

**PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY**

**JULY 19, 2017**

**OPENING STATEMENT OF J. KENNETH BLACKWELL**

Thank you, Mr. Chairman.

I am honored to be a member of this Commission. I want to thank President Trump for issuing Executive Order 13799 to create this Commission and for appointing me to serve as part of this body. I thank our Chairman, Vice President Pence, for his leadership in this endeavor, and express my gratitude to all of my colleagues for their willingness to undertake this important work.

This Commission's task is to identify every threat to the integrity of the electoral process, both foreign and domestic. We will assist the President and serve the American people by enumerating the vulnerabilities in our electoral system and recommending countermeasures to protect the voting rights of the American people, as guaranteed by the Constitution.

I would like to offer into the record a scholarly work of constitutional law on this issue. I coauthored this work with Ken Klukowski, a constitutional attorney and rising star in the Nation's legal community. Our law review article is entitled "The Other Voting Right: Protecting Every Citizen's Vote by Safeguarding the Integrity of the Ballot Box," published by the *Yale Law & Policy Review*.

We set forth that one way to articulate the right to vote secured by the Constitution is that every properly registered adult citizen has the right to an undiluted vote. Each elector has the right to a vote that carries its full weight, that when it is tallied has its

maximum, proper effect to give that citizen a full voice in determining who among us will be entrusted with the powers of government for a term of office.

As we explain in our law review article, this really means the Constitution secures two voting rights. The first is the one we talk about most often: the franchise, the right to cast a ballot on Election Day. Most voting laws combat abuses rooted in the past that denied Americans access to the voting booth.

But there is a second right that accompanies the right to cast a ballot, and that is the right for a citizen's legal ballot not to be diluted or cancelled out by anyone else's illegal activity. That illegal activity could be voter fraud by casting a ballot in more than one precinct or State. It could be a noncitizen voting; whether that noncitizen is a legal alien or an illegal alien, if they are not citizens, then their ballots dilute the votes of American citizens. That illegal activity could be voter intimidation, or voter registration fraud. Or it could be foreign interference in our elections, whether from Russia, China, North Korea, Iran, or any other foreign power. This other voting right is a fundamental constitutional right against any such dilution or cancellation, and it is our Commission's work and our mandate from the President of the United States to identify these threats and safeguard against them.

Another topic explored in this scholarly writing is that voting is perhaps the only fundamental right secured by the Constitution that is also a citizen's duty. We all have the right to the free exercise of religion or to keep and bear arms, for example, but our form of government does not impose them upon us as duties. But when it comes to voting, the Constitution enables "election officials to presume that public-spirited citizens with due

concern for the course of state and national policy should be willing to satisfy reasonable regulations and shoulder incidental burdens in the fulfillment of their civic duty.”

My home state of Ohio is in the jurisdiction of the U.S. Court of Appeals for the Sixth Circuit. One distinguished Ohioan who has served on that court for more than a quarter-century is among the most respected federal judges in the United States, the former Chief Judge of the Sixth Circuit, Judge Alice Batchelder. Two years ago, in *Russell v. Lundergan-Grimes*, Judge Batchelder wrote, “Citizens cannot demand as a constitutional entitlement an environment in which fulfilling this civic duty is effortless.” To the contrary, Judge Batchelder added, the Constitution allows for the possibility that “citizens should be expected to overcome minimal obstacles when voting.”

Every patriotic American citizen who is a qualified elector has a solemn duty in our democratic republic, to participate in public debate by casting a thoughtful, informed, and deliberate ballot on Election Day. We are a self-governing people. The machinery of democracy on Election Day is the cornerstone of how we govern ourselves. This Commission’s duty is to catalogue every threat to that machinery and determine how to thwart each threat and thereby safeguard the integrity of the ballot box.

Mr. Chairman, I ask that this Article be made a part of the record of today’s proceedings and of the work of the Commission.