

REQUEST BY VOTERS:

To amend the bill formerly known as H.R. 550 (aka the “Holt bill”) with remedies and recommendations for removing obstacles to democratic elections

December 25, 2006

Dear Honorable Representative _____,

i. We are a coalition of national and local individuals and groups working on meaningful election reform. We understand that the bill formerly known as H.R. 550 and other proposed election reform legislation are targeted for passage in the upcoming congressional session starting on January 4, 2007. We believe there is a need to amend the bill formerly known as H.R. 550, of which you are a sponsor.

ii. Congressman Holt has indicated that he is amenable to changing the language of this bill. As of the date of this letter, those proposed changes have not been made public. Unless these proposed changes address our concerns, our recommendations regarding this or any other proposed legislation to address election problems remain as stated herein.

iii. **A recent Zogby poll shows that 92% of the American public wants the right to view vote counting and obtain information about it**, making a very strong case *for* transparency and *against* secret vote counting outside the observation of the public. We believe that fiscally responsible and secure solutions will ensure transparency and restore full validity to all future election results for millions of voters across America.

iv. **Whereas HAVA and many proposed legislative amendments are written to enable technology-based elections, our remedies are written to enable democratic elections. The question of if and how technology is integrated into elections must build off of this foundation, and not vice versa.**

v. We wish to acknowledge your and Congressman Holt’s support for election integrity that led to the development and co-sponsorship of H.R. 550 to amend HAVA in early 2004. However, in the years since H.R. 550’s first introduction, revelations about electronic voting and HAVA outcomes undermine the bill’s original purpose. We describe these in detail below.

vi. In light of our work in the area of election integrity, we ask you to consider the strategy as described below. We have submitted our remedies and recommendations to some of the most experienced election officials in the nation, and have received their support. Our proposal reflects years of work to restore the democratic processes required to support the American Republic as envisioned in the U.S. Constitution. Your leadership in enacting the remedies described below is an important first step towards this goal.

VII. REMEDIES

- 1) **PAPER BALLOTS** – Amend HAVA to require durable voter-marked, paper ballots, *which are defined as those ballots used in the first count*, as the legally defensible gold standard for determining voter intent. The voter-marked paper ballot is auditable, durable, observable, efficient, and reliable. Federal law (the Voting Rights Act) requires voting records be kept for 22 months following every federal election. The use of electronic voting machines severely hinders our ability to comply with this mandatory retention of voting records. States that choose, in the administration of their elections, to follow federal HAVA leadership, will then be able to quickly implement sane and sensible checks and balances into their voting systems.
 - a. This amendment should also encourage states, through appropriate incentives, to implement checks and balances appropriate to democratic elections such as parallel hand-count verifications on election night, and financially feasible and accessible recounts.
 - b. Additionally, paper ballots for all voting systems are required in order for states to comply with existing federal law regarding information technology (IT) disaster recovery plans. Pursuant to the E-Government Act of 2002, Pub. L. No. 107-347, 44 U.S.C. 3531 et seq., Title III, Federal Information Security Management Act (FISMA), all states must have viable disaster recovery plans for all IT-based systems. Paper ballots requirement shall include language to enforce this existing law.

- 2) **FREEDOM OF ACCESS TO ELECTIONS INFORMATION** – Amend HAVA to require elections-related information at the local, state and federal levels be made available to any person under the civil rights principles embodied in the Freedom of Information Act in a way that addresses the special circumstances in elections.
 - a. All information necessary to validate elections must be produced by the voting system and its accompanying elections procedures;
 - b. When information to validate the election is requested, it must be provided *before* recount and contest periods have expired;
 - c. The information must be provided in a usable and cost-effective manner;
 - d. There will be no restrictions imposed by proprietary claims, nor shall access to information be placed outside of governmental custody.

- 3) **RESTRUCTURE THE ELECTION ASSISTANCE COMMISSION (EAC)** – The EAC was established in the Help America Vote Act to help implement the Act through 2006. There is no longer any meaningful purpose in continuing to fund and maintain the EAC. Remove the Commissioners and the inherent political nature of the Agency. Turn the Agency over to the 50-state representational Standards Board, rename it the National Election Standards Board, hire a new administrative staff, and add a 50-state citizens’ representational body to jointly assume most of the functions currently filled by the EAC.¹

VIII. RECOMMENDATIONS

- 1) **ACCOUNTABILITY STUDY** – We recommend a comprehensive GAO report to assess HAVA, monies spent and disbursed, and subsequent end results. This report will provide an analysis of vote tabulation systems including both hand-counted paper ballot and electronic systems (such as DRE touch screen and optical scan). This report will also include a study of the applicability of e-voting products for the nation’s election systems, and the efficacy of the Election Assistance Commission (EAC) Certification program.

