

VOTER CONFIDENCE AND INCREASED ACCESSIBILITY  
ACT OF 2007

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MAY 16, 2007.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. BRADY of Pennsylvania, from the Committee on House  
Administration,

submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 811]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 811) to amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot under title III of such Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Voter Confidence and Increased Accessibility Act of 2007”.

**SEC. 2. PROMOTING ACCURACY, INTEGRITY, AND SECURITY THROUGH VOTER-VERIFIED PERMANENT PAPER BALLOT.**

(a) **BALLOT VERIFICATION AND AUDIT CAPACITY.**—

(1) **IN GENERAL.**—Section 301(a)(2) of the Help America Vote Act of 2002 (42 U.S.C. 15481(a)(2)) is amended to read as follows:

“(2) **BALLOT VERIFICATION AND AUDIT CAPACITY.**—

“(A) **VOTER-VERIFIED PAPER BALLOTS.**—

“(i) VERIFICATION.—(I) The voting system shall require the use of or produce an individual, durable, voter-verified paper ballot of the voter’s vote that shall be created by or made available for inspection and verification by the voter before the voter’s vote is cast and counted. For purposes of this subclause, examples of such a ballot include a paper ballot marked by the voter for the purpose of being counted by hand or read by an optical scanner or other similar device, a paper ballot prepared by the voter to be mailed to an election official (whether from a domestic or overseas location), a paper ballot created through the use of a ballot marking device or system, or a paper ballot produced by a touch screen or other electronic voting machine, so long as in each case the voter is permitted to verify the ballot in a paper form in accordance with this subparagraph.

“(II) The voting system shall provide the voter with an opportunity to correct any error made by the system in the voter-verified paper ballot before the permanent voter-verified paper ballot is preserved in accordance with clause (ii).

“(III) The voting system shall not preserve the voter-verified paper ballots in any manner that makes it possible, at any time after the ballot has been cast, to associate a voter with the record of the voter’s vote.

“(ii) PRESERVATION.—The individual, durable voter-verified paper ballot produced in accordance with clause (i) shall be used as the official ballot for purposes of any recount or audit conducted with respect to any election for Federal office in which the voting system is used, and shall be preserved—

“(I) in the case of votes cast at the polling place on the date of the election, within the polling place in the manner or method in which all other paper ballots are preserved within such polling place on such date; or

“(II) in any other case, in a manner which is consistent with the manner employed by the jurisdiction for preserving such ballots in general.

“(iii) MANUAL AUDIT CAPACITY.—(I) Each paper ballot produced pursuant to clause (i) shall be suitable for a manual audit equivalent to that of a paper ballot voting system, and shall be counted by hand in any recount or audit conducted with respect to any election for Federal office.

“(II) In the event of any inconsistencies or irregularities between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable voter-verified paper ballots produced pursuant to clause (i), and subject to subparagraph (B), the individual, durable voter-verified paper ballots shall be the true and correct record of the votes cast.

“(B) SPECIAL RULE FOR TREATMENT OF DISPUTES WHEN PAPER BALLOTS HAVE BEEN SHOWN TO BE COMPROMISED.—

“(i) IN GENERAL.—In the event that—

“(I) there is any inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable voter-verified paper ballots produced pursuant to subparagraph (A)(i) with respect to any election for Federal office; and

“(II) it is demonstrated by clear and convincing evidence (as determined in accordance with the applicable standards in the jurisdiction involved) in any recount, audit, or contest of the result of the election that the paper ballots have been compromised (by damage or mischief or otherwise) and that a sufficient number of the ballots have been so compromised that the result of the election could be changed,

the determination of the appropriate remedy with respect to the election shall be made in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified vote tally.

“(ii) RULE FOR CONSIDERATION OF BALLOTS ASSOCIATED WITH EACH VOTING MACHINE.—For purposes of clause (i), the paper ballots associated with each voting system shall be considered on a voting-machine-by-voting-machine basis, and only the paper ballots deemed compromised, if any, shall be considered in the calculation of whether or not the result of the election could be changed due to the compromised paper ballots.”

(2) CONFORMING AMENDMENT CLARIFYING APPLICABILITY OF ALTERNATIVE LANGUAGE ACCESSIBILITY.—Section 301(a)(4) of such Act (42 U.S.C. 15481(a)(4)) is amended by inserting “(including the paper ballots required to be produced under paragraph (2) and the notices required under paragraphs (7) and (13)(C))” after “voting system”.

(3) OTHER CONFORMING AMENDMENTS.—Section 301(a)(1) of such Act (42 U.S.C. 15481(a)(1)) is amended—

(A) in subparagraph (A)(i), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”;

(B) in subparagraph (A)(ii), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”;

(C) in subparagraph (A)(iii), by striking “counted” each place it appears and inserting “counted, in accordance with paragraphs (2) and (3)”;

(D) in subparagraph (B)(ii), by striking “counted” and inserting “counted, in accordance with paragraphs (2) and (3)”.

(b) ACCESSIBILITY AND BALLOT VERIFICATION FOR INDIVIDUALS WITH DISABILITIES.—

(1) IN GENERAL.—Section 301(a)(3)(B) of such Act (42 U.S.C. 15481(a)(3)(B)) is amended to read as follows:

“(B)(i) satisfy the requirement of subparagraph (A) through the use of at least one voting system equipped for individuals with disabilities at each polling place; and

“(ii) meet the requirements of subparagraph (A) and paragraph (2)(A) by using a system that—

“(I) allows the voter to privately and independently verify the individual, durable paper ballot through the conversion of the human-readable printed or marked vote selections into accessible form,

“(II) ensures that the entire process of ballot verification and vote casting is equipped for individuals with disabilities, and

“(III) does not preclude the supplementary use of Braille or tactile ballots; and”.

(2) SPECIFIC REQUIREMENT OF STUDY, TESTING, AND DEVELOPMENT OF ACCESSIBLE BALLOT VERIFICATION MECHANISMS.—

(A) STUDY AND REPORTING.—Subtitle C of title II of such Act (42 U.S.C. 15381 et seq.) is amended—

(i) by redesignating section 247 as section 248; and

(ii) by inserting after section 246 the following new section:

“SEC. 247. STUDY AND REPORT ON ACCESSIBLE BALLOT VERIFICATION MECHANISMS.

“(a) STUDY AND REPORT.—The Director of the National Institute of Standards and Technology shall study, test, and develop best practices to enhance the accessibility of ballot verification mechanisms for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including best practices for the mechanisms themselves and the processes through which the mechanisms are used. In carrying out this section, the Director shall specifically investigate existing and potential methods or devices, including non-electronic devices, that will assist such individuals and voters in creating voter-verified paper ballots and presenting or transmitting the information printed or marked on such ballots back to such individuals and voters.

“(b) COORDINATION WITH GRANTS FOR TECHNOLOGY IMPROVEMENTS.—The Director shall coordinate the activities carried out under subsection (a) with the research conducted under the grant program carried out by the Commission under section 271, to the extent that the Director and Commission determine necessary to provide for the advancement of accessible voting technology.

“(c) DEADLINE.—The Director shall complete the requirements of subsection (a) not later than December 31, 2008.

“(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out subsection (a) \$3,000,000, to remain available until expended.”.

(B) CLERICAL AMENDMENT.—The table of contents of such Act is amended—

(i) by redesignating the item relating to section 247 as relating to section 248; and

(ii) by inserting after the item relating to section 246 the following new item:

“Sec. 247. Study and report on accessible ballot verification mechanisms.”.

(3) CLARIFICATION OF ACCESSIBILITY STANDARDS UNDER VOLUNTARY VOTING SYSTEM GUIDANCE.—In adopting any voluntary guidance under subtitle B of title III of the Help America Vote Act with respect to the accessibility of the paper ballot verification requirements for individuals with disabilities, the Elec-

tion Assistance Commission shall include and apply the same accessibility standards applicable under the voluntary guidance adopted for accessible voting systems under such subtitle.

(c) ADDITIONAL VOTING SYSTEM REQUIREMENTS.—

(1) REQUIREMENTS DESCRIBED.—Section 301(a) of such Act (42 U.S.C. 15481(a)) is amended by adding at the end the following new paragraphs:

“(7) INSTRUCTION REMINDING VOTERS OF IMPORTANCE OF VERIFYING PAPER BALLOT.—

“(A) IN GENERAL.—The appropriate election official at each polling place shall cause to be placed in a prominent location in the polling place which is clearly visible from the voting booths a notice, in large font print accessible to the visually impaired, advising voters that the paper ballots representing their votes shall serve as the vote of record in all audits and recounts in elections for Federal office, and that they should not leave the voting booth until confirming that such paper ballots accurately record their vote.

“(B) SYSTEMS FOR INDIVIDUALS WITH DISABILITIES.—All voting systems equipped for individuals with disabilities shall present or transmit in accessible form the statement referred to in subparagraph (A), as well as an explanation of the verification process described in paragraph (3)(B)(ii).

“(8) PROHIBITING USE OF UNCERTIFIED ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGIES; DISCLOSURE REQUIREMENTS.—

“(A) IN GENERAL.—A voting system used in an election for Federal office in a State may not at any time during the election contain or use any election-dedicated voting system technology which has not been certified by the State for use in the election and which has not been deposited with an accredited laboratory described in section 231 to be held in escrow and disclosed in accordance with this section.

“(B) REQUIREMENT FOR AND RESTRICTIONS ON DISCLOSURE.—An accredited laboratory under section 231 with whom an election-dedicated voting system technology has been deposited shall—

“(i) hold the technology in escrow; and

“(ii) disclose technology and information regarding the technology to another person if—

“(I) the person is a qualified person described in subparagraph (C) who has entered into a nondisclosure agreement with respect to the technology which meets the requirements of subparagraph (D); or

“(II) the laboratory is required to disclose the technology to the person under State law, in accordance with the terms and conditions applicable under such law.

