   that stuff accurate. So what is a good, consistent, you

8   know, common ground so that you can achieve some

9   randomization, but not be so detailed that you're going to

10   create a problem?

11   DR. GRANT: So I appreciate your question, sir.

12   And I appreciate the question when asked previously, as

13   well. So I appreciate the question, generally. So let me

14   try answering your question by answering a slightly

15   different question. If someone came to me and said,

16   Professor Grant, what do you think about switching Texas'

17   procedure. And let's just stick with the primaries and

18   leave the generals of out of it. You know, Texas uses a

19   procedure in the general that's kind of like what

20   Pennsylvania does right now. But let's just leave that out

21   of it and go to the primaries.

22   Professor Grant, would you advocate switching

23   from a county level randomization system to a precinct

24   level rotation system? Would that be something you'd

25   advocate? I've been prepared to answer this question,

1   although I don't believe I've ever been asked it. My

2   answer would be neutral on that point because, you know,

3   Texas' procedure in the primaries has been around for quite

4   some time, and it's actually kind of a right of passage if

5   you want to say it for everybody to get together for the

6   drawing. You know, it's kind of maybe almost like a

7   campaign kickoff in a way.

8   And so it has legitimacy among, you know, the

9   public. It's been kind of -- there's a procedure. It's

10   standard knowledge. And these county clerks don't turn

11   over all that often. So you learn it. Then maybe you know

12   it for the next 25 years as you're serving in that

13   position. So to move from that approach to a precinct

14   level randomization approach would reduce the amount of

15   kind of -- there's still a little bit of random favoritism

16   in the randomization system because things don't have to

17   perfectly balance out across the state.

18   A rotation system would really make things

19   balance out quite evenly, but would have some trade off,

20   perhaps, in terms of legitimacy of the public and perhaps,

21   in terms of the complexity of ballots. And so that is a

22   tradeoff that is not the professor's to judge. I mean,

23   certainly, I would acknowledge that it is a legitimate

24   consideration to take into account. You know, legitimacy

25   and the complexity of administration as well as the

1 evenness of outcomes.

2   I will note that when I testified in Wyoming,

3 they were actually suggesting that individual ballots be

4 randomized. And I don't mean at the precinct level. I

5 don't mean at the county level. I mean at the individual

6 ballot level. And the Association of County Clerks for

7 Wyoming, they have 23 counties, did not object to that

8 procedure. So they didn't feel like it would have raised

9 too great a burden.

10   So it is a good question as to what that

11 administrative burden would be, also a question as to what

12 the effect on legitimacy would be, as well as the effect on

13 fairness of outcome. You know, use a randomization system

14 at the county level, things are going to even out pretty

15 well at the state level, but not going to even out so well

16 at the local level. State legislators may come from just

17 one or two counties. And then, of course, there's a lot of

18 county level positions. So there's definitely some

19 tradeoff involved.

20   REPRESENTATIVE NELSON: The --

21   DR. GRANT: And I would just say one last thing.

22 I know I've been too long on this one. In Texas -- I think

23 Pennsylvania's different -- we have a four -- our county

24 commissions all have four seats on the, and then a county

25 judge makes five. And so you know, an option within our

1   counties would be to go Republican, Democrat, Republican,

2   Democrat across those four county commission zones, so to

3   speak. That would be another kind of hybrid approach that

4   might balance those concerns in an effective way. My

5   pardon if that was too long.   (Indiscernible - away from

6   microphone).

7   REPRESENTATIVE NELSON: No, I think that was

8   helpful. The second part of that question is, is there a

9   method, or have you researched a method that if we would,

10 you know, implement some type of randomization selection

11 that you'd be able to identify manipulation even if it was

12 after the election? So if there were shenanigans in

13 selection, how would you go about after the fact, and you

14 know, how would you address that?

15   DR. GRANT: So that is the focus of some of my

16 ongoing research. I published a paper last year with two

17 co-authors of University of Washington that presented, you

18 know, formal statistical methods with all the charts, and

19 numbers, and equations. But doing exactly that, if you

20 knew how the ballots were going to be manipulated, that you

21 could somehow read the minds of anybody who might be

22 tempted to manipulate a ballot and say this is what we're

23 looking for.

24   I think what you really want is something that

25 you don't have to read anybody's mind. It just looks at,

1   you know, how many time this person is first, and second,

2   and third, and fourth across all the different counties.

3   And so you look at all the hoarderings [sic] across the

4   different counties, and then you put it through the

5   process. And it says something ain't right. Something

6   smells fishy here. And so you don't -- you know, the

7   analyst doesn't have to somehow magically know how the

8   ballots might be manipulated. It's just going to smoke out

9   manipulation whenever it occurs.

10   And that is what I'm working on right now in a

11   working paper whose link I will provide. I'm going to

12   provide some follow-up and as -- I have a couple of

13   contacts here. So I'll provide follow-up through those

14   contacts. But definitely what you want -- because you want

15   a process that allows you to look at the orderings across

16   counties, let's say, like in Texas, to look at them. And

17   if there's a problem, you want to be able to smoke it out

18   before the election if you can, and otherwise, right, maybe

19   you smoke it out after the election.

20   So in Texas they -- maybe five years ago they

21   went to requiring counties to submit their ballot orders to

22   the state, and the state puts that stuff on the Internet.

23   And so I had the whole list of ballot orders for the 2020

24   primary before that primary was held. And so in theory, I

25   would be able to actually run those tests before that

1   primary's even held. And there have been a few times

2   where the ballot orders are definitely not random. And you

3   can see that in Republican primaries and in Democratic

4   primaries. You can see it in both of them. You don't see

5   it in every race, but you do see it in some of those races.

6   So that's a little sunlight that help -- and I

7   have, in fact, communicated to people on occasion -- we'll

8   just leave it at that -- that things don't look good. And

9   I think that -- you know, so I think that that kind of

10   visibility as to what those ballot orders are is important.

11   And the tests that I'm developing and have published in a

12   working paper form can be used for that purpose, to go in

13   there and look and say, hey, do these ballot orders look

14   reasonable, or does it look like somebody's getting some

15   benefit here?

16   And then also, of course, it could be possible to

17   have some visibility in the process that, you know, maybe

18   these drawings should be videotaped and just posted on the

19   Internet, or maybe there should be, you know, certain

20   witnesses. Maybe you should have to have some witnesses

21   just to make sure that things are on the up and up.