- 2) **CONGRESSIONAL COMMITTEE** – We recommend a congressional committee to study the election crisis and hold public hearings. This special committee would work closely with a 50-state representational task force including state and/or local election officials, and an equal number of individuals and representatives from interested citizen groups. This committee would issue a report recommending state-based electoral reforms.

IX. *New information available since the original introduction of H.R. 550 includes the following:*

- **Discoveries by computer security experts that the nation’s e-voting systems are vulnerable to unacceptably high rates of failure as well as unacceptable exposure to the insertion of malicious programming.**²

- **Evidence that software can be configured to create an electronic recording of a result that is different from that shown on the “paper trail” generated from a printer attached to a DRE.**

- The Election Science Institute (ESI) study of Cuyahoga County, Ohio’s primary election showed 1.4% of Voter Verified Paper Audit Trail (VVPAT) cartridges exhibited missing ballots; 16.9% of VVPAT tapes showed a discrepancy of one to five votes between the tally of ballots and the electronically recorded results; and 2.1% showed a discrepancy of over 25 votes.³
- In the same ESI study, team members discovered that of 40 VVPAT tapes, 9.6% were either destroyed, blank, illegible, missing, taped together or otherwise compromised.
- In Denver County, Colorado VVPATs contained gibberish instead of legitimate voter choices, and that printer jams rendered VVPAT unsuitable for use in recounts or audits.⁴
- Doug Jones, Associate Professor of Computer Science, University of Iowa, testified that paper trails are sufficiently unreadable that only a small fraction of voters can actually view them.⁵
- Additionally, the use of DREs routinely disenfranchises voters, through DRE failure, or just because the limited availability of DREs per jurisdiction is a cause of long voter lines and limited access to voting.⁶

- **Evidence that the e-voting solutions implemented to address voter disabilities do not do so.** Providing an accessible voting system for persons with disabilities was a major rationale for HAVA. Noel Runyan, an accessibility engineer, testified in the Colorado lawsuit⁷ that *none of the major voting system vendors’ VVPAT systems met federal disability requirements, particularly for voters with visual disabilities.*

- **Preliminary recommendations by the National Institute of Standards and Technology (NIST) to universally decertify paperless and DRE paper trail technologies in the federal 2007 voting system guidelines, citing the non-auditability and high risk factors for DRE touch screens.** Legislation supporting investment in a voting technology that is soon to be obsolete, and is proven insecure, is fiscally irresponsible.

- **Statistical evidence that audits of only 2% of all precincts, as recommended in HR 550, even if properly executed, fail to catch misdeeds or mistabulations by voting machines.**⁸ The H.R. 550 audit language further fails to address even the most fundamental procedural issues. Election night parallel hand-count verifications offer a better solution than relying exclusively on

post-election audits. Accessible and financially feasible recounts provide security and integrity for a given voting system.

- **Questions concerning the composition and authority of the EAC.** The EAC consists of Presidential appointees and is vulnerable to partisan appointments made by the Executive Branch. Legislation authorizing the EAC to delegate core governmental electoral functions to private vendors eliminates the critical decentralized checks and balances necessary for U.S. democracy.
- **The failure to address the public's right to know.** The current status quo within the e-voting industry, supported by EAC Certification procedures, violates fundamental civil rights as defined in the Freedom of Information Act (FOIA) by allowing industry stances of proprietary solutions and the use of nondisclosure agreements, and fails to recognize the right of the citizenry to access information to validate their own elections.
- **The EAC Certification Program has created a system in which every jurisdiction, beginning in 2007, must replace or use uncertified voting equipment.** In 2007 jurisdictions adhering to federal guidelines must comply with the EAC's 2005 Voting System Guidelines, rendering all current and existing voting equipment uncertifiable. The EAC Certification Program has three fundamentally fatal flaws, which expose our elections to unacceptable risk and present two unacceptable choices: 1) replace computer-based election equipment every two years while implementing repeated testing for same at exorbitant financial expense, or 2) use un-certifiable computer-based equipment. The three flaws are as follows:
 - **The EAC Certification Program creates a situation wherein elections are run using substandard and highly vulnerable equipment.** The EAC approves certification guidelines at least two years before products meeting the guidelines are released to market. As a result, election officials end up using sub-standard equipment. As well, the published certification guidelines, detailing all of the existing vulnerabilities to be addressed by future products, provide a virtual blueprint for tampering with election equipment in current use.
 - **The business model on which the EAC Certification Program is based is unrealistic.** Software and hardware development requires significant upfront financial investment. Once the product is delivered to market, preliminary testing on a broad scale is needed to identify and fix bugs. However, the election market environment makes this technological testing impossible. The public market can neither afford to subsidize computer-based product development, nor – because there are fixed timeline requirements for elections – provide the necessary testing. The unacceptable result is that costs continue to rise as our national elections are effectively used to test the product.
 - **The Certification Program creates a situation wherein it is virtually impossible, without considerable expense, for election officials to use certified equipment.** The 2005 EAC Voluntary Voting System Guidelines (2005 VVSG) require election software to be registered in the National Software Reference Library (NSRL) with any ensuing modifications to the registered software to be re-tested and re-certified. *The typical scenario for elections more often than not will call for modifications to the certified software because of ballot design requirements and "patches" for fixing bugs in the software.* When these inevitable changes occur, states have three choices: 1) run uncertified software that has not undergone the required post-modification testing, or 2) incur unacceptable financial expense for repeated testing, which itself may or may not even be

