



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION

No. 2019-06

Calling for Well-Designed Standardized Nationwide Ballot Standards

Reported to the Caucus by the NHCSL
Latino Voting and Elections Task Force
Sen. Otoniel “Tony” Navarrete (AZ), Chair

Sponsored by Sen. Daniel Ivey Soto (NM)

Unanimously ratified by the Caucus on December 5, 2019

1 **WHEREAS**, the National Hispanic Caucus of State Legislators has been continually
2 committed to improving the reliability and accessibility of the voting system in the
3 United States; and,

4 **WHEREAS**, to that end, we approved Resolution 2017-14, Implementing Opt-Out
5 Automatic Voter Registration Across the United States; and,

6 **WHEREAS**, we also approved Resolution 2018-18, Expanding Voting Opportunities
7 for All Americans, in which we called for an election day holiday, due-process
8 safeguards against undue voter-roll purging, no-excuse early in-person voting for at
9 least two weeks, same-day voter registration, and several fairness and procedural
10 improvements to the vote-by-mail system; and,

11 **WHEREAS**, of central importance to a fair voting system is a straight-forward ballot
12 that does not require a voter’s scrutiny to ensure they fully understand it and can
13 complete it to their satisfaction; and,

WHEREAS, thousands of ballots are undervoted or otherwise miscast each election due to poorly designed ballots, with the elderly, new voters and minorities being most affected;¹ and,

WHEREAS, poorly designed ballots create distrust in the electoral process, undermining further voter participation and trust in elected officials; and,

WHEREAS, after issues of bad ballot design cast a cloud over the results of the 2000 presidential election, Congress enacted the Help America Vote Act of 2002 (HAVA), creating the U.S. Election Assistance Commission (EAC) with the mandate, among other things, of issuing voluntary guidance on voting system standards and serving as a clearinghouse for studies regarding election administration issues and other activities to promote the effective administration of Federal elections;² and,

WHEREAS, starting in the middle of the last decade, independent entities like AIGA: The professional association for design, the Brennan Center for Justice at NYU School of Law, and the Center for Civic Design began publishing ballot design best-practices standards of varying specificity;³ and,

WHEREAS, based in part on that independent work, and fulfilling their duties under HAVA, the National Institute of Standards and Technology (NIST) and the EAC also released design guidelines for election administrators;⁴ and,

¹ Lawrence Norden, *Better Ballots* (2008 Brennan Center for Justice at NYU School of Law), available at <https://www.brennancenter.org/sites/default/files/legacy/Democracy/Better%20Ballots.pdf>

² EAC, the Help America Vote Act, available at <https://www.eac.gov/about/help-america-vote-act/>

³ AIGA, *Election design tools and resources* (AIGA: The professional association for design), available at <https://www.aiga.org/aiga/content/why-design/design-for-democracy/election-design-tools-and-resources/>; Lawrence Norden, *Better Design, Better Elections* (2012 Brennan Center for Justice at NYU School of Law), available at <http://www.brennancenter.org/publication/better-design-better-elections>; Center for Civic Design, *Field Guides to Ensuring Voter Intent*, available at <https://civicdesign.org/fieldguides/>

⁴ NIST, Voting Publications, Human Factors: Usability and Accessibility, available at <https://www.nist.gov/itl/voting/publications> (the assistance of NIST was mandated under Section 221 of HAVA); and EAC, Designing Polling Place Materials, available at <https://www.eac.gov/election-officials/designing-polling-place-materials/>

32 **WHEREAS**, although multiple voluntary standards are available with varying degrees
33 of specificity, ballot design problems persist,⁵ even in cases where other states have
34 faced and fixed the same problems;⁶ and,

35 **WHEREAS**, in response to these recurring design issues, the U.S. House of
36 Representatives included Section 1506 in H.R. 1, the For the People Act of 2019,
37 requiring the EAC “conduct a study of the best ways to design ballots used in elections
38 for public office, including paper ballots and electronic or digital ballots, to minimize
39 confusion and user errors,” reporting its findings to Congress no later than January 1,
40 2020;⁷ and,

41 **WHEREAS**, even if H.R. 1 were enacted, the results of the EAC study would remain
42 voluntary unless further legislation is approved, and there are Constitutional
43 concerns regarding the extent to which Congress may mandate ballot design in the
44 states; and,