22   REPRESENTATIVE NELSON: Great, great. Thank you.

23   Those are some really detailed answers, and I appreciate

24   you sending that after request, as well.

25   Thank you, Mr. Chair.

1   MAJORITY CHAIRMAN MACKENZIE: Great.

2   DR. GRANT: Sometimes not --

3   MAJORITY CHAIRMAN MACKENZIE: Thank you.

4   DR. GRANT: Sometimes not giving detailed answers

5   is not my strength.

6   MAJORITY CHAIRMAN MACKENZIE: No, no, we

7   appreciate your answers and the insight that you're

8   providing. I think it's very helpful here in our process.

9   So we do have a question from a member joining us

10   virtually, Representative Miller.

11   REPRESENTATIVE MILLER: Thank you, Mr. Chairman,

12   and thank you Professor for your testimony here today. I

13   want to follow up on what Representative Nelson asked

14   previously, and has to do with the issue of audits related

15   to actually finding out what happened. And you kind of

16   detailed some of what your studying and what other --

17   Texas, in particular, has been looking into.

18   My question has to do with this, if it's pure

19   randomization, then it is possible that candidate A is

20   always first. And then there's no way of finding out if

21   there's a problem. So what my question is, is it

22   randomization, or is it a fixed rotation? So ballot 1 is

23   candidate A is first. Ballot two, candidate B is first.

24   Ballot 3 A, 4 B, and so on.

25   DR. GRANT: So I would agree with you 100 percent

1   that the rotation procedure, that can be checked 100

2   percent. And so, for example, in Wyoming my team that I'm

3   working with looked at every primary ballot in every

4   precinct in Wyoming. There's 500 precincts or something,

5   which I think there's one precinct for each voter. And so

6   they were able to check that, and they were able to confirm

7   that ballot order was determined correctly in every

8   precinct in Wyoming in that election. And there's no

9   ambiguity because there's a rule or an algorithm, and you

10   follow that rule or algorithm, and then you can just check

11   whether that algorithm is followed.

12   [Started at 1:06:07]

13   DR. GRANT: So that's 100 percent. Now, in the

14   randomization process, you get into the statistical realm,

15   and that means that you can't know for sure. Now, if one

16   candidate was listed in a two-candidate race -- if one

17   candidate was listed first across the entire state of Texas

18   of 254 counties, and they came up heads in every single one

19   of them, man, the chances of that happening are really

20   quite low.

21   But you are right. But do you get -- you're into

22   the statistics. You're into the odds here. And so

23   statisticians often use a baseline that, oh, you know, the

24   chances that this could've happened by just randomness are

25   only about five percent. So probably that wasn't the deal.

1   Someone was monkeying with these orders.

2   And you could change that cut off. You could

3   say, you know, I don't want to be suspicious unless the

4   chance is really small that this would've happened by

5   random chance. Maybe only a one percent chance that pure

6   randomness leads this particular candidate to be listed

7   first disproportionately. But you're never in the realm of

8   absolute certainly because it is always possible for

9   lightening to strike multiple times. And so you can

10   definitely get cases where the data are suggestive, but not

11   determinative. You look at it, and you think, well, there

12   could be some manipulation going on here, or it could just

13   be random chance. You know, the data really doesn't let me

14   nail that down. That is something that happens with

15   statistics, and it would be an issue with the randomization

16   procedure. I think that answers your question.

17   REPRESENTATIVE MILLER: Okay. So are you

18   recommending an exact rotation? Candidate A is first on

19   ballot 1. Candidate B is first on ballot 2. Or are you

20   advocating for randomization?

21   DR. GRANT: Well, I'm not going to advocate for

22   either one of those because I do appreciate that there are

23   tradeoffs here. And you had mentioned an additional

24   tradeoff that is worth considering. You know, there's

25   legitimacy in the procedure. There's the effect on how

1   much it kind of balances things out. There's the

2   administrative costs. And then the thing that you had

3   mentioned, Representative, is the ability to confirm that

4   the procedure was followed correctly, which is also a

5   legitimate consideration.

6   So we've listed four things, and some of them

7   favor the rotation system, and some of them favor the

8   randomization system. And you know, my expertise lies in

9   the analysis of these ballot order effects, but I myself

10   don't want to get into the business of trying to steer you

11   across those considerations. I think that that I would

12   want to be in the political arena if need to.

13   REPRESENTATIVE MILLER: Okay.

14   DR. GRANT: Yeah.

15   REPRESENTATIVE MILLER: Yeah. Well, thank you.

16   And I think just as a final comment, I appreciate your

17   research and the information you're providing for us. And

18   whichever system we employ, if any, will have to address

19   the auditing provision to ensure confidence, as you well

20   know, across the nation. There's a lot of people that are

21   questioning the results. And if we're adding another

22   dimension that adds a question mark, that may not be

23   helpful for a lot of folks. So I appreciate your

24   testimony, and thank you very much, Mr. Chairman.

25   MAJORITY CHAIRMAN MACKENZIE: Thank you. Next up

1   is Representative Ryan.

2   REPRESENTATIVE RYAN: Professor, thank you so

3   much for your time. And I appreciate you being here. You

4   know, I'm not exactly sure where I stand on the issue. And

5   it's not really relevant to the discussion, but I do want

6   to -- I'm talking about the legislation, by the way. I

7   don't mean the study.

8   And so the questions I'm asking I want to be

9   offered in the spirit of getting the better perspective of

10 what's going on and not -- I think it's for me, anyway,

11 it's really clear. I don't want ballot position to have a

12 favorable or unfavorable effect on any one particular

13 candidate because it's not any significant part of the

14 person's capabilities of being in office. But I'm worried

15 about in the studies and looking at them are certain

16 comments such as -- I'll give you an example, unintended

17 consequences.

18   So kind of frame issues up in the way I would

19 look at it as a business person. For a challenger to

20 compete against an incumbent is quite difficult from my

21 perspective. And I have no statistical basis for that

22 other than I hear it all the time that there's a value of

23 being an incumbent. And election results, generally

24 speaking, support that when 98 percent of incumbents are

25 getting reelected.

1   And so what my concern is, does the -- and have

2   any of your studies shown that the randomization or the

3   ballot position makes it harder or more expensive for a

4   challenger to, in fact, then challenge an incumbent?

