

TESTIMONY OF CONGRESSMAN LES AuCOIN
Before the
Committee on House Administration,

December 15, 1981

Mr. Chairman and Members of this Committee, I want to thank you not only for inviting me to these hearings, but also for holding hearings at all. We have a dilemma, a clash of rights, in which there are no clear answers, right or wrong. This is a nation in which -- out of fairness -- we will bar the public from a pretrial court hearing in order to protect a single accused person from prejudicial disclosures. Yet early election predictions, and later projections based on partial results, discourage millions of potential voters from casting a vote for our most important office.

We have a situation which Senator Hubert Humphrey described as being just plain wrong when "people turn on television and have someone in New York tell them what is going to happen across the country... On election day people ought to be left alone to make up their own minds."

Since 1960, when television began reporting presidential election returns while the polls were still open in the West, we of the West have suffered a systematic devaluation of our vote. It happened in 1964, and in 1972, and again in 1980. That is why I am extremely gratified that my corrective legislation, HR 3595, is receiving support from Midwest and Eastern Members.

A vote is a precious thing to give, and to lose. In my section of the country, the will to vote is lost when people sit down to dinner just before going to vote, switch on the television, and hear that so and so has already been projected the winner. For them, voting is futile. They lose the fundamental right to vote independent of and unhampered by prior knowledge of the outcome. They are discouraged, apathetic, they are angry, and by the millions, they do not vote.

I am in no way disputing the inherent right of the people to know the facts, and the right of networks and stations to report the news when it happens, along with interpretations. The media has an absolutely right to conduct exit polls, and use the results as an analytic tool. I happen to think it is wrong for the media to make predictions based on exit polls, but to do so is protected by the First Amendment, which is vital to the democratic process. What we can do, without plunging into a constitutional confrontation, is diminish the credibility of predictions, and prevent predictions from becoming premature projections.

For nearly two decades, Congress has groped with this problem. During that time, we have been asked repeatedly by the major television networks to go slowly, to wait for proof before reaching judgement. We have repeatedly been told that the issue of early media calls is only one narrow aspect of the problem of voter turnout.

As an example, William J. Small, president of NBC News, wrote to me on April 1, 1981 and said he "would not assume that early election calls are necessarily discouraging West Coast voters from going to the polls... (The) voting pattern of registered voters does not indicate that television had any noticeable impact in 1980."

Ideally, in this situation, Congress should do nothing but let the networks, out of their own sense of responsibility to the nation, police themselves. It would be far better, Mr. Chairman, if the networks acknowledge what each of us viscerally knows to be true: early disclosures and television projections work as a deterrent to the free election process.

But that's not going to happen, and if you have any remaining doubts about the need for Congressional action, allow me to cite three very recent examples.

(1) Last spring, a coalition of 33 national organizations, including the League of Women Voters, the AFL-CIO, the National Council of Senior Citizens, and the National Women's Political Caucus, testified before this hearing that projections before the polls close serve "no useful societal purpose." They also wrote the network news organizations seeking a voluntary agreement to report only actual Presidential election results on future election nights until all polling places are closed.

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This request, based on the principle of fundamental fairness, was denied. The response of Bill Leonard, President of CBS News, on May 12, 1981, was typical, and illustrative: "Our position is clear and uncomplicated. Our job is to report as quickly and accurately as we can any information we have on any subject, including election results. To do as you request and "exercise voluntary restraint" and withholding voluntary information we know to be true would be a violation of our fundamental responsibilities. We are not therefore prepared to "refrain from projecting results of any given election."

(2) If actions speak louder than words, I urge you to review the performance of television news units in covering the election for Governor in New Jersey last November 3. Two hours before the closing of the polls, an ABC-TV affiliate declared a "trend" to Representative James Florio. As the polls closed, a CBS affiliate declared Representative Florio a winner, based on exit polls showing an 8 percent lead. More than three hours after the polls closed, an NBC affiliate declared Mr. Florio's opponent the winner, but retracted this declaration an hour later.