45 **WHEREAS**, Section 3001 of H.R. 1, also intends to make a new grant available to states
46 under Title II of HAVA, in part “to implement and model best practices for ballot
47 design, ballot instructions, and the testing of ballots;”⁸ and,

48 **WHEREAS**, beyond the bad-design issues that have made headlines, ballots that differ
49 in general design standards from state to state and, even worse, from county to
50 county, make it difficult for organizations to educate voters on how to cast their vote
51 properly because every significant variation requires new materials and explanations
52 to be conceived, with the attendant higher publishing and volunteer-training costs;
53 and,

⁵ See, Dana Chisnell, *How a badly designed ballot might have swayed the election in Florida* (The Washington Post, Nov. 12, 2018), available at https://www.washingtonpost.com/outlook/2018/11/12/how-badly-designed-ballot-might-have-swayed-election-florida/?utm_term=.22ab577495e5; and see Caitlin Ostroff, *Bad ballot design may have changed Florida’s election outcome. But there’s an easy fix* (The Miami Herald), available at <https://www.miamiherald.com/latest-news/article226292680.html>. The use of these notes in this Resolution does not intend to question the result of the 2018 US Senate election in Florida, only to highlight that design problems were used by many to question it without a definitive answer.

⁶ See Ostroff, *supra*, noting that the increased undervote potential of placing of a voting area under the instructions, as happened in the 2018 Broward County Florida ballot, had been previously identified by King County Washington in 2009, forcing the Washington State Legislature to enact prohibitions against it. The UAC, *supra* note 4, also cautioned against this ballot design problem since 2009, but that caution went unheeded by both King County and Broward County.

⁷ Amendment 72 of Rep. Harley Rouda (CA). As of this writing, H.R. 1 remains pending before the U.S. Senate, where Leader McConnell has stated it won’t get a vote, citing provisions other than the ones referred to in this Resolution. See, <https://www.vox.com/2019/1/18/18188150/mitch-mcconnell-house-democrats-anti-corruption-bill-hr1>

⁸ Amendment 89 of Rep. Lois Frankel (FL). The amount of the grant is at least equal, in dollars, to the number of votes cast in the two most recent Federal elections, allowing pro rata reductions if appropriations are insufficient.

54 **WHEREAS**, a best-practices standard can accommodate state electoral preferences in
55 areas like ranked-choice voting and multi-choice/multi-winner elections.

56 **THEREFORE, BE IT RESOLVED**, that the National Hispanic Caucus of State
57 Legislators reiterates its past calls for comprehensive electoral reform including opt-
58 out automatic voter registration; an election day holiday; robust due-process
59 safeguards against undue voter-roll purging; no-excuse early in-person voting for at
60 least two weeks; same-day voter registration; and fairness and procedural
61 improvements to the vote-by-mail system, including eliminating undue vote
62 rejections; and,

63 **BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators
64 underscores that the above ballot-submission and poll-accessibility improvements
65 are only part of the solution, and that ensuring voters' understanding of the ballots
66 themselves is also an essential component of comprehensive electoral reform; and,

67 **BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators
68 calls for a ballot design standard that promotes ease of understanding and
69 minimization of undesired undervotes, while allowing for electoral innovation and
70 variability on issues like ranked-choice voting and multi-choice/multi-winner
71 elections; and,

72 **BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators
73 supports the ballot-design provisions of H.R. 1 cited above and but calls on Congress
74 and the President to go further, by robustly funding the ballot-design grant program;
75 and,

76 **BE IT FURTHER RESOLVED**, that the National Hispanic Caucus of State Legislators
77 calls on State Legislatures, without waiting for Congress to act, to enact statewide
78 ballot design requirements, following the principles herein defined and other best-
79 practices; and,

80 **BE IT FINALLY RESOLVED**, that the National Hispanic Caucus of State Legislators
81 calls on State Legislatures, without waiting for Congress to act, to collaborate with
82 other states to ensure interstate ballot similarities with other best-practices
83 compliant states, and collectively fund an independent nonpartisan or bipartisan
84 entity to research and determine the ballot design models and standards.

85 THE NHCSL EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED THIS
86 RESOLUTION, AS AMENDED, ON MAY 6, 2019 AT ITS SPRING MEETING IN
87 WASHINGTON, DC.

88 THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY
89 RATIFIED THIS RESOLUTION ON DECEMBER 5, 2019, AT THE ANNUAL MEETING
90 IN SAN JUAN, PR.