5   Because when you're doing your marketing, and your mailing,

6   and your advertising, you might say pull lever 2, pull --

7   if you know your ballot position. If it's randomized, you

8   can't do that. And so have you don't any research to

9   indicate whether or not that has an effect?

10   DR. GRANT: I have thought about it, but I

11   haven't been able to research it, and so bottom line is no.

12   In fact, even in the randomization system, when there are

13   deviations from randomization when some people manipulate

14   the orderings, what tends to happen is they tend to list

15   these popular incumbents first.

16   So that's, you know, going back to the previous

17   question about auditing and making sure the rules are

18   followed. When there is manipulation, you tend to be, you

19   know, helping those people who already are incumbents and

20   have that incumbent benefit to start. But that is a

21   legitimate consideration, and what you've really done is

22   listed a fifth consideration to take into account.

23   We talked about the ease of administering this

24   process, but then there's also the ease of informing

25   voters. And you know, again, that falls outside of my

1   particular expertise. The ballot order effect itself

2   probably results in part from poor information on the part

3   of voters. So they don't really know the different

4   candidates, so they just tend to pick that person that's

5   listed first. But as to whether randomization would make

6   it harder for candidates to inform voters and get their

7   word out is just not something that I'm an expert on.

8   REPRESENTATIVE RYAN: Okay. Thank you very much.

9   In that same line -- and again, I appreciate because I -- I

10   know Representative Solomon and I have actually had this

11   discussion, and I really like the concept, but I want to

12   make sure that I'm solving a problem and not creating one.

13   And so on the same issue, in my prior life I was a business

14   person, and I would look at ballot positions as almost a --

15   like a shelf position in a grocery store. If you are

16   checking out and there's an impulse item, you want to put

17   it right by the cash register, and someone's doing it.

18   And so I know when we do shelf space analytics,

19   being on the bottom shelf versus the top shelf is really a

20   big deal, and that's part of a determinative demand aspect

21   of -- but that's one factor of the determinative demand.

22   Should we be looking at this the same way?

23   DR. GRANT: You know, it's not illegitimate to

24   look at it that way. I mean, you're absolutely right. You

25   know, which shelf you're on in the grocery store just

1   matters a big old deal. And so I would say the analogy is

2   sound. And you know, you got someone sitting there in

3   that, you know, one shelf down from the top right there at

4   eye level versus someone sitting down there in the bottom

5   shelf. It's not a level playing field. I mean, it's not.

6   REPRESENTATIVE RYAN: And you know, I taught

7   economics at Franklin and Marshall for about 10 years, and

8   when -- as an adjunct faculty member, and when I did it, I

9   would frequently use a term ceteris paribus, right? I

10   would freeze all the variables except the one.

11   In the studies that you've seen, have we frozen

12   all the other variables and looked only at the

13   randomizations issue? Or have we looked at the impact of

14   it being a multivariate expression for which the

15   correlation coefficient can be significantly different

16   based upon other variables as they interrelate and interact

17   with one another?

18   DR. GRANT: The short answer to your question is

19   both. So when I was discussing my research design with one

20   of your colleagues, I mentioned that I came at it two ways.

21   And the first way was really not the multivariate thing.

22   It really was just relying on that randomization. So you

23   know, the FDA, when they're looking at a clinical trial,

24   they're really going to hang their hat on that

25   randomization that you randomize across who gets it, who

1   doesn't. Then all these other factors are going to balance

2   out. And so then if there's a difference in survival

3   rates, or recovery rates, or whatever, you really got to

4   credit it to the drug.

5   So in the same way in my study of Texas or if I

6   was looking at you know, Florida or Pennsylvania, I think,

7   with -- well, no, use a different system. Florida, Texas,

8   or some of these other places. When it is, indeed,

9   randomized, then you're -- you know, you're kind of hanging

10   your hat on that same deal that the randomization process

11   means that all these other things are going to tend to

12   balance out. They're not going to be systematically

13   related to the first ballot position versus second ballot

14   position.

15   But then being an economist, you know, we got to

16   do our OCD run the numbers, fire up the computer thing. So

17   again, I gathered about 10, 12 variables about each county

18   that would help to predict, you know, maybe who's going to

19   vote for the two-party candidate versus the establishment

20   Republican or whatever in the primary. And so I threw

21   those into the mix in a multivariate analysis, and by

22   golly, I got same (indiscernible) results with just really

23   similar across the queue. So I really came at it both

24   ways, got the same answer both ways.

25   REPRESENTATIVE RYAN: Outstanding. If I could

1 ask you one final follow-up question.

2   And Mr. Chairman, thank you for your flexibility

3 with this.

4   Did you see anything where -- as example, if you

5 had a predominantly Democratic county or district or

6 predominantly Republican district that if there was a

7 randomization the candidate from the opposing party that

8 might've gotten first ballot position might've done better

9 under those races than not? Which to me would reinforce

10 that randomization really is a big effect.

11   DR. GRANT: Well, if you're thinking about

12 general elections, Texas does not use randomization in

13 general. So I was only looking at primaries.

14   REPRESENTATIVE RYAN: Okay.

15   DR. GRANT: It's only in Wyoming where I was able

16 to look at the general.

17   REPRESENTATIVE RYAN: Okay. Fantastic. But so

18 you didn't see anything that would indicate to you that in

19 predominantly Democratic or Republican districts reversing

20 to randomization would have -- in other words, enough

21 study's not been done on that issue?

22   DR. GRANT: I'm not certain of your question. If

23 you want to know whether the ballot order effect seems to

24 be stronger in one party versus another, doesn't seem to

25 be.

1   REPRESENTATIVE RYAN: Okay.

2   DR. GRANT: Doesn't seem to be a whole lot of

3   difference there. And then in Wyoming -- maybe this will

4   get at your question -- you know, you wouldn't think

5   there'd be any party changes in Wyoming, but in fact, over

6   the last 40 years you had about 25 counties go from

7   Democrat in one cycle to Republican in the next. But you

8   also had about 25 counties go the other way. And this is

9   again over a long period.

10   So you know, you have cycles in politics. And so

11   --

12   REPRESENTATIVE RYAN: Sure.

13   DR. GRANT: -- some counties, sometimes they

14   shift from Democrat to Republican. Sometimes they shift

15   back the other way. And so in Wyoming those estimates of

16   the effect of ballot order are kind of based on things

17   going both ways.