Why did this happen? Why, with highly sophisticated methods of predicting the outcome long before the polls close, did television's experts become so confused? The basic tenet of journalism is to establish the fact before you report it. In New Jersey, last month, that tenet was sacrificed to the intense competition between stations, to the importance of being first with the story in the instantaneous world of electronic journalism.

(3) Most significant of all is the publication of a new study by the University of Michigan's Center for Political Studies, which I have previously provided to the committee. This study provides, for the first time, substantial evidence that television coverage influences the outcome of elections. According to the study, millions of voters who planned to vote in the 1980 presidential election late in the day decided not to vote because they had heard network projections or President Carter's subsequent concession. The report said: "People's likelihood of voting is related to their perception of the value of their vote in determining the election's outcome. Events that alter that perception value alter turnout."

Mr. Chairman, it was just last July that the network news executives were here before you, discounting the need for corrective legislation. They couldn't seem to locate a real problem of any significance, and refused to acknowledge that projections also discourage voters from participating in state and local elections.

But listen to these executives carefully. Have the networks told us what societal purpose is served by making projections? They haven't, and they can't. For as Members of this committee have stated, a voter whose confidence in the electoral process has been eroded by the networks is unlikely to vote in future elections. I share with you a concern about the accumulating and permanent harm early projections will have on future voter turnout. There is no need for this to continue.

The point is very simple. There is not a State in the Union which allows the results of an election to be revealed until all the polls are closed. But we do not do that in a Presidential election.

As we all know, it is well within the state of the art for a network to base a projection solely on exit polling and precinct analyses. Advances in electronics and polling techniques will only shorten and intensify the election-night race at the networks. In 1972, two television networks projected Richard Nixon the winner by 6 p.m. Pacific Standard Time. In 1980, Ronald Reagan had been projected the winner shortly after 5 p.m. Pacific Standard Time. Unless we act, Americans who live in the West on Election Day, 1984, will probably learn even earlier in the afternoon who will be the President, regardless of how they intend to vote.

Twice since 1960, the Senate has passed legislation to solve this problem. In both instances, the Senate chose to control the release of Presidential results by election officials, once by mandating a uniformed closing of all polls, and once by simply withhold the results until a certain hour. The House has never passed corrective legislation.

The bill which I have introduced would assure Americans who live in the West that their votes in Presidential elections really count. H.R. 3595 is in line with, and I believe an improvement upon, the earlier, Senate-passed language.

The bill provides a pragmatic, practical and nonintrusive solution to the problem by withholding Presidential election results until 11 p.m. Eastern Standard Time. The bill mandates that all polls close by that time, leaving a decision as to when the polls open, and a possible closure prior to 11 p.m. EST, in the hands of the states. Alaska would be the only state required by this proposal to alter its voting hours (and then, only by two hours).

There is no provision in H.R. 3595 which poses a First Amendment confrontation, restricts the coverage of news, the news media's right to report, or the public's right to be informed. To the contrary, it would focus the attention of the media on a fast and accurate tally of actual votes immediately after the voting period had ended. This would eliminate confusion, and would do away with the influence of early projections.

I urge you to heed the testimony of the League of Women Voters: election projections when polls are still open anywhere serve no positive purpose in the election process. I urge you to adopt the judgment that nothing more is involved in the projection game than a race for a competitive edge that satisfies nothing other than the private interests of the broadcaster.

The media's responsibility is to broadcast elections results as soon as the results are made available. The question of when to make the results available is a determination of government. By postponing the release until all polls are closed, we can spare an entire region of the country a wrenching experience without damaging the unrivaled ability of radio and television to spread the word swiftly.

Under H.R. 3595, no rights are violated, and no one would be discomfited except the networks. Any additional cost caused by holding up release of the results for a few hours would be small price to pay for the assurance of greater fairness and greater participation in an election.

Mr. Chairman, the influence of television projections has been addressed in bills introduced in the 87th, 88th, 90th, 91st, 92nd, 93rd, 94th, 95th and 96th Congresses. None has been enacted. David Broder, the syndicated columnist of the Washington Post, recently wrote: "I think those western viewers and listeners deserve to be taken seriously when they say it suits their psyches not to be told how the election came out until they have a chance to vote." Now is the time for the House to act.