“(C) QUALIFIED PERSONS DESCRIBED.—With respect to the disclosure of election-dedicated voting system technology by a laboratory under subparagraph (B)(ii)(I), a ‘qualified person’ is any of the following:

“(i) A governmental entity with responsibility for the administration of voting and election-related matters for purposes of reviewing, analyzing, or reporting on the technology.

“(ii) A party to pre- or post-election litigation challenging the result of an election or the administration or use of the technology used in an election, including but not limited to election contests or challenges to the certification of the technology, or an expert for a party to such litigation, for purposes of reviewing or analyzing the technology to support or oppose the litigation, and all parties to the litigation shall have access to the technology for such purposes.

“(iii) A person not described in clause (i) or (ii) who reviews, analyzes, or reports on the technology solely for an academic, scientific, technological, or other investigation or inquiry concerning the accuracy or integrity of the technology.

“(D) REQUIREMENTS FOR NONDISCLOSURE AGREEMENTS.—A nondisclosure agreement entered into with respect to an election-dedicated voting system technology meets the requirements of this subparagraph if the agreement—

“(i) is limited in scope to coverage of the technology disclosed under subparagraph (B) and any trade secrets and intellectual property rights related thereto;

“(ii) does not prohibit a signatory from entering into other nondisclosure agreements to review other technologies under this paragraph;

“(iii) exempts from coverage any information the signatory lawfully obtained from another source or any information in the public domain;

“(iv) remains in effect for not longer than the life of any trade secret or other intellectual property right related thereto;

“(v) prohibits the use of injunctions barring a signatory from carrying out any activity authorized under subparagraph (C), including injunctions limited to the period prior to a trial involving the technology;

“(vi) is silent as to damages awarded for breach of the agreement, other than a reference to damages available under applicable law;

“(vii) allows disclosure of evidence of crime, including in response to a subpoena or warrant;

“(viii) allows the signatory to perform analyses on the technology (including by executing the technology), disclose reports and analyses that describe operational issues pertaining to the technology (including vulnerabilities to tampering, errors, risks associated with use, failures as a result of use, and other problems), and describe or explain why or how a voting system failed or otherwise did not perform as intended; and

“(ix) provides that the agreement shall be governed by the trade secret laws of the applicable State.

“(E) ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGY DEFINED.—For purposes of this paragraph, ‘election-dedicated voting system technology’ means ‘voting system software’ as defined under the 2005 voluntary voting system guidelines adopted by the Commission under section 222, but excludes ‘commercial-off-the-shelf’ software and hardware defined under those guidelines.

“(9) PROHIBITION OF USE OF WIRELESS COMMUNICATIONS DEVICES IN VOTING SYSTEMS.—No voting system shall contain, use, or be accessible by any wireless, power-line, or concealed communication device, except that enclosed infrared communications devices which are certified for use in the voting system by the State and which cannot be used for any remote or wide area communications or used without the knowledge of poll workers shall be permitted.

“(10) PROHIBITING CONNECTION OF SYSTEM OR TRANSMISSION OF SYSTEM INFORMATION OVER THE INTERNET.—No component of any voting device upon which ballots are programmed or votes are cast or tabulated shall be connected to the Internet at any time.

“(11) SECURITY STANDARDS FOR VOTING SYSTEMS USED IN FEDERAL ELECTIONS.—

“(A) IN GENERAL.—No voting system may be used in an election for Federal office unless the manufacturer of such system and the election officials using such system meet the applicable requirements described in subparagraph (B).

“(B) REQUIREMENTS DESCRIBED.—The requirements described in this subparagraph are as follows:

“(i) The manufacturer and the election officials shall document the secure chain of custody for the handling of all software, hardware, vote storage media, ballots, and voter-verified ballots used in connection with voting systems, and shall make the information available upon request to the Commission.

“(ii) The manufacturer shall disclose to an accredited laboratory under section 231 and to the appropriate election official any information required to be disclosed under paragraph (8).

“(iii) After the appropriate election official has certified the election-dedicated and other voting system software for use in an election, the manufacturer may not—

“(I) alter such software; or

“(II) insert or use in the voting system any software not certified by the State for use in the election.

“(iv) At the request of the Commission—

“(I) the appropriate election official shall submit information to the Commission regarding the State’s compliance with this subparagraph; and

“(II) the manufacturer shall submit information to the Commission regarding the manufacturer’s compliance with this subparagraph.

“(C) DEVELOPMENT AND PUBLICATION OF BEST PRACTICES ON DOCUMENTATION OF SECURE CHAIN OF CUSTODY.—Not later than August 1, 2008, the Commission shall develop and make publicly available best practices regarding the requirement of subparagraph (B)(i).

“(D) DISCLOSURE OF SECURE CHAIN OF CUSTODY.—The Commission shall make information provided to the Commission under subparagraph (B)(i) available to any person upon request.

“(12) DURABILITY AND READABILITY REQUIREMENTS FOR BALLOTS.—

“(A) DURABILITY REQUIREMENTS FOR PAPER BALLOTS.—

“(i) IN GENERAL.—All voter-verified paper ballots required to be used under this Act (including the paper ballots provided to voters under paragraph (13)) shall be marked, printed, or recorded on durable paper.

“(ii) DEFINITION.— For purposes of this Act, paper is ‘durable’ if it is capable of withstanding multiple counts and recounts by hand without compromising the fundamental integrity of the ballots, and capable of retaining the information marked, printed, or recorded on them for the full duration of a retention and preservation period of 22 months.

“(B) READABILITY REQUIREMENTS FOR MACHINE-MARKED OR PRINTED PAPER BALLOTS.—All voter-verified paper ballots completed by the voter through the use of a marking or printing device shall be clearly readable by the voter without assistance (other than eyeglasses or other personal vision enhancing devices) and by a scanner or other device equipped for individuals with disabilities.

“(13) MANDATORY AVAILABILITY OF PAPER BALLOTS AT POLLING PLACE.—

“(A) REQUIRING BALLOTS TO BE OFFERED AND PROVIDED.—The appropriate election official at each polling place in an election for Federal office shall offer each individual who is eligible to cast a vote in the election at the polling place the opportunity to cast the vote using a pre-printed paper ballot which the individual may mark by hand and which is not produced by a direct recording electronic voting machine. If the individual accepts the offer to cast the vote using such a ballot, the official shall provide the individual with the ballot and the supplies necessary to mark the ballot, and shall ensure (to the greatest extent practicable) that the waiting period for the individual to cast a vote is not greater than the waiting period for an individual who does not agree to cast the vote using such a paper ballot under this paragraph.

“(B) TREATMENT OF BALLOT.—Any paper ballot which is cast by an individual under this paragraph shall be counted and otherwise treated as a regular ballot for all purposes (including, to the greatest extent practicable, the deadline for counting the ballot) and not as a provisional ballot, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot if the individual had not accepted the offer to cast the vote using a paper ballot under this paragraph.

“(C) POSTING OF NOTICE.—The appropriate election official shall ensure that at each polling place a notice is displayed prominently which describes the obligation of the official to offer individuals the opportunity to cast votes using a pre-printed paper ballot under this paragraph.

“(D) TRAINING OF ELECTION OFFICIALS.—The chief State election official shall ensure that election officials at polling places in the State are aware of the requirements of this paragraph, including the requirement to display a notice under subparagraph (C), and are aware that it is a violation of the requirements of this title for an election official to fail to offer an individual the opportunity to cast a vote using a pre-printed paper ballot under this paragraph.

“(E) EXCEPTIONS.—This paragraph does not apply with respect to—

“(i) a polling place at which each voting system used in the administration of an election for Federal office uses only pre-printed paper ballots which are marked by hand and which are not produced by a direct recording electronic voting machine (other than a system used to meet the disability access requirements of paragraph (3)); or

“(ii) a polling place in operation prior to the date of the election, but only with respect to days prior to the date of the election.

“(F) EFFECTIVE DATE.—This paragraph shall apply with respect to the regularly scheduled general election for Federal office in November 2010 and each succeeding election for Federal office.”

(2) REQUIRING LABORATORIES TO MEET STANDARDS PROHIBITING CONFLICTS OF INTEREST AS CONDITION OF ACCREDITATION FOR TESTING OF VOTING SYSTEM HARDWARE AND SOFTWARE.—

(A) IN GENERAL.—Section 231(b) of such Act (42 U.S.C. 15371(b)) is amended by adding at the end the following new paragraphs:

“(3) PROHIBITING CONFLICTS OF INTEREST; ENSURING AVAILABILITY OF RESULTS.—

“(A) IN GENERAL.—A laboratory may not be accredited by the Commission for purposes of this section unless—

“(i) the laboratory certifies that the only compensation it receives for the testing carried out in connection with the certification, decertification, and recertification of the manufacturer’s voting system hardware and software is the payment made from the Testing Escrow Account under paragraph (4);

“(ii) the laboratory meets such standards as the Commission shall establish (after notice and opportunity for public comment) to prevent the existence or appearance of any conflict of interest in the testing carried out by the laboratory under this section, including standards to ensure that the laboratory does not have a financial interest in the manufacture, sale, and distribution of voting system hardware and software, and is sufficiently independent from other persons with such an interest;

“(iii) the laboratory certifies that it will permit an expert designated by the Commission to observe any testing the laboratory carries out under this section; and

“(iv) the laboratory, upon completion of any testing carried out under this section, discloses the test protocols, results, and all communication between the laboratory and the manufacturer to the Commission.