18   REPRESENTATIVE RYAN: Okay.

19   DR. GRANT: They're kind of both in there. They

20   got the Democrats going to Republicans. And so that's

21   switching up ballot order in some counties. And then you

22   got going the other way around in some other counties. So

23   it's kind of a balanced analysis in that respect if that's

24   what you're thinking.

25   REPRESENTATIVE RYAN: Sort of along those lines.

1   I think what the issue if, if I ran in Representative

2   Solomon's district as Republican, would I win if I was

3   first? I'm just kidding. He's got a very heavily

4   Democratic district, and that would not -- I was just

5   teasing Representative Solomon. I apologize. Sorry,

6   Jared.

7   DR. GRANT: You know, because it's so hard to

8   even get an estimate for the state as a whole, just to get

9   a general estimate, I didn't try to break those estimates

10   down, you know, kind of cut them up and break them up more

11   finely.

12   REPRESENTATIVE RYAN: Okay.

13   DR. GRANT: I will tell you that in Texas I took

14   several variables like education, income, median age,

15   couple others I can't remember, and I just looked to see if

16   the ballot order effect really varied with respect to that.

17   You know, hey, in places that are more educated or

18   wealthier, does there seem to be a larger effect or a

19   smaller effect? And I really didn't find that.

20   So you know, I can't say that this is an

21   authoritative statement, but given the limited knowledge

22   out there, it's probably best to think of it as being kind

23   of a human effect that is reasonably similar across people

24   and not highly sensitive to whether they're Democrats, or

25   Republicans, or wealthy, or not wealthy, or highly educated

1 or not, or whatever. Tends to be more of just a people

2 thing.

3   REPRESENTATIVE RYAN: Okay.

4   DR. GRANT: That's the way I at least think about

5 it.

6   REPRESENTATIVE RYAN: Professor, this has been

7 very helpful. Thank you so very much.

8   And Mr. Chairman, thank you.

9   MAJORITY CHAIRMAN MACKENZIE: Thank you. Final

10 question we have for the professor is from Representative

11 Wheeland.

12   REPRESENTATIVE WHEELAND: Thank you. Has your

13 work or any work you're familiar with analyzed this topic

14 in relation to ballot questions? Does it seem to make a

15 difference whether the affirmative or negative is listed

16 first?

17   DR. GRANT: Great question. And the answer is

18 yes, and the answer is also yes. I myself have not looked

19 at this, but there are a few studies that have. I think

20 they tend to look at, like, a bond election, or in

21 California you've got those things that's put on the ballot

22 -- whatever those things are called. Propositions. Thank

23 you.

24   So and so those tend to be yes, no. Right?

25 Shall we raise X amount of money by levying X amount of

1   tax? Yes? No? Shall we do X? You know, shall we amend

2   the Constitution in such and such a way? Yes? No? And so

3   it doesn't look at whether you flip the answer because you

4   aren't going to have anybody put it on the ballot and then

5   put no first and then yes second. You know, it's just

6   always going to be yes first and then no second.

7   But what they do look at is how far down the

8   ballot they are. So sometimes you get a whole bunch of

9   these propositions are bond issues, or Constitutional

10   amendments, and sometimes you just have a few. And they do

11   find, in fact, that the further down you are in the ballot,

12   the less likely that thing is to pass. So indeed, this

13   kind of mental fatigue effect, this -- it's kind of not

14   sequencing exactly, but just the order in which questions

15   appear. You get more tired as you work your way down the

16   ballot mentally, and then they're less likely to pass. So

17   there is research on that question. I'm aware of a couple

18   studies in the last five years.

19   REPRESENTATIVE WHEELAND: So it would be obvious

20   that, perhaps, not only candidates, but also ballot

21   questions should be placed in random order?

22   DR. GRANT: I probably wouldn't offer a judgment

23   on that myself. I think that I would have to think about

24   it more than I have. That is a very good question. And

25   you would again possibly be trading off multiple

1   considerations. Possibly one question is going to garner

2   more attention than the others. It's actually an excellent

3   question. I really haven't thought about it. It's an

4   excellent question, and I will be chewing on after we've

5   finished this hearing.

6   REPRESENTATIVE WHEELAND: Well, it gives you

7   something to think about while you're hunkered in for the

8   hurricane or tropical storm. Thank you, Professor.

9   DR. GRANT: Thank you.

10   MAJORITY CHAIRMAN MACKENZIE: Great. Well, thank

11   you again, Professor. I think we all enjoyed your

12   testimony and some of the insights that you've gleaned from

13   your different studies over the years and the studies of

14   others, as well. So I want to thank you again. And the

15   only follow-up was if you can provide that information

16   about randomization and rotation from other states. Even

17   if it's outdated, it will give us some knowledge of what

18   other states are out there and what's going on. So thank

19   you again. We really appreciate it.

20   DR. GRANT: That sounds great. Thank you for

21   having me, and I will follow up with the staff who reached

22   out to me originally and be sure to provide that soon.

23   MAJORITY CHAIRMAN MACKENZIE: Fantastic. Well,

24   keep on the interesting work on randomization and rotation.

25   We in the legislature certainly appreciate it and enjoy

1   reading your work. So thank you.

2   DR. GRANT: My pleasure.

3   MAJORITY CHAIRMAN MACKENZIE: All right. The

4   next panel that we have is Forrest Lehman, who is going to

5   be joining us virtually, I believe, or we will cue him up.

6   MR. LEHMAN: Yes.

7   MAJORITY CHAIRMAN MACKENZIE: All right.

8   MR. LEHMAN: Hello.

9   MAJORITY CHAIRMAN MACKENZIE: Thank you for

10 joining us. Forrest Lehman is the director of elections

11 and registration with Lycoming County. He will be

12 providing some input, and then we will move to questions.

13 So I don't believe -- you did not provide written

14 testimony. Is that correct?

15   MR. LEHMAN: No, I don't have any prepared

16 testimony.

17   MAJORITY CHAIRMAN MACKENZIE: That's quite all

18 right.

19   MR. LEHMAN: I just have a couple assorted

20 thoughts here up front that I guess you could say I had

21 them while I was making coffee this morning and listening

22 to what's already been discussed in terms of the testimony

23 and the questions. And I guess the place to start is just

24 that to keep in mind there seem to be two dichotomies here

25 that have to be navigated with respect to ballot order.

1   And one of them is the divide between what you might

2   colloquially call local offices and state offices. And I

3   think it's been touched on a little bit already.