feasible depending on the nature and timing of the modifications, or 3) request a “grandfather” waiver from the EAC Certification Program, which, if granted, renders the entire certification process moot since such a practice leads to the de facto nullification of the NSRL requirement.

x. Included with our letter to you is a copy of the recently published book *Hacked! High Tech Election Theft in America ~ 11 Experts Expose the Truth*. Each chapter in this book portrays the raw truth about our dangerously diminished right to vote and have it correctly counted in the age of electronic voting. **On pages 189 - 193, you will find our specific concerns regarding the February 2005 version of H.R. 550 presented in detail.**

xi. Given the new information we are presenting to you, we ask that you join us in exploring real solutions for restoring integrity to our election process. We have supplied you with evidence indicating that adding a "paper trail", audits and an empowered EAC to an insecure, non-transparent voting system does not offer the necessary meaningful reform necessary to repair our broken election systems. We are hopeful that you will engage in healthy debate and provide the leadership to legislate changes to truly rebuild a democratic election system. We wish to thank you for your help and support with this most serious matter.

Sincerely,

ENDNOTES

¹ The EAC’s functions, as described on its website, are listed here in bulleted format, with suggested handover to other entities in ALL CAPS:

- Generate technical guidance on the administration of federal elections. – HAND OVER TO NIST & STANDARDS BOARD
- Produce voluntary voting systems guidelines. – HAND OVER TO NIST & STANDARDS BOARD
- Research and report on matters that affect the administration of federal elections. – HAND OVER TO STANDARDS BOARD & CITIZENS GROUP
- Otherwise provide information and guidance with respect to laws, procedures, and technologies affecting the administration of Federal elections. – HAND OVER TO STANDARDS BOARD & CITIZENS GROUP
- Administer payments to States to meet HAVA requirements. – HAND OVER TO GENERAL SERVICES ADMINISTRATION
- Provide grants for election technology development and for pilot programs to test election technology. – ELIMINATE THIS FUNCTION.
- Manage funds targeted to certain programs designed to encourage youth participation in elections. – HAND OVER TO FEC
- Develop a national program for the testing, certification, and decertification of voting systems. – HAND OVER TO NIST & STANDARDS BOARD
- Maintain the national mail voter registration form that was developed in accordance with the National Voter Registration Act of 1993 (NVRA), report to Congress every two years on the impact of the NVRA on the administration of federal elections, and provide information to States on their responsibilities under that law. – HAND OVER TO FEC
- Audit persons who received federal funds authorized by HAVA from the General Services Administration or the Election Assistance Commission. – HAND OVER TO GAO
- Submit an annual report to Congress describing EAC activities for the previous fiscal year. – HAND OVER AS APPROPRIATE TO ENTITIES PICKING UP FUNCTIONS AS DESCRIBED ABOVE

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- ² GAO Report on Election Equipment (September 2005)
<http://www.gao.gov/new.items/d05956.pdf>
Black Box Report: Security Alert (July 2005)
<http://www.blackboxvoting.org/BBVreport.pdf>
Security Analysis of the Diebold AccuBasic Interpreter (February 2006)
www.ss.ca.gov/elections/voting_systems/security_analysis_of_the_diebold_accubasic_interpreter.pdf
Security Assessment of the Diebold Optical Scan Voting Terminal (2006)
<http://voter.engr.uconn.edu/voter/Reports.html>
- ³ http://bocc.cuyahogacounty.us/GSC/pdf/esi_cuyahoga_final.pdf
- ⁴ Conroy v. Dennis, Case No.: 06 CV 6072 filed in Colorado District Court
- ⁵ <http://vote.nist.gov/threatworksummary.pdf>
- ⁶ http://www.pfaw.org/pfaw/dfiles/file_477.pdf,
http://www.votingintegrity.org/Testimony/EAC_Hearing5_5_04.html, <http://www.nyvv.org/voterlines.shtml>
- ⁷ Conroy v. Dennis, Case No.: 06 CV 6072 filed in Colorado District Court
- ⁸ An End To “Faith-Based” Voting: Universal Precinct-based Handcount Sampling To Check Computerized Vote Counts In Federal and Statewide Elections
<http://electiondefensealliance.org/files/UPSEndFaithBasedVoting.pdf>