“(B) AVAILABILITY OF RESULTS.—Upon receipt of information under subparagraph (A), the Commission shall make the information available promptly to election officials and the public.

“(4) PROCEDURES FOR CONDUCTING TESTING; PAYMENT OF USER FEES FOR COMPENSATION OF ACCREDITED LABORATORIES.—

“(A) ESTABLISHMENT OF ESCROW ACCOUNT.—The Commission shall establish an escrow account (to be known as the ‘Testing Escrow Account’) for making payments to accredited laboratories for the costs of the testing carried out in connection with the certification, decertification, and recertification of voting system hardware and software.

“(B) SCHEDULE OF FEES.—In consultation with the accredited laboratories, the Commission shall establish and regularly update a schedule of fees for the testing carried out in connection with the certification, decertification, and recertification of voting system hardware and software, based on the reasonable costs expected to be incurred by the accredited laboratories in carrying out the testing for various types of hardware and software.

“(C) REQUESTS AND PAYMENTS BY MANUFACTURERS.—A manufacturer of voting system hardware and software may not have the hardware or software tested by an accredited laboratory under this section unless—

“(i) the manufacturer submits a detailed request for the testing to the Commission; and

“(ii) the manufacturer pays to the Commission, for deposit into the Testing Escrow Account established under subparagraph (A), the applicable fee under the schedule established and in effect under subparagraph (B).

“(D) SELECTION OF LABORATORY.—Upon receiving a request for testing and the payment from a manufacturer required under subparagraph (C), the Commission shall select at random (to the greatest extent practicable), from all laboratories which are accredited under this section to carry out the specific testing requested by the manufacturer, an accredited laboratory to carry out the testing.

“(E) PAYMENTS TO LABORATORIES.—Upon receiving a certification from a laboratory selected to carry out testing pursuant to subparagraph (D) that the testing is completed, along with a copy of the results of the test as required under paragraph (3)(A)(iv), the Commission shall make a payment to the laboratory from the Testing Escrow Account established under subparagraph (A) in an amount equal to the applicable fee paid by the manufacturer under subparagraph (C)(ii).

“(5) DISSEMINATION OF ADDITIONAL INFORMATION ON ACCREDITED LABORATORIES.—

“(A) INFORMATION ON TESTING.—Upon completion of the testing of a voting system under this section, the Commission shall promptly disseminate to the public the identification of the laboratory which carried out the testing.

“(B) INFORMATION ON STATUS OF LABORATORIES.—The Commission shall promptly notify Congress, the chief State election official of each State, and the public whenever—

“(i) the Commission revokes, terminates, or suspends the accreditation of a laboratory under this section;

“(ii) the Commission restores the accreditation of a laboratory under this section which has been revoked, terminated, or suspended; or

“(iii) the Commission has credible evidence of significant security failure at an accredited laboratory.”.

(B) CONFORMING AMENDMENTS.—Section 231 of such Act (42 U.S.C. 15371) is further amended—

(i) in subsection (a)(1), by striking “testing, certification,” and all that follows and inserting the following: “testing of voting system hardware and software by accredited laboratories in connection with the certification, decertification, and recertification of the hardware and software for purposes of this Act.”;

(ii) in subsection (a)(2), by striking “testing, certification,” and all that follows and inserting the following: “testing of its voting system hardware and software by the laboratories accredited by the Commission under this section in connection with certifying, decertifying, and recertifying the hardware and software.”;

(iii) in subsection (b)(1), by striking “testing, certification, decertification, and recertification” and inserting “testing”; and

(iv) in subsection (d), by striking “testing, certification, decertification, and recertification” each place it appears and inserting “testing”.

(C) DEADLINE FOR ESTABLISHMENT OF STANDARDS, ESCROW ACCOUNT, AND SCHEDULE OF FEES.—The Election Assistance Commission shall establish the standards described in section 231(b)(3) of the Help America Vote Act of 2002 and the Testing Escrow Account and schedule of fees described in section 231(b)(4) of such Act (as added by subparagraph (A)) not later than January 1, 2008.

(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Election Assistance Commission such sums as may be necessary to carry out the Commission’s duties under paragraphs (3) and (4) of section 231 of the Help America Vote Act of 2002 (as added by subparagraph (A)).

(3) SPECIAL CERTIFICATION OF BALLOT DURABILITY AND READABILITY REQUIREMENTS FOR STATES NOT CURRENTLY USING DURABLE PAPER BALLOTS.—

(A) IN GENERAL.—If any of the voting systems used in a State for the regularly scheduled 2006 general elections for Federal office did not require the use of or produce durable paper ballots, the State shall certify to the Election Assistance Commission not later than 90 days after the date of the enactment of this Act that the State will be in compliance with the requirements of sections 301(a)(2), 301(a)(12), and 301(b) of the Help America Vote Act of 2002, as added or amended by this subsection, in accordance with the deadline established under this Act, and shall include in the certification the methods by which the State will meet the requirements.

(B) CERTIFICATIONS BY STATES THAT REQUIRE CHANGES TO STATE LAW.—In the case of a State that requires State legislation to carry out an activity covered by any certification submitted under this paragraph, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.

(4) GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE.—

(A) IN GENERAL.—Subtitle D of title II of the Help America Vote Act of 2002 (42 U.S.C. 15401 et seq.) is amended by adding at the end the following new part:

**“PART 7—GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE**

**“SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE.**

“(a) IN GENERAL.—The Director of the National Science Foundation (hereafter in this part referred to as the ‘Director’) shall make grants to not fewer than 3 eligible entities to conduct research on the development of election-dedicated voting system software.



“(b) ELIGIBILITY.—An entity is eligible to receive a grant under this part if it submits to the Director (at such time and in such form as the Director may require) an application containing—

“(1) certifications regarding the benefits of operating voting systems on election-dedicated software which is easily understandable and which is written exclusively for the purpose of conducting elections;

“(2) certifications that the entity will use the funds provided under the grant to carry out research on how to develop voting systems that run on election-dedicated software and that will meet the applicable requirements for voting systems under title III; and

“(3) such other information and certifications as the Director may require.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under this part \$1,500,000 for each of fiscal years 2007 and 2008, to remain available until expended.”

(B) CLERICAL AMENDMENT.—The table of contents of such Act is amended by adding at the end of the items relating to subtitle D of title II the following:

“PART 7—GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE

“Sec. 297. Grants for research on development of election-dedicated voting system software.”

(d) AVAILABILITY OF ADDITIONAL FUNDING TO ENABLE STATES TO MEET COSTS OF REVISED REQUIREMENTS.—

(1) EXTENSION OF REQUIREMENTS PAYMENTS FOR MEETING REVISED REQUIREMENTS.—Section 257(a) of the Help America Vote Act of 2002 (42 U.S.C. 15407(a)) is amended by adding at the end the following new paragraph:

“(4) For fiscal year 2007, \$1,000,000,000, except that any funds provided under the authorization made by this paragraph shall be used by a State only to meet the requirements of title III which are first imposed on the State pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007, or to otherwise modify or replace its voting systems in response to such amendments.”

(2) USE OF REVISED FORMULA FOR ALLOCATION OF FUNDS.—Section 252(b) of such Act (42 U.S.C. 15402(b)) is amended to read as follows:

“(b) STATE ALLOCATION PERCENTAGE DEFINED.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the ‘State allocation percentage’ for a State is the amount (expressed as a percentage) equal to the quotient of—

“(A) the voting age population of the State (as reported in the most recent decennial census); and

“(B) the total voting age population of all States (as reported in the most recent decennial census).

“(2) SPECIAL RULE FOR PAYMENTS FOR FISCAL YEAR 2007.—

“(A) IN GENERAL.—In the case of the requirements payment made to a State for fiscal year 2007, the ‘State allocation percentage’ for a State is the amount (expressed as a percentage) equal to the quotient of—

“(i) the sum of the number of noncompliant precincts in the State and 50% of the number of partially noncompliant precincts in the State; and

“(ii) the sum of the number of noncompliant precincts in all States and 50% of the number of partially noncompliant precincts in all States.

“(B) NONCOMPLIANT PRECINCT DEFINED.—In this paragraph, a ‘noncompliant precinct’ means any precinct (or equivalent location) within a State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2006 did not meet either of the requirements described in subparagraph (D).

“(C) PARTIALLY NONCOMPLIANT PRECINCT DEFINED.—In this paragraph, a ‘partially noncompliant precinct’ means any precinct (or equivalent location) within a State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2006 met only one of the requirements described in subparagraph (D).

“(D) REQUIREMENTS DESCRIBED.—The requirements described in this subparagraph with respect to a voting system are as follows:

“(i) The primary voting system required the use of or produced durable paper ballots (as described in section 301(a)(12)(A)) for every vote cast.

“(ii) The voting system provided that the entire process of paper ballot verification was equipped for individuals with disabilities.”

(3) INCREASE IN STATE MINIMUM SHARE OF PAYMENT.—Section 252(c) of such Act (42 U.S.C. 15402(c)) is amended—

(A) in paragraph (1), by inserting after “one-half of 1 percent” the following: “(or, in the case of the payment made for fiscal year 2007, 1 percent)”; and

(B) in paragraph (2), by inserting after “one-tenth of 1 percent” the following: “(or, in the case of the payment made for fiscal year 2007, one-half of 1 percent)”.