4   But in county election offices, we think about

5   state offices as one category. Local is another. State

6   offices being the ones where the candidate has to file with

7   Department of Atate. They file their nomination petitions,

8   their campaign finance, and everything else. Department of

9   State is kind of responsible for them versus the local

10   offices like, you know, the county and the school district,

11   borough, township and so on. That where, you know, those

12   candidates are filing with the county. And so we feel more

13   responsible for them.

14   So you know, that's one kind of dividing line

15   that you'd have to think about. To what extent do we want

16   to look at changes to candidate ballot order affecting

17   state offices versus local offices? And the other is what

18   you do in a primary versus a November election. You know,

19   and that's been touched on a little bit already that in the

20   primary it's already random, but it's -- I guess you could

21   call it uniformly random. You know, when you talk about

22   statewide office where you're doing what's called a casting

23   of lots, and different counties do that in different ways.

24   Currently, these are public events. They're

25   advertised; they're witnessed. So that part of the

1   equation is actually already contemplated by the election

2   code. And then in November, yes, there is a party ballot

3   order preference that's determined in the gubernatorial

4   election. And one interesting point about that is -- maybe

5   this is just me personally, but it seems to me the way we

6   do that it almost creates a perverse incentive for third

7   parties to run in the gubernatorial election specifically

8   to run for governor because that's a way they can try to

9   secure ballot position for four years.

10   You know, and so it leads maybe parties to run

11   for governor that might otherwise not choose to do so. And

12   so right now, for the next four years, you've got

13   Democratic, Republican, Libertarian, Green, and it's

14   everybody else in alphabetical order.

15   And I guess the other point about November

16   elections is to keep in mind that right now there is some

17   element of merit imbedded in that. You don't see it in a

18   vote for one race, but when you get into a vote for two,

19   three, four, like school director or borough council, if

20   you have multiple Democrats, multiple Republicans on that

21   November ballot, they are ordered based on how many votes

22   they got in the primary. You know, and so that -- I guess

23   that's something to keep in mind because that may be

24   something that's worth holding onto if, you know, you

25   looked at how things were done in the primary. Had an

1   arrangement that you thought was more fair, more equitable.

2   And then there was that element of merit that carried over

3   to the November ballot. So something else to think about

4   there.

5   As far as county level randomization versus

6   precinct level randomization, I think that was the other

7   kind of -- you know, two different models that were being

8   proposed and prepared. As far as the county lift on

9   implementing either of those, I think the county level

10 randomness would probably represent less of a departure,

11 less of a challenge compared to what we currently do.

12   I don't see any new programming challenges in

13 terms of the voting systems. And in fact, you know, one

14 thing that could be done if it was county level randomness

15 for state races, for statewide races, Department of State

16 could randomize the counties' ballot orders for them. You

17 know, just like the secretary certifies the ballot, the

18 counties now, they could tell, you know, Lycoming County,

19 this is the order you're going to use for the Supreme Court

20 justice race, and you know, Chester, this is the order

21 you're going to use, and everybody do that so that the

22 statistical analysis doesn't need to be done to root out,

23 you know, whether counties are doing it right. It might

24 just be a question of you know, was that randomness done

25 correctly that one time.

1   If that was done at the county level, you would

2   probably still need some rules for local offices, though,

3   to determine party and candidate order if it's not going to

4   rotate at all. And maybe you keep it random in the

5   primary, but in November, you could go purely on the

6   primary results irrespective of party. You know, so

7   whoever got the most votes in the primary on either party

8   ballot goes first in November. Doesn't matter if you're

9   Democratic. Doesn't matter if you're Republican. It's

10   just going to go right down the line. So that's one

11   thought there.

12   I think one, you know, challenge whether you do

13   this at the county level or at the precinct level is it

14   could cause some minor complications for candidates for

15   parties to the extent that a lot of them will circulate

16   prefilled sample ballots. You know, voter guides with

17   graphics of ballots. I'm not sure how easy that will be to

18   continue to do because you could give a voter a ballot

19   filled out to say this is what you need to do, and then

20   they go in, and their ballot doesn't look the way they

21   anticipated. And I think that can happen in either model.

22   But if you take this down further to precinct

23   level, I think that's where you could really get into some

24   complications for what county offices have to do. I'm

25   thinking about the programming could be more difficult.

1   The ballot proofing could be more difficult.

2   Now, I know it was brought up already that, you

3   know, we've had some difficulties with programming errors,

4   that kind of thing. You could have more difficulty with

5   programming, with proofing of ballots because now you have

6   the same contest of hearing multiple different ways within

7   a single county. You know, and it's not like you could

8   look at the ballot and go that I know that, you know, this

9   person's going to go first and this person's going to go

10   second. You really have to scrutinize that contest on

11   every ballot to make sure that all the elements are there,

12   even if they're in a different order. You know, and that

13   makes proofing a little more complicated.

14   And I guess the last part of that with the

15   equipment is the potential complicating element of that we

16   have fix, six different voting systems in use in

17   Pennsylvania. I haven't engaged with this functionality in

18   my system personally because there hasn't been a need to,

19   but when you look at what they already support, what might

20   need to be done to get into certification timelines at the

21   EAC, at the state level, and to the extent that any

22   software updates or changes needed to be made to certify

23   voting equipment to implement this, you could be looking at

24   -- I mean, it could be up to a two-year time frame to get a

25   change in.

1   I mean, some of the companies right now have had

2   stuff sitting at the EAC for a year that hasn't been

3   certified because the EAC, it just -- it moves at a glacial

4   pace even under the best of circumstances. So you know,

5   the timeline on this could get complicated if it involves

6   changes to certify voting equipment. But I guess that's

7   everything I have up front. So we can go to questions.

8   MAJORITY CHAIRMAN MACKENZIE: Great. Well, thank

9   you. First up, we have Representative Solomon.

10   REPRESENTATIVE SOLOMON: Thank you so much for

11   that. I just wanted to pick up on your last point first,

12   which is sort of the grace period. You talked about the

13   need for counties to adjust. Just talk about your county.

14   How long would it take you, let's say, to be ready for this

15   whether it's randomization or rotational based system? You

16   think you would need a year, two years? What do you think?

17   MR. LEHMAN: If it was at the county level -- if

18   it was limited to the county level where, say, you know, I

19   was told that your statewide offices, this is the order

20   you're going to use as opposed to the order another

21   county's going to use, it wouldn't add any extra time at

22   all because I can just plug the candidates into my ballot

23   software and say that, you know, this candidate's going to

24   be first and this one's going to be second. No big deal.

25   But when you start getting into moving that down

1   to randomness within the county, you know, that I might --

2   say I have a countywide race like sheriff and they tell me

3   that, you know, your sheriff -- you know, the Democratic

4   candidate is going to be first on the ballot, and half the

5   precincts your Republican's going to be first, and you're

6   going to use your voting system software to rotate it.

7   Well, now, you get into how does that work within the

8   software? Does it do everything the statute requires it to

9   do? And is that going to be the case not just for my

10   software, but all the counties in the state that are using

11   different equipment?

12   So that's where you get into a certification

13   problem, software problem that could take anywhere from a

14   year to two years to resolve. To be fair, some of this

15   equipment might support exactly what the legislature would

16   want to do, might support it right out of the gate, but

17   there could by other systems that don't, and that might

18   involve really some outreach to Department of State and

19   those companies to ascertain what are their capabilities

20   right now? How does that line up with the intent, you

21   know, that where do we want this to end up?

22   REPRESENTATIVE SOLOMON: So the randomization you

23   could do in November? You would be ready to go?

24   MR. LEHMAN: If it was county level randomness --

25   REPRESENTATIVE SOLOMON: Right.

1   MR. LEHMAN: -- county level randomness can be,

2   you know, programmed manually. You know, I can say that

3   everywhere in my county and all my precincts this

4   candidate's going to go first. This candidate's going to

5   go second. And the only randomness is that in my county

6   it's one way. In you know, Philadelphia county it's

7   another way. In Clarion County it's another way. That's

8   fine. But it's when you're going into your own county

9   within your county and telling it I need my ballots to look

10   different within different precincts, that's where you're

11   going to get into some real complications.

12   REPRESENTATIVE SOLOMON: And so in your example,

13   the Democratic candidate for sheriff and Republican

14   candidate for sheriff, if I said to you today I want you to

15   rotate within every one of your precinct to get rid of any

16   advantage that ballot position might give to either the

17   Democrat or Republican, that's what you're saying would

18   take you a longer time to do?

19   MR. LEHMAN: Yeah. That would be a bigger lift

20   because every county would have to ascertain for itself,

21   what can my system do right now going toward that goal?

22   Does it fall short in any way? And if it does, what

23   changes need to be made to the software to support it? And

24   you know, if there's a statute passed and then we're

25   finding out our equipment can't do it, you know, then it's

1   already too late.

2   So for precinct level, you know, within the

3   county randomness, that's where the capabilities of the

4   software of your certified voting equipment becomes

5   incredibly important and where the timeline to be able to

6   comply could stretch out years just because of how long it

7   takes to make changes to certify voting equipment.

8   REPRESENTATIVE SOLOMON: Thank you.

9   MR. LEHMAN: Yeah.

10   MAJORITY CHAIRMAN MACKENZIE: Great. Thank you.

11   So I think we've addressed the current system we have now

12   versus randomization by county as compared to the rotation,

13   the precinct rotation, which we talked about. And I

14   understand. And maybe, you know, there are different

15   options. You maybe do some kind of phased approach where

16   you go to the easier method that can be done now at the

17   county level randomization, and then maybe you take a

18   second step down the road. So you could do something like

19   that.

20   But let me just ask, the challenges of going

21   straight to a precinct rotation. Because in the discussion

22   that we were having -- I was having with the Democratic

23   chair when he was here before, I made a comment that, you

24   know, we're already preparing ballots at the precinct level

25   at least in primaries today because you have county

1   Committee members running for their county party Committee,

2   and those -- at least in our area, those are run at the

3   precinct level.

4   In our county, in Lehigh County, each precinct is

5   already preparing a unique ballot for the primary. So if

6   they're already doing that and preparing a unique ballot

7   for the precinct, I guess what would the challenge be to

8   adding -- I guess you're adding variation in other races or

9   rotation in other races, but it's still going to result in

10   a unique ballot for that precinct.

11   MR. LEHMAN: The challenge is going to be how far

12   down are you drilling to do the randomness? So what

13   counties are doing right now is -- you know, if you talk

14   about a primary, we're having a random drawing for ballot

15   position where, you know, like in my case, maybe they draw

16   a number out of a hat. Well, this number goes first on the

17   ballot. All that is being determined outside of the voting

18   equipment.

19   So we do a drawing, and I already know based on

20   that drawing, you know, this candidate's going to be first,

21   second, third. That all gets manually programmed into the

22   system, into the ballot design. To tell it, this

23   candidate's first, this candidate's second, and it's going

24   to appear the same way then all over the county, that

25   contest.

1   And similarly, you know, if randomness was done

2   across my county the same way -- so Department of State

3   told me, you know, in your race you're going to put the

4   Republican first for Justice of the Supreme Court in

5   November, and they told another county you're going to do

6   the Democratic candidate first. We could do that. We can

7   manually program that level of randomness into our

8   equipment because the Republican's going to be first for

9   Justice of the Supreme Court across my entire county.

10   So there's no software magic that is needed. I

11   just tell it this this the way the ballot looks, and it's

12   going to look the same everywhere. Where the, you know,

13   the greater lift comes in is if I need a Democrat to show

14   up first in some of my precincts and I need the Republican

15   to show up first in other precincts and rotate it around.

16   That's where it has to happen, inside the voting system

17   software.

18   And that's where you get into the fact that, you

19   know, that I don't know that it's ever been formally

20   ascertained by Department of State as part of a state

21   certification process because it's never been a statutory

22   requirement in the election. So you know, that's where

23   every county would kind of be scrambling to figure out what

24   can our software do? Does it do what we need it to do?

25   And the better way to approach that problem would

1 be for it to start with the legislature and Department of

2 State deciding, what do we want this to look like? What

3 does the software need to do to make that happen? And

4 we've got to test and certify all the current equipment to

5 make sure it can do that. You know, and there may need to

6 be updates for that. So it gets to be a lot more

7 complicated if counties have to accomplish that on a

8 precinct level.

9   MAJORITY CHAIRMAN MACKENZIE: Okay. Let me ask

10 the question this way. So I have seen lists from the

11 Department of State. Now, I don't know if these are

12 official lists or if it was just somebody's accounting

13 within the Department, you know, or some methodology used

14 within the Department. So I have seen lists where all of

15 the precincts are numbered across the entire state, and

16 each precinct has its own unique number identifier listed

17 next to it. Again, I don't know if that was just in one

18 method that they were providing data or if that is

19 consistent all the time.