(4) REVISED CONDITIONS FOR RECEIPT OF FUNDS.—Section 253 of such Act (42 U.S.C. 15403) is amended—

(A) in subsection (a), by striking “A State is eligible” and inserting “Except as provided in subsection (f), a State is eligible”; and

(B) by adding at the end the following new subsection:

“(f) SPECIAL RULE FOR FISCAL YEAR 2007.—

“(1) IN GENERAL.—Notwithstanding any other provision of this part, a State is eligible to receive a requirements payment for fiscal year 2007 if, not later than 90 days after the date of the enactment of the Voter Confidence and Increased Accessibility Act of 2007, the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official—

“(A) certifies to the Commission the number of noncompliant and partially noncompliant precincts in the State (as defined in section 252(b)(2)); and

“(B) files a statement with the Commission describing the State’s need for the payment and how the State will use the payment to meet the requirements of title III (in accordance with the limitations applicable to the use of the payment under section 257(a)(4)).

“(2) CERTIFICATIONS BY STATES THAT REQUIRE CHANGES TO STATE LAW.—In the case of a State that requires State legislation to carry out any activity covered by any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.”

(5) PERMITTING USE OF FUNDS FOR REIMBURSEMENT FOR COSTS PREVIOUSLY INCURRED.—Section 251(c)(1) of such Act (42 U.S.C. 15401(c)(1)) is amended by striking the period at the end and inserting the following: “, or as a reimbursement for any costs incurred in meeting the requirements of title III which are imposed pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007 or in otherwise modifying or replacing voting systems in response to such amendments.”

(6) RULE OF CONSTRUCTION REGARDING STATES RECEIVING OTHER FUNDS FOR REPLACING PUNCH CARD, LEVER, OR OTHER VOTING MACHINES.—Nothing in the amendments made by this subsection or in any other provision of the Help America Vote Act of 2002 may be construed to prohibit a State which received or was authorized to receive a payment under title I or II of such Act for replacing punch card, lever, or other voting machines from receiving or using any funds which are made available under the amendments made by this subsection.

(7) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to fiscal years beginning with fiscal year 2007.

(e) EFFECTIVE DATE FOR NEW REQUIREMENTS.—Section 301(d) of such Act (42 U.S.C. 15481(d)) is amended to read as follows:

“(d) EFFECTIVE DATE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

“(2) SPECIAL RULE FOR CERTAIN REQUIREMENTS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the requirements of this section which are first imposed on a State and jurisdiction pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007 shall apply with respect to the regularly scheduled general election for Federal office held in November 2008 and each succeeding election for Federal office.

“(B) DELAY FOR JURISDICTIONS USING CERTAIN PAPER BALLOT PRINTERS OR CERTAIN PAPER BALLOT-EQUIPPED ACCESSIBLE MACHINES IN 2006.—

“(i) DELAY.—In the case of a jurisdiction described in clause (ii), subparagraph (A) shall apply to the jurisdiction as if the reference in such subparagraph to ‘the regularly scheduled general election for Federal office held in November 2008 and each succeeding election for Federal office’ were a reference to ‘elections for Federal office occurring during

2010 and each succeeding year', but only with respect to the following requirements of this section:

“(I) Paragraph (3)(B)(ii)(I) and (II) of subsection (a) (relating to access to verification from the durable paper ballot).

“(II) Paragraph (12) of subsection (a) (relating to durability and readability requirements for ballots).

“(ii) JURISDICTIONS DESCRIBED.—A jurisdiction described in this clause is—

“(I) a jurisdiction which used thermal reel-to-reel voter verified paper ballot printers attached to direct recording electronic voting machines for the administration of the regularly scheduled general election for Federal office held in November 2006 and which will continue to use such printers attached to such voting machines for the administration of elections for Federal office held in 2008; or

“(II) a jurisdiction which used voting machines which met the accessibility requirements of paragraph (3) of subsection (a) (as in effect with respect to such election) for the administration of the regularly scheduled general election for Federal office held in November 2006 and which used or produced a paper ballot, and which will continue to use such voting machines for the administration of elections for Federal office held in 2008.”

**SEC. 3. ENHANCEMENT OF ENFORCEMENT OF HELP AMERICA VOTE ACT OF 2002.**

Section 401 of such Act (42 U.S.C. 15511) is amended—

(1) by striking “The Attorney General” and inserting “(a) IN GENERAL.—The Attorney General”; and

(2) by adding at the end the following new subsections:

“(b) FILING OF COMPLAINTS BY AGGRIEVED PERSONS.—

“(1) IN GENERAL.—A person who is aggrieved by a violation of section 301, 302, or 303 which has occurred, is occurring, or is about to occur may file a written, signed, notarized complaint with the Attorney General describing the violation and requesting the Attorney General to take appropriate action under this section.

“(2) RESPONSE BY ATTORNEY GENERAL.—The Attorney General shall respond to each complaint filed under paragraph (1), in accordance with procedures established by the Attorney General that require responses and determinations to be made within the same (or shorter) deadlines which apply to a State under the State-based administrative complaint procedures described in section 402(a)(2).

“(c) CLARIFICATION OF AVAILABILITY OF PRIVATE RIGHT OF ACTION.—Nothing in this section may be construed to prohibit any person from bringing an action under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) (including any individual who seeks to enforce the individual’s right to a voter-verified paper ballot, the right to have the voter-verified paper ballot counted in accordance with this Act, or any other right under subtitle A of title III) to enforce the uniform and nondiscriminatory election technology and administration requirements under sections 301, 302, and 303.

“(d) NO EFFECT ON STATE PROCEDURES.—Nothing in this section may be construed to affect the availability of the State-based administrative complaint procedures required under section 402 to any person filing a complaint under this subsection.”

**SEC. 4. REQUIREMENT FOR MANDATORY MANUAL AUDITS BY HAND COUNT.**

(a) MANDATORY MANUAL AUDITS.—Title III of the Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amended by adding at the end the following new subtitle:

**“Subtitle C—Mandatory Manual Audits**

**“SEC. 321. REQUIRING AUDITS OF RESULTS OF ELECTIONS.**

“(a) REQUIRING AUDITS.—

“(1) IN GENERAL.—In accordance with this subtitle, each State shall administer, without advance notice to the precincts selected, audits of the results of elections for Federal office held in the State (and, at the option of the State or jurisdiction involved, of elections for State and local office held at the same time as such election) consisting of random hand counts of the voter-verified paper ballots required to be produced and preserved pursuant to section 301(a)(2).

“(2) EXCEPTION FOR CERTAIN ELECTIONS.—A State shall not be required to administer an audit of the results of an election for Federal office under this subtitle if the winning candidate in the election—

“(A) had no opposition on the ballot; or

“(B) received 80% or more of the total number of votes cast in the election, as determined on the basis of the final unofficial vote count.

“(b) DETERMINATION OF ENTITY CONDUCTING AUDITS; APPLICATION OF GAO INDEPENDENCE STANDARDS.—The State shall administer audits under this subtitle through an entity selected for such purpose by the State in accordance with such criteria as the State considers appropriate consistent with the requirements of this subtitle, except that the entity must meet the general standards established by the Comptroller General to ensure the independence (including the organizational independence) of entities performing financial audits, attestation engagements, and performance audits under generally accepted government accounting standards.

“(c) REFERENCES TO ELECTION AUDITOR.—In this subtitle, the term ‘Election Auditor’ means, with respect to a State, the entity selected by the State under subsection (b).

**“SEC. 322. NUMBER OF BALLOTS COUNTED UNDER AUDIT.**

“(a) IN GENERAL.—Except as provided in subsection (b), the number of voter-verified paper ballots which will be subject to a hand count administered by the Election Auditor of a State under this subtitle with respect to an election shall be determined as follows:

“(1) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is less than 1 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 10 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

“(2) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is greater than or equal to 1 percent but less than 2 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 5 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

“(3) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is equal to or greater than 2 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 3 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

“(b) USE OF ALTERNATIVE MECHANISM.—Notwithstanding subsection (a), a State may adopt and apply an alternative mechanism to determine the number of voter-verified paper ballots which will be subject to the hand counts required under this subtitle with respect to an election, so long as the alternative mechanism uses the voter-verified paper ballots to conduct the audit and the National Institute of Standards and Technology determines that the alternative mechanism will be at least as statistically effective in ensuring the accuracy of the election results as the procedure under this subtitle.

**“SEC. 323. PROCESS FOR ADMINISTERING AUDITS.**

“(a) IN GENERAL.—The Election Auditor of a State shall administer an audit under this section of the results of an election in accordance with the following procedures:

“(1) Within 24 hours after the State announces the final unofficial vote count (as defined by the State) in each precinct in the State, the Election Auditor shall determine and then announce the precincts in the State in which it will administer the audits.

“(2) With respect to votes cast at the precinct or equivalent location on or before the date of the election (other than provisional ballots described in paragraph (3)), the Election Auditor shall administer the hand count of the votes

on the voter-verified paper ballots required to be produced and preserved under section 301(a)(2)(A) and the comparison of the count of the votes on those ballots with the final unofficial count of such votes as announced by the State.

“(3) With respect to votes cast other than at the precinct on the date of the election (other than votes cast before the date of the election described in paragraph (2)) or votes cast by provisional ballot on the date of the election which are certified and counted by the State on or after the date of the election, including votes cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act, the Election Auditor shall administer the hand count of the votes on the applicable voter-verified paper ballots required to be produced and preserved under section 301(a)(2)(A) and the comparison of the count of the votes on those ballots with the final unofficial count of such votes as announced by the State.

“(b) USE OF ELECTION PERSONNEL.—In administering the audits, the Election Auditor may utilize the services of election administration personnel of the State or jurisdiction, including poll workers, without regard to whether or not the personnel have professional auditing experience.

“(c) LOCATION.—The Election Auditor shall administer an audit of an election at the location where the ballots cast in the election are stored and counted after the date of the election, and in the presence of those personnel who under State law are responsible for the custody of the ballots.

“(d) SPECIAL RULE IN CASE OF DELAY IN REPORTING ABSENTEE VOTE COUNT.—In the case of a State in which the final count of absentee and provisional votes is not announced until after the expiration of the 7-day period which begins on the date of the election, the Election Auditor shall initiate the process described in subsection (a) for administering the audit not later than 24 hours after the State announces the final unofficial vote count for the votes cast at the precinct or equivalent location on or before the date of the election, and shall initiate the administration of the audit of the absentee and provisional votes pursuant to subsection (a)(3) not later than 24 hours after the State announces the final unofficial count of such votes.

“(e) ADDITIONAL AUDITS IF CAUSE SHOWN.—

“(1) IN GENERAL.—If the Election Auditor finds that any of the hand counts administered under this section do not match the final unofficial tally of the results of an election, the Election Auditor shall administer hand counts under this section of such additional precincts (or equivalent jurisdictions) as the Election Auditor considers appropriate to resolve any concerns resulting from the audit and ensure the accuracy of the results.

“(2) ESTABLISHMENT AND PUBLICATION OF PROCEDURES GOVERNING ADDITIONAL AUDITS.—Not later than August 1, 2008, each State shall establish and publish procedures for carrying out the additional audits under this subsection, including the means by which the State shall resolve any concerns resulting from the audit with finality and ensure the accuracy of the results.

“(f) PUBLIC OBSERVATION OF AUDITS.—Each audit conducted under this section shall be conducted in a manner that allows public observation of the entire process.

**“SEC. 324. SELECTION OF PRECINCTS.**

“(a) IN GENERAL.—Except as provided in subsection (c), the selection of the precincts in the State in which the Election Auditor of the State shall administer the hand counts under this subtitle shall be made by the Election Auditor on an entirely random basis using a uniform distribution in which all precincts in a Congressional district have an equal chance of being selected, in accordance with procedures adopted by the Commission, except that at least one precinct shall be selected at random in each county.

“(b) PUBLIC SELECTION.—The random selection of precincts under subsection (a) shall be conducted in public, at a time and place announced in advance.

“(c) MANDATORY SELECTION OF PRECINCTS ESTABLISHED SPECIFICALLY FOR ABSENTEE BALLOTS.—If a State establishes a separate precinct for purposes of counting the absentee ballots cast in an election and treats all absentee ballots as having been cast in that precinct, and if the state does not make absentee ballots sortable by precinct and include those ballots in the hand count administered with respect to that precinct, the State shall include that precinct among the precincts in the State in which the Election Auditor shall administer the hand counts under this subtitle.

“(d) DEADLINE FOR ADOPTION OF PROCEDURES BY COMMISSION.—The Commission shall adopt the procedures described in subsection (a) not later than March 31, 2008, and shall publish them in the Federal Register upon adoption.

**“SEC. 325. PUBLICATION OF RESULTS.**

“(a) SUBMISSION TO COMMISSION.—As soon as practicable after the completion of an audit under this subtitle, the Election Auditor of a State shall submit to the

Commission the results of the audit, and shall include in the submission a comparison of the results of the election in the precinct as determined by the Election Auditor under the audit and the final unofficial vote count in the precinct as announced by the State and all undervotes, overvotes, blank ballots, and spoiled, voided or cancelled ballots, as well as a list of any discrepancies discovered between the initial, subsequent, and final hand counts administered by the Election Auditor and such final unofficial vote count and any explanation for such discrepancies, broken down by the categories of votes described in paragraphs (2) and (3) of section 323(a).

“(b) PUBLICATION BY COMMISSION.—Immediately after receiving the submission of the results of an audit from the Election Auditor of a State under subsection (a), the Commission shall publicly announce and publish the information contained in the submission.

“(c) DELAY IN CERTIFICATION OF RESULTS BY STATE.—

“(1) PROHIBITING CERTIFICATION UNTIL COMPLETION OF AUDITS.—No State may certify the results of any election which is subject to an audit under this subtitle prior to—

“(A) to the completion of the audit (and, if required, any additional audit conducted under section 323(d)(1)) and the announcement and submission of the results of each such audit to the Commission for publication of the information required under this section; and

“(B) the completion of any procedure established by the State pursuant to section 323(d)(2) to resolve discrepancies and ensure the accuracy of results.

“(2) DEADLINE FOR COMPLETION OF AUDITS OF PRESIDENTIAL ELECTIONS.—In the case of an election for electors for President and Vice President which is subject to an audit under this subtitle, the State shall complete the audits and announce and submit the results to the Commission for publication of the information required under this section in time for the State to certify the results of the election and provide for the final determination of any controversy or contest concerning the appointment of such electors prior to the deadline described in section 6 of title 3, United States Code.

**“SEC. 326. PAYMENTS TO STATES.**

“(a) PAYMENTS FOR COSTS OF CONDUCTING AUDITS.—In accordance with the requirements and procedures of this section, the Commission shall make a payment to a State to cover the costs incurred by the State in carrying out this subtitle with respect to the elections that are the subject of the audits conducted under this subtitle.

“(b) CERTIFICATION OF COMPLIANCE AND ANTICIPATED COSTS.—

“(1) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State shall submit to the Commission, in such form as the Commission may require, a statement containing—

“(A) a certification that the State will conduct the audits required under this subtitle in accordance with all of the requirements of this subtitle;

“(B) a notice of the reasonable costs incurred or the reasonable costs anticipated to be incurred by the State in carrying out this subtitle with respect to the elections involved; and

“(C) such other information and assurances as the Commission may require.

“(2) AMOUNT OF PAYMENT.—The amount of a payment made to a State under this section shall be equal to the reasonable costs incurred or the reasonable costs anticipated to be incurred by the State in carrying out this subtitle with respect to the elections involved, as set forth in the statement submitted under paragraph (1).

“(3) TIMING OF NOTICE.—The State may not submit a notice under paragraph (1) until candidates have been selected to appear on the ballot for all of the elections for Federal office which will be the subject of the audits involved.

“(c) TIMING OF PAYMENTS.—The Commission shall make the payment required under this section to a State not later than 30 days after receiving the notice submitted by the State under subsection (b).

“(d) RECOUPMENT OF OVERPAYMENTS.—No payment may be made to a State under this section unless the State agrees to repay to the Commission the excess (if any) of—

“(1) the amount of the payment received by the State under this section with respect to the elections involved; over

“(2) the actual costs incurred by the State in carrying out this subtitle with respect to the elections involved.

“(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Commission for fiscal year 2008 and each succeeding fiscal year \$100,000,000 for payments under this section.

**“SEC. 327. EXCEPTION FOR ELECTIONS SUBJECT TO RECOUNT UNDER STATE LAW PRIOR TO CERTIFICATION.**

“(a) **EXCEPTION.**—This subtitle does not apply to any election for which a recount under State law will commence prior to the certification of the results of the election, including but not limited to a recount required automatically because of the margin of victory between the two candidates receiving the largest number of votes in the election, but only if each of the following applies to the recount:

“(1) The recount commences prior to the determination and announcement by the Election Auditor under section 323(a)(1) of the precincts in the State in which it will administer the audits under this subtitle.

“(2) If the recount would apply to fewer than 100% of the ballots cast in the election—

“(A) the number of ballots counted will be at least as many as would be counted if an audit were conducted with respect to the election in accordance with this subtitle; and

“(B) the selection of the precincts in which the recount will be conducted will be made in accordance with the random selection procedures applicable under section 324.

“(3) The recount for the election meets the requirements of section 323(e) (relating to public observation).

“(4) The State meets the requirements of section 325 (relating to the publication of results and the delay in the certification of results) with respect to the recount.

“(b) **CLARIFICATION OF EFFECT ON OTHER REQUIREMENTS.**— Nothing in this section may be construed to waive the application of any other provision of this Act to any election (including the requirement set forth in section 301(a)(2) that the voter verified paper ballots serve as the vote of record and shall be counted by hand in all audits and recounts, including audits and recounts described in this subtitle).

**“SEC. 328. EFFECTIVE DATE.**

“This subtitle shall apply with respect to elections for Federal office beginning with the regularly scheduled general elections held in November 2008.”.

(b) **AVAILABILITY OF ENFORCEMENT UNDER HELP AMERICA VOTE ACT OF 2002.**— Section 401 of such Act (42 U.S.C. 15511), as amended by section 3, is amended—

(1) in subsection (a), by striking the period at the end and inserting the following: “, or the requirements of subtitle C of title III.”;

(2) in subsection (b)(1), by striking “303” and inserting “303, or subtitle C of title III.”; and

(3) in subsection (c)—

(A) by striking “subtitle A” and inserting “subtitles A or C”, and

(B) by striking the period at the end and inserting the following: “, or the requirements of subtitle C of title III.”.

(c) **GUIDANCE ON BEST PRACTICES FOR ALTERNATIVE AUDIT MECHANISMS.**—

(1) **IN GENERAL.**—Not later than May 1, 2008, the Director of the National Institute for Standards and Technology shall establish guidance for States that wish to establish alternative audit mechanisms under section 322(b) of the Help America Vote Act of 2002 (as added by subsection (a)). Such guidance shall be based upon scientifically and statistically reasonable assumptions for the purpose of creating an alternative audit mechanism that will be at least as effective in ensuring the accuracy of election results and as transparent as the procedure under subtitle C of title III of such Act (as so added).

(2) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to carry out paragraph (1) \$100,000, to remain available until expended.