20   But so if the Department of State had a system

21 where each precinct is, you know, listed alphabetically and

22 then by division and ward and subsets within that, and

23 they're all listed out, and they're all given a unique

24 identifier, and then the legislature were to come up with a

25 precinct rotation system where they would be rotating those

1   candidates on the ballot, and then, you know, it starts

2   over once you've gone through all the candidates in that

3   race.

4   If the Department of State were to tell you that

5   this is the order for each of your individual precincts,

6   here is the order for all of the races. Here's the order

7   for president. Here's the order for senator. Here's the

8   order for governor. Here's the order for all of those

9   state determined races. And they told each county -- they

10   gave you that spreadsheet and specifically said here it is.

11   So they took that work away from you. Could you then load

12   that information for each of your precincts?

13   MR. LEHMAN: No. I don't believe the software in

14   my voting system can do it that way. It's not really a

15   question -- the challenge there is not really a question of

16   work that the county would need to do. It really has to do

17   with what are the technical capabilities of the software.

18   And I think that the latter -- what you just described

19   would actually be more difficult because that's -- what

20   you're describing there would be -- I guess you could call

21   it manually determined randomness. I'm not sure if that's

22   a great way to describe it, but it's like, you know, the

23   randomness has been determined outside, as you're

24   describing, by Department of State, and they're telling us,

25   you know, do the contest differently in every precinct, and

1   here's exactly how it needs to be done differently.

2   The software would not permit that right now.

3   You couldn't program a candidate to appear in this position

4   in one precinct and that position in another. I think to

5   the extent the ballot design software in these systems

6   accomplishes candidate rotation, it's done, I believe, on -

7   - it may be a random basis. It could be a rotating basis,

8   but it does it on its own.

9   You know, it's kind of like you pull the trigger

10   and it does it. I don't know that you have the ability to

11   go in and control precinct by precinct and say, no, no, I

12   want you to do it this way here and that way there. It's

13   kind of like you either turn that function on and let the

14   chips fall where they may, or you don't. But you know,

15   these are all the kinds of things that the counties would

16   have to ascertain in their systems and Department of State

17   would have to ask these vendors about. And it's such a new

18   type of function that it's never been tested in the state

19   that they may want to take a look at everything before they

20   would certify the equipment to be used in that way.

21   MAJORITY CHAIRMAN MACKENZIE: Okay. You know,

22   I'm happy to -- obviously, these hearings, not just this

23   one, but the earlier hearing, as well, they're designed to

24   gain information from experts in the field and understand

25   how the impacts of legislation would play out in practice.

1   So you know, we are going to continue the discussion, and

2   we appreciate your joining us here.

3   We have reached out to the Department of State to

4   gain input from them, as well. At this time, we haven't

5   heard back, but hopefully, they will provide their input,

6   and again, hopefully, we can continue this conversation

7   with the input of all the different stakeholders, county,

8   boards of elections, the Department of State, and any other

9   interested parties, as well.

10   All right. Seeing no other questions, we will

11   wrap up with you. So thank you very much, Mr. Lehman, for

12   joining us. And we will conclude this panel, and we will

13   next go to a third and final panel where we will have

14   Representative Solomon and Representative Rabb providing

15   their input and thoughts on the legislation that they have

16   introduced or either circulated co-sponsor memos on. So --

17   MR. LEHMAN: Thank you very much. Good

18   afternoon.

19   MAJORITY CHAIRMAN MACKENZIE: Thank you.

20   All right. Republican Rabb, are you with us?

21   REPRESENTATIVE RABB: Yes.

22   MAJORITY CHAIRMAN MACKENZIE: All right. We will

23   start with you, and then we will go next to Representative

24   Solomon. So feel free to start whenever you're ready.

25   REPRESENTATIVE RABB: Thank you, Mr. Chairman.

1 It's an honor to be on this panel and to benefit from the

2 expertise of the prior two testifiers. Back in June of

3 2019 in the previous term, I circulated a co-sponsorship

4 memo regarding establishing rotating ballot positions for

5 candidates. I went on to introduce it in October of 2019,

6 and I reintroduced it this year. It's currently House Bill

7 1797.

8   And essentially, what this bill seeks to do is to

9 avoid human error and potential foul play in a manner that

10 could be well audited by removing unnecessary barriers to

11 candidate viability. There are a lot of factors that

12 impact candidate viability that are within the control of

13 specific candidates and campaigns. But how it operates

14 now, we have an unnecessary barrier for viability

15 irrespective of the legitimacy or the qualifications of any

16 given candidate.

17   And lastly, there is the technological

18 feasibility to do this with certain voting systems. I

19 believe the previous gentleman referenced that there are

20 five or six different voting systems, certified voting

21 systems. I believe most of them can do this, and I think

22 there's room to allow those counties that have the

23 technical capability to do this to do so because it

24 wouldn't be unfair because the very thing that would be

25 embraced is something that would remove those undo

1   advantages to candidates based on casting of lots.

2   So even if there was a way to allow those

3   counties that had the capacity to do so to start and to

4   facilitate and expedite other counties to get to that

5   level, that would be a great step going forward. But as it

6   stands right now, I represent part of Philadelphia,

7   northwest Philadelphia. So I'm in the most populous county

8   in the state. We choose ballot position based on

9   candidates or their designees pulling lots out of an old

10   can, an old coffee can -- and it's quite a tradition in

11   Philadelphia, but it is a tradition whose time should draw

12   to an end simply because it create an unfair advantage to

13   whomever because of the luck of the draw.

14   And when we have technology that can obviate

15   those undo advantages, why not leverage them if they're at

16   our fingertips right now? And as previous commentators

17   have said, we do things on the precinct level when we elect

18   Republican and Democratic Committee people. So given the

19   systems that exist -- I can't speak to all of them, but I

20   can speak to the one that operates in Philadelphia and

21   other counties that this is something that is

22   technologically feasible, and I think it's worth pursuing

23   simply because it is auditable.

24   You can find out before the election happens if,

25   indeed, there's foul play. But the reality is there could

1   be foul play for the system that has been used for decades,

2   so -- and that is an analog process. That is literally

3   people sticking their hands into a coffee can and pulling

4   out their number.