(d) **CLERICAL AMENDMENT.**—The table of contents of such Act is amended by adding at the end of the items relating to title III the following:

“Subtitle C—Mandatory Manual Audits

“Sec. 321. Requiring audits of results of elections.

“Sec. 322. Number of ballots counted under audit.

“Sec. 323. Process for administering audits.

“Sec. 324. Selection of precincts.

“Sec. 325. Publication of results.

“Sec. 326. Payments to States.

“Sec. 327. Exception for elections subject to recount under State law prior to certification.

“Sec. 328. Effective date.”.

**SEC. 5. REPEAL OF EXEMPTION OF ELECTION ASSISTANCE COMMISSION FROM CERTAIN GOVERNMENT CONTRACTING REQUIREMENTS.**

(a) **IN GENERAL.**—Section 205 of the Help America Vote Act of 2002 (42 U.S.C. 15325) is amended by striking subsection (e).

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall apply with respect to contracts entered into by the Election Assistance Commission on or after the date of the enactment of this Act.

**SEC. 6. EFFECTIVE DATE.**

Except as otherwise provided, this Act and the amendments made by this Act shall apply with respect to the regularly scheduled general election for Federal office in November 2008 and each succeeding election for Federal office.

**PURPOSE OF THE LEGISLATION**

In 2002, in response to the public's mounting concern about election administration problems, Congress passed the Help America Vote Act (HAVA) P.L. 107-252 (42 U.S.C. 15301) to improve the voting process in a number of ways. One of the hallmark changes allowed citizens to cast provisional ballots if their eligibility was questioned at the polls. The eligibility of these provisional ballot voters would be verified before the ballots were ultimately counted, as Congress guaranteed that no eligible voter should ever leave the polling station without casting a ballot.

Another improvement to the election process involved the replacement of punch card and lever voting machines with paperless direct recording electronic voting machines. Although these machines are generally easy to use and, if properly equipped, accessible to voters with disability and language assistance needs, the 2006 election revealed that these machines suffer from an essential flaw: the digital results reported from these machines cannot be audited independently. The only output available is a digital readout that relies on the accuracy of the electronic software during the voting process and cannot be recounted. As a result, many of these paperless DRE voting machines are not properly equipped to independently demonstrate voter intent during a recount or audit.

If a voter casts a vote on an paperless electronic voting machine, the only thing the voter verifies—the information displayed on the touch screen surface for a few moments while the voter votes—disappears forever the moment the voter hits the cast vote button and leaves the voting booth. No election official, no computer scientist, and no voting system vendor can reconstruct what that voter intended because the voter votes in secret.

Because of the secret ballot, only the voter can verify that his or her intention is recorded correctly, and it is impossible for the voter to verify an electronic record.

When questions arise, candidates, voters and election officials alike are left to trust voting system vendors who insist their trade-secret-protected software counts votes accurately. This difficulty became glaringly apparent in the 2006 election, when reports revealed voting problems in numerous jurisdictions, producing a lack of voter confidence and uncertainty regarding election results.<sup>1</sup>

<sup>1</sup>Examples of news articles include: Tinsley, Anna M. and Anthony Spangler. "Vote Spike Blamed on Program Snafu." *Fort Worth Star-Telegram*, March 9, 2006; Tinsley, Anna M. "Judicial Candidate Files Challenge." *Fort Worth Star-Telegram*, April 6, 2006; "Pottawattamie County Recorder's Race Leads to Recount." The Associated Press, June 8, 2006; Rabin, Charles and Darran Simon. "Glitches Cited in Early Voting; Early Voters are Urged to Cast Their Ballots with Care Following Scattered Reports of Problems with Heavily Used Machines." *The Miami Herald*, October 28, 2006; McCormick, John. "Voting Equipment Glitches Lingering." *Chicago Tribune*, November 2, 2006; Smith, Tammy M. "New Voting Machines Pose Election Day Prob-



In order to restore public confidence and ensure transparency in future elections, the law must be revised to require an independent paper copy of each vote—verified by the voter him or herself—to serve as a check on any electronic tallies reported by the voting machines. If a jurisdiction chooses an electronic system to tally votes, the vote of record—the ballot—must be tangible, not electronic.

H.R. 811 allows jurisdictions to continue to rely on the expediency, convenience and accessibility of computer-assisted voting, while preserving the critical ability to independently confirm that the will of the voters is reflected in the final results. Votes represent the most basic right of citizens in a free society, and voters must be given the confidence that they are accurately tallied and easily recounted.

In amending H.R. 811, the Committee has taken into account concerns raised by state and local officials and other stakeholders concerning the timing of implementation. As reported, the bill allows jurisdictions that used any paper-ballot-based voting system in 2006 a waiver until the first election in 2010 to meet new requirements. If H.R. 811 is enacted promptly, these states will have adequate time to implement the new requirements. Only the jurisdictions that used voting systems without any sort of voter-verified paper ballot in 2006 must replace or upgrade those systems by November 2008. This means that only six states would be required to replace all of their voting machines by 2008 (Delaware, Georgia, Louisiana, Maryland, South Carolina, and Tennessee).

Four states, New Mexico, Nevada, North Carolina, and West Virginia, recently converted to voter verifiable paper ballot systems in less than one year:

- New Mexico enacted a law on March 2, 2006 requiring conversion from a mixed system with paperless electronic voting machines to a uniform statewide system using paper optical scan ballots with accessible ballot marking devices. All 33 counties fully deployed the new system eight months later, in time for the 2006 mid-term election.
- Nevada's then-Secretary of State, now Representative Dean Heller, mandated in December 2003 that the state would obtain new voting systems with voter-verified paper records. By the following August (again, eight months later), 16 of 17 counties deployed voter-verified paper record systems county-wide in time for the primary, and all counties had them for the November 2004 presidential election.

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lems." *Sun Herald (Mississippi)*, November 7, 2006; "Voting Problems Reported in NJ." New Jersey—WABC, November 7, 2006; Glendenning, Lauren. "Voting Glitch in Fairfax, Some Machine Malfunctions Could Fuel Arguments for Recount." *The Connection Newspaper (Virginia)*, November 8, 2006; "Some Electronic Voting Machines Not 'up to date'." *Pittsburg Tribune-Review*, November 8, 2006; Burk, Jennifer. "Bibb Voting Glitches Nothing Out of the Ordinary, Carr Says." *The Telegraph (Georgia)*, November 9, 2006; "Disabled Voters Disappointed with Touch-Screen Problems." WISH—TV, November 10, 2006; King, Lauren. "Count on Recount in E. City Mayor's Race." *The Virginian-Pilot*, November 11, 2005; "Arkansas Mayoral Candidate Disputes Tally of Zero Votes, Says He Voted for Himself." The Associated Press, November 11, 2006; "Hendersonville Voters Back Building Height Restriction." *Tryon Daily Bulletin*, November 13, 2006; "Another Voting Glitch in Baldwin County." The Associated Press, November 14, 2006; Spoto, Maryann. "Voting Mishap Blamed on Software Problems, Some Ballots Counted Twice, Sparking a Call for a Check of Totals at Shore." *Star-Ledger (New Jersey)*, November 14, 2006; Peters, Paul. "Communication Breakdown." *Missoula Independent*, November 16, 2006; "E-voting Glitch Turns up in Texas." CNet.News, November 16, 2006; Toland, Bill. "If You Think the Computer 'Flipped' Your Vote, You're Not Alone; Though Solid Evidence is Hard to Pin Down, Complaints Abound About Voting Machines." *Pittsburgh Post-Gazette*, December 10, 2006.

- North Carolina enacted a law requiring voter verified paper records on August 26, 2005. Eight months later, in time for the May 2006 primary, the entire state had completed the conversion process to new systems, including RFP, testing, certification and training.
- West Virginia enacted a law requiring voter-verified paper records in May 2005; every county had new voter-verified paper record equipment in place for the primary the following year.

To delay implementation beyond 2008 in jurisdictions that have no paper ballots at all would reduce trust in the process of democracy.

Concern has been raised over relying on paper ballots as the primary vehicle for recounts and audits where thermal reel-to-reel systems remain in place. In the primary in Cuyahoga County, Ohio in 2006, where thermal paper printer retrofits were used, approximately 10% of the ballots were lost, missing or destroyed; however, thermal paper ballot printers used in (for example) Mississippi and Nevada did not experience similar failure rates. As amended, H.R. 811 addresses this concern by providing that if it is demonstrated by clear and convincing evidence that the paper ballots have been compromised, and that a sufficient number of the ballots have been so compromised that the results of the election could be changed, the appropriate remedy will be determined in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified vote tally.

During the 109th Congress, the House narrowly approved H.R. 4844, “The Federal Election Integrity Act of 2006” introduced by former Representative Henry Hyde, which required all states to demand voters provide government-issued photo identification in order to vote in the 2008 election. By the time H.R. 4844 was considered on the floor, more than 100 civil rights organizations and citizen groups wrote to the House in opposition to any measures aimed at creating voter identification and proof of citizenship requirements to vote. The Committee considered and rejected two similar provisions proposed as amendments to H.R. 811 during Committee consideration of the bill.

The Committee’s opposition to these photo ID proposals rests on several factors. In addition to the lack of evidence demonstrating voter fraud as a rampant problem that needs to be addressed, requiring Americans to show identification at the polls is contrary to the foundation of our democracy. Photo ID laws disproportionately impact the elderly, people with disabilities, rural voters, students, racial and ethnic minorities, the homeless, low-income people, frequent movers, and members of large households—all of whom are less likely to have current and valid photo ID. Requiring government-issued photo identification to vote also amounts to a modern-day poll tax because acquiring the supporting documents required to obtain government photo ID takes both time and money. A birth certificate typically costs \$10 to \$15, a passport over \$100, and naturalization papers, if they are lost or damaged and need to be replaced, cost \$220. Lastly, voters with photo ID can be turned away for more benign reasons as well. If an ID card does not contain the voter’s current address or name, which is true of countless Ameri-

cans who move or marry, he or she will likely be turned away from the polls. Instead of increasing voter confidence and participation, onerous voter identification requirements will only serve to skew election results by removing countless eligible voters from the process.

The Committee also assured reliable voting for all eligible voters by working extensively with prominent organizations and advocates in the disability community to ensure the standard of providing every voter access to a private and independent ballot, established by HAVA, is not violated. Diane Cordry Golden, Ph.D., Director, Missouri Assistive Technology conveyed in testimony presented before the House Administrations' Subcommittee on Elections, March 15, 2007, hearing that Congress should not restrict the rights of the disabled to vote privately and independently with new laws. H.R. 811 does not change section 301(a)(3)(A) of HAVA, which requires each polling place be equipped with a voting machines that is accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as other voters.

As Ms. Golden testified, "Accessible verification technology will only develop if the law clearly requires it, and the technology will only be adequate if reasonable time and appropriate resources are allocated to support that development." H.R. 811 provides clear indication that voting systems must be accessible for all voters. In fact, H.R. 811 extends further protections for persons with disabilities by requiring that any such voting system must adhere to the following:

- (1) allow the voter to "privately and independently verify the permanent paper ballot through the conversion of the human-readable printed or marked vote selections into accessible form;"
- (2) ensure that "the entire process of ballot verification and vote casting is equipped for individuals with disabilities;" and
- (3) not preclude the supplemental use of Braille and tactile ballots.

H.R. 811 does not alter satisfaction of the HAVA mandate requiring voting systems be equipped for individuals with disabilities in each polling place.

Lastly, it is the intention of the Committee that the term "election dedicated voting system technology," as used in Section 2(c)(1) of the Voter Confidence and Increased Accessibility Act, and in what will be Section 301(a)(8) of the Help America Vote Act, as amended by the same, be construed broadly to include all elements of election dedicated software, code, and programming files, all of which are to be disclosed in electronic form. In addition to the elements of "voting system software" included in the definition of "voting system software" contained in the 2005 Voluntary Voting System Guidelines, it is the intention of the Committee that all of the elements and components mentioned in Sections 5.4 through 5.9 of the Election Assistance Commission's Voting System Testing and Certification Manual Version 1.0, as well as subsequent versions and similar software or equivalent going forward, also be disclosed. The exclusion of "commercial off the shelf" software and hardware is intended to apply to the definition of "voting system software" included in the 2005 Voluntary Voting System Guidelines, and the

elements and components mentioned in Sections 5.4 through 5.9 of the Election Assistance Commission's Voting System Testing and Certification Manual Version 1.0 Attached to this Report as Exhibits C and D are the definition of "voting system software" and the definition of "commercial off the shelf" software and hardware, as defined by the 2005 Voluntary Voting System Guidelines, and Sections 5.4 through 5.9 of the Election Assistance Commission's Voting System Testing and Certification Manual Version 1.0. The Committee worked tirelessly with stakeholders to form a consensus that will allow for the protection of intellectual property while ensuring that manufacturers will provide adequate evidence to demonstrate that their products functioned as intended.

#### SECTION BY SECTION SUMMARY OF THE LEGISLATION

The bill is to amend the Help America Vote Act of 2002 (HAVA) to require a voter-verified permanent paper ballot under Title III of that Act, and for other purposes.

Section 1.—Short title—provides a short title.

Section 2.—Promoting accuracy, integrity, and security through voter-verified permanent paper ballot.—amends Section 301 of HAVA to require all voting systems to require the use of or produce a voter verified paper ballot, increase accessibility, and implement security requirements as more specifically set forth below.

*Section (2)(a)(1): "Ballot Verification and Audit Capacity."*

*Verification*—each voting system must "require the use of or produce" an "individual durable voter-verified paper ballot" that "shall be created by or made available for inspection and verification by the voter before the voter's vote is cast and counted." Examples are listed, including optical scan ballots, mail in ballots and print-outs from direct recording electronic (DRE) voting machines. Optical scan and other paper-ballot-based systems already meet the requirement; this bill is not exclusively about requiring DREs to print paper records, but it does require that.

Voters must be allowed to correct "errors made by the system" on the paper ballot. (HAVA Section 301(a)(1), which is not changed by H.R. 811, already allows voters to correct errors made by themselves, and/or to change their mind and change their vote.) While machine errors in ballot production should not be an issue with optical scan ballots, which are created by the voter, machine errors could be an issue with DREs, which print ballots themselves after receiving data input. If the DRE prints an erroneous ballot, the voter must be given an opportunity to correct it.

*Preservation*—the voting system "shall not preserve the voter-verifiable paper ballots in any manner that makes it possible, at any time after the ballot is cast, to associate" the voter with his or her vote. This provision protects the secrecy of the ballot.

The voter-verified ballots shall be used as the official ballots for purposes of any recount or audit and must be preserved by election officials. They do not leave the polling station with voters, thus minimizing vote-selling risks.

*Manual Audit Capacity*—The paper ballots "shall be suitable for a manual audit equivalent to that of a paper ballot voting system and shall be counted by hand in any recount or audit." This provision in effect rules out cryptographic audit schemes likely to be in-

comprehensible to the average voter. Audits required under the bill must be done by hand count.

In the event of discrepancies between an electronic tally and a hand count, the paper ballots “shall be the true and correct records of the votes cast.” The paper records are deemed the vote of record because they are the only ones verified by the voter, rather than the voting machine. Strictly electronic “recounts” (the computer re-reporting its first reported total) would not be acceptable under H.R. 811.

*Compromised paper ballots*—If it is demonstrated by clear and convincing evidence that the paper ballots have been compromised, and that a sufficient number of the ballots have been so compromised that the results of the election would be changed, “the determination of the appropriate remedy . . . shall be made in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified vote tally.”

*Section 2(a)(2)—Language Access*—clarifies that the language access requirements of the Voting Rights Act apply to the voter verified paper ballots and the instructional notices called for under the bill.

*Section 2(b)(1)*—amends in part HAVA Section 301(a)(3), “*Accessibility for Individuals with Disabilities*”.

HAVA’s existing subparagraph 301(a)(3)(A) is unchanged; it requires voting systems to be “accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”

HAVA’s existing subparagraph 301(a)(3)(C) is also unchanged; it requires that voting systems shall, “if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).” This deadline has passed and the provision applies to HAVA’s requirements; the new requirements of H.R. 811 have later deadlines (as set forth below).

HAVA’s remaining subparagraph (B) in Section 301(a)(3) is preserved and amended as follows: it requires voting systems to satisfy the accessibility requirement in subparagraph 301(a)(3)(A) “through the use of at least one voting system equipped for individuals with disabilities at each polling place.” H.R. 811 extends this by requiring any such system to:

(4) allow the voter to “privately and independently verify the permanent paper ballot through the conversion of the human-readable printed or marked vote selections into accessible form;”

(5) ensure that “the entire process of ballot verification and vote casting is equipped for individuals with disabilities;” and

(6) not preclude the supplemental use of Braille and tactile ballots.

*Section 2(b)(2)—NIST Accessibility Study*—adds to HAVA a requirement that the National Institute of Standards and Technology (NIST) study, test and develop accessible ballot marking and paper ballot verification mechanisms and best practices pertaining thereto; this requirement also applies to enhancing language access mechanisms. \$3 million is authorized for the study, and the results are due by December 2008. Accessible systems that used or pro-

duced paper ballots and were used in 2006 may be used until 2010, while improved systems are developed.

*Section 2(b)(3)—VVSG Accessibility Standards*—requires that the voluntary voting system guidelines established by the Election Assistance Commission apply the same accessibility standards for access to ballot verification as are applied to access to voting.

*Section 2(c)(1)—Additional Voting System Requirements*—HAVA’s current “Voting System Requirements” include (a) the opportunity for 2nd chance voting (changing your mind); (b) a requirement for “a permanent paper record” (but not a voter-verified paper record); (c) disability access; (d) language access; (e) compliance with federal error rate standards; and (f) a uniform definition of what constitutes a “vote”. H.R. 811 adds to those the requirements that:

(1) *Vote of record instruction*—a notice must be posted in each polling place instructing voters that the paper ballot shall serve as the vote of record in all recounts and audits, and not to leave the voting booth without verifying it.

(2) *Ban on uncertified, undisclosed software*—no voting system shall “contain or use” any “undisclosed software,” or any software not certified by the State,” “at any time” (vendors” and others’ proprietary rights to the software remain, enabling them to license and sell it (etc.); downloading and use of undisclosed, uncertified “patches” at the last minute, however, are prohibited). Test labs are to hold the software in escrow and release it to qualified reviewers who sign non-disclosure agreements protecting intellectual property and trade secrets.

(3) *Ban on wireless devices*—voting systems must not “contain, use or be accessible by any wireless, power-line, remote, wide area or concealed communications device,” except enclosed infrared communications devices that cannot be used for remote or wide area communications.

(4) *Ban on Internet connections*—“no component of any voting device upon which ballots are programmed or votes are cast or tabulated shall be connected to the Internet at any time.”