5   So I think just getting us to the 21st Century

6   and using the technology that is already available for many

7   counties and the voters in it is worth pursuing. When we

8   talk about what it means to have a level playing field and

9   merit, those things go out the window when because you

10 choosing a ballot position that is low -- you could be the

11 most viable candidate. You could've raised the most money.

12 You could've had the longest record in terms of community

13 service, have an outstanding resume. But in places like

14 Philadelphia and other places the party that you're

15 affiliated with may very well tell you don't run because

16 voters are not going to look for you way down on the

17 ballot. And that's a shame.

18   We should do things to encourage good candidates

19 to run. And when you have something like this, this

20 barrier that can so easily be dissolved, I think the

21 impetus is on erring on the side of a level playing field

22 and embracing the technology we've already invested in

23 through our state.

24   So I have a bill. It is materially the same as

25 Representative Solomon's. I believe that getting good

1 feedback from the Secretary of State, and county

2 commissioners, and elections officials makes sense to

3 determine which systems could use this, and how quickly,

4 and what unintended consequences could be avoided. But

5 ultimately, this is a non-partisan approach to helping

6 candidates and the voters they seek to represent. Thank

7 you, Mr. Chairman.

8   MAJORITY CHAIRMAN MACKENZIE: Great. Well, thank

9 you, Representative Rabb, for joining us today and sharing

10 about your legislation and your thoughts on potential

11 changes to the current systems. We appreciate that. And

12 next we will go to Representative Solomon.

13   REPRESENTATIVE SOLOMON: Thank you, Chairman. I

14 just want to say that I really appreciate you bringing this

15 issue up before this Committee. It means a lot. I think

16 Rep. Rabb hit a home run in terms of his presentation. And

17 I'm going to pick up where Rep. Ryan left off. Let's

18 assume that the two of us were running in a race together,

19 whether it's in his home county of Lebanon County, or in

20 Philadelphia County, or statewide. There are certain sort

21 of factors that you would assume any voter takes into

22 account, reasonable factors.

23   He's a Republican. I'm a Democrat. That

24 dictates certain ideology that flows from our party label.

25 How much money we raise. Political insiders and others

1   will look to that as an indication of how well we are

2   moving our campaign forward. Polling data. Some voters

3   look to that. Media coverage, how the media is portraying

4   the nature of our campaigns. The ongoing narrative of the

5   back and forth between Representative Ryan and myself

6   during a general election battle.

7   Our votes in the legislature. Did I vote a way

8   that maybe his folks think was not in line with his county

9   values? If he ran in my county, did he vote in a way that

10 maybe doesn't reflect some folks in Philadelphia County?

11 These are all reasonable. And we might agree or disagree

12 that one of these variables should be high up on the list

13 as opposed to one or the others. But the one thing that

14 should not matter is ballot position.

15   If Republican Ryan is gaining two to three points

16 because he's one and I'm two, or I'm gaining two to three

17 points or more because I'm first and he's second, that has

18 nothing to do with any of the factors that naturally flow

19 when you have people from different parties, or even within

20 the same parties, or unaffiliated folks running for office.

21   This becomes worse, right, more complicated if we

22 have more people running. So let's say we brought all the

23 Committee back and Representative Keefer ends up and she's

24 at the bottom of the ballot. She's 10th in a judicial

25 race. She might be eminently more qualified as a jurist

1   than me, but I'm first. It's likely that Rep. Keefer

2   decides to drop out of that race, not because of merit, but

3   because she's 10th and I'm first. And maybe I'm not

4   qualified at all. Maybe I'm just fresh out of law school

5   and I have no clue what I'm doing and actually have never

6   written an opinion or considered any of the legal issues

7   that are going to come before me fast and furious when I'm

8   on the bench. That doesn't speak to any sense of fairness.

9   In Philadelphia this is worse. This is all done by

10   this, a Horn & Hardart's can. We literally entrust our

11   Democratic process to a Horn & Hardart's can where I go

12   before the voters based on what lot I pick, whether I pick

13   my name 1st, 10th, 15th, or 20th. This system is not fair.

14   It's not efficient.

15   A recent article in Philadelphia before the last

16   judicial election in quotes said, hopes of judicial

17   candidates determined by Horn & Hardart's can. Lead

18   headline. So it's not just that we have this process; it's

19   that we're right up and front about it. It's time for us

20   in Philadelphia to kill the can and for all 67 counties to

21   eliminate the added advantage that we get from being on the

22   top of a ballot, that ballot position gives us. Efficiency

23   and fairness dictate that we move in this direction. Thank

24   you, Mr. Chair.

25   MAJORITY CHAIRMAN MACKENZIE: Well, thank you,

1   Representative Solomon for that testimony. That was

2   wonderful. I think you lucked out on two fronts. One, we

3   are going to allow props at this Subcommittee hearing, even

4   though that may not be allowed in other instances. And

5   second, you know, I wasn't about to jump in and comment on

6   the merits of your candidacy versus those of my goods

7   Representative Ryan or Representative Keefer. We will

8   leave that for discussion outside of a Subcommittee

9   hearing. But really do appreciate your passion about the

10   topic, and I know we have spoken about that.

11   I think we share an interest with Representative

12   Rabb and some of the other members here about coming up

13   with a better system that has more fairness built into it

14   so that we aren't depending on these things that are very

15   arbitrary in nature and shouldn't be a factor, and a

16   potentially determining factors in the outcomes of

17   elections. So I will close on that. If anybody else has

18   any other comments or any --

19   REPRESENTATIVE KEEFER: Mr. Chairman, I would

20   just like to say --

21   MAJORITY CHAIRMAN MACKENZIE: Representative

22   Keefer, by all means.

23   REPRESENTATIVE KEEFER: Thank you, Mr. Chairman.

24   I would just like to say, if I were 10th on the ballot,

25   that would be quite impressive since I have not taken the

1 bar.

2   MAJORITY CHAIRMAN MACKENZIE: All right. Well,

3 thank you to everybody for joining us. And as always, if

4 anybody outside of the Committee hearing has any other

5 information or testimony that they would like to provide,

6 they can certainly provide that to me or a member of the

7 State Government Committee staff. They can provide that to

8 them, as well.

9   So again, I'd like to thank everybody for joining

10 us for both of our hearings today. This concludes the

11 second of our two hearings, and with that this meeting is

12 adjourned. Thank you.

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