(5) *Security standards for voting systems*—no voting system shall be used unless

(i) its manufacturer and the election officials using it document the secure chain of custody for handling the software, hardware, vote storage media and ballots; the Election Assistance Commission (EAC) is to develop best practices for same by August 2008;

(ii) the manufacturer discloses its code to the test labs as required under item (2);

(iii) the manufacturer does not, after election officials have certified the software, alter the software or insert or use in the system any software not certified by the State; and

(iv) election officials submit information regarding the State’s compliance with the foregoing to the EAC upon request; the EAC is to disclose information confirming secure chain of custody to the public upon request.

(6) *Durability and readability of paper ballots*— All voter-verified paper ballots shall be:

(i) marked, printed or recorded on “durable” paper, defined as “capable of withstanding multiple counts and recounts by hand without compromising the fundamental integrity of the ballots,”

and capable of retaining the information marked, printed or recorded on them for 22 months.

(ii) “clearly readable by the voter without assistance” (other than eyeglasses, etc) and “by a scanner or other device equipped for individuals with disabilities.”

(7) *Mandatory availability of paper ballots at the Polls*—Election officials at the polls shall make available to any individual who is eligible to vote the option of casting such vote by pre-printed paper ballot which is not produced by a direct recording electronic voting machine. The election officials shall, to the greatest extent practicable ensure that the waiting time to cast a vote on paper is not greater than the waiting period to cast a vote on a machine. All such ballots shall be counted as regular ballots (unless the voter was otherwise required to vote provisionally). Election officials are to be trained in this right and notice of this right is to be posted.

*Section 2(c)(2)—Testing Escrow Account*—adds to HAVA’s existing “Certification and Testing” requirements, which currently mandates that the EAC will provide for the certification of voting system hardware and software by accredited labs, and makes it optional for States to provide for certification through those labs. H.R. 811 adds the following requirements to HAVA’s provisions describing the lab approval process:

(1) A lab cannot be accredited unless (i) it certifies that the only payment it receives for testing is from the Testing Escrow Account (see item (2)); (ii) it prohibits, in accordance with EAC protocols, “the existence or appearance” of conflicts of interest with respect to its dealings with the manufacturers who hire the labs to test their equipment; (iii) the lab permits an expert designated by the EAC to observe testing; (iv) the lab discloses “the test protocols, results, and all communication between” the lab and the manufacturer. The EAC must disclose the results.

(2) The EAC must, by January 1, 2008, establish a “Testing Escrow Account” and a schedule of testing fees; the manufacturer requests a test and pays the appropriate fee, upon which the EAC randomly (to the greatest extent practicable) selects a lab to conduct the test, and pays the lab upon completion of the test and submission of the results.

(3) The EAC must disclose the identity of the lab that conducted the testing, and notify Congress, the chief state election official in each State and the public if it suspends, revokes or restores the accreditation of, or has credible evidence of a significant security failure at, any laboratory.

*Section 2(c)(3)—Certification as to compliance with new requirements*—Requires each State not currently using durable paper ballots to certify to the EAC, within 90 days of enactment of the bill, that it will be in compliance with the durability, accessibility and readability requirements for paper ballots and the methods by which the State will meet the requirements. States are authorized to make the certification even if their legislatures have not met.

*Section 2(c)(4)—NSF Software Study*—The National Science Foundation is to award grants to at least 3 entities for the purpose of researching and developing election dedicated voting systems software. \$3 million is authorized (half in FY 2007 and half in FY 2008).

*Section 2(d)—Funding for new voting system requirements*—provides funding to meet the requirements of Section 2. In particular, it amends HAVA Section 257, which authorized for \$3 billion over fiscal years 2003, 2004 and 2005 to be paid to the states to help them meet their Title III (Voting System Standards) requirements, by:

(1) adding \$1 billion to be paid to states to help them meet the new paper record and other requirements of Title III imposed by H.R. 811;

(2) establishing a formula for disbursement of funds, allocating the bulk of the funds to “noncompliant” (those with neither durable paper ballots nor accessible paper ballot verification) and “partially noncompliant” (those with either durable paper ballots or accessible paper ballot verification) precincts;

(3) increasing the minimum requirements payment to each State to 1% (.5% for the territories);

(4) requiring States to identify their noncompliant and partially compliant precincts and to describe their need for the payments and how they will spend the funds within 90 days of enactment (States are authorized to make this certification even if their legislatures have not met);

(5) allowing the funds to be used to reimburse states for costs incurred to meet such requirements prior to enactment of H.R. 811; and

(6) allowing States to receive funds even if they already received HAVA funds to replace voting equipment.

HAVA provides, and H.R. 811 preserves the requirement, that all funds appropriated under this section remain available without fiscal year limitation until expended.

*Section 2(e)—Delayed Implementation for jurisdictions that used paper-ballot-based systems in 2006*—The durable paper ballot and accessible ballot verification (scanning or conversion of vote selections from the paper ballot itself) requirements of Section 2 of the bill are to be implemented in time for the November 2008 election, except that

(i) Jurisdictions that used thermal reel-to-reel paper ballot printers in 2006 and

(ii) Jurisdictions that used accessible system in 2006 that used or produced a paper ballot, and will continue to use them in 2008, are authorized to keep using them until the first federal election in 2010.

*Section 3.—Enhancement of Enforcement of Help America Vote Act*—amends the enforcement provisions of HAVA to clarify the rights of individuals and the Attorney General, respectively, to pursue legal resolution of complaints pertaining to violations of HAVA (as amended by H.R. 811) and discrepancies revealed by audits (as further described in Section 5).

Section 401 of HAVA allows the Attorney General to bring a civil action to enforce Sections 301 (pertaining to Voting System Standards), 302 (pertaining to provisional ballots) and Section 303 of HAVA (pertaining to computerized statewide voter registration databases). Section 402 of HAVA requires States to set up administrative complaint procedures through which voters can file complaints with respect to violations of Title III.



H.R. 811 (Sections 3 and Section 5(b)) would amend HAVA Section 401 to:

(1) allow individuals to file complaints with the Attorney General pertaining to violations of 301, 302, 303 and the new subtitle C of Title III (pertaining to routine random audits); and

(2) require the Attorney General to respond on the same (or shorter) time frame as applies to State-based administrative complaint procedures;

(3) clarify that nothing in the section may be construed to prohibit any person from bringing a civil action on his or her own behalf under section 1979 of 42 U.S.C. 1983 to enforce sections 301, 302, 303 and Subtitle C of Title III; and

(4) clarify that nothing in the section may be construed to affect the availability of Section 402's State-based administrative complaint procedures.

**Section 4.—Requirement for Mandatory Manual Audits by Hand Count**—adds to HAVA a requirement for routine, random audits to be administered by a State audit board.

**Section 4(a)—Requiring audits (Section 321(a))**—adds a new subtitle C to HAVA Title III, “Mandatory Manual Audits,” which requires each State to administer, “without advance notice to the precincts selected,” “random hand counts of the voter-verified paper ballots.” At the option of the States, elections for State and local office may be included in the audits. *Exceptions*—Audits do not have to be conducted in

(i) Unopposed races and

(ii) Races determined by 80% or more of the vote

**Section 321(b)—Requirement of “independence”**—The entity conducting the audits (the “Election Auditor”) must satisfy the requirement of “independence,” including “organizational independence,” as defined in GAO Government Accounting Standards.

**Section 322(a)—Number of Ballots Counted Under Audit**—sets forth the number of ballots that shall be subject to a hand count: (1) at least 3% of the precincts in the case of elections decided by more than a 2% margin; (2) at least 5% of the precincts in the case of races decided by a margin of between 1% and 2%; and (3) at least 10% of the precincts in the case of races decided by a margin of less than 1%.

**Section 322(b)—Alternative ballot sampling method**—allows States to use an “alternative mechanism” to determine the number of ballots selected for a hand count, so long as NIST determines that it is “at least as statistically effective in ensuring the accuracy of the election results” and equally transparent as the procedure set forth in the bill.

**Section 323(a)—“Process for Administering Audits**—sets forth the process for administering the audits:

(1) Within 24 hours after the State announces the final unofficial vote count, the Audit Board shall determine and then announce the precincts in which the audits are to be conducted.

(2) Early votes are to be included in the audit.

(3) Mail-in (including military and overseas) and provisional votes are to be included in the audit.

**Sections 323(b) and (c)—Personnel and ballot custody**—provide that election administration personnel may be used to conduct audits, regardless of whether they have auditing experience, and that

the audits must be done where the ballots are kept and in the presence of the ballot custodian.

*Section 323(d)—Two-stage audit to include absentee and provisional ballots*—sets forth a procedure for including absentee and provisional votes not counted on election day: if more than 7 days elapse between the date of the election and the date upon which mail-in and provisional votes are counted, the audit process shall be conducted in 2 stages. The 1st will commence within 24 hours of the announced totals of all early and election-day votes, and the 2nd within 24 hours of the announced totals for all mail-in and provisional votes.

*Section 323(e)—Additional audits*—sets forth a procedure by which additional audits can be conducted if cause is shown:

(1) If the Audit Board finds that the “results don’t match,” the Election Auditor shall conduct hand counts of “such additional precincts . . . as the Election Auditor considers appropriate to resolve any concerns resulting from the audit and to ensure the accuracy of the results;” and

(2) by August 1, 2008, each State must establish and publish a procedure by which it will “resolve any concerns resulting from the audit with finality and ensure the accuracy of the results.”

*Section 323(f)—Publicly observable*—requires the audits be conducted in a manner “that allows public observation of the entire process.”

*Section 324(a)—Selection of Precincts*—sets forth the manner in which precincts to be hand counted are to be selected:

(1) the Election Auditor shall select the precincts “on an entirely random basis using a uniform distribution in which all precincts in a Congressional District have an equal chance of being selected”; and

(2) “at least one precinct shall be selected at random in each county.”

*Section 324(b)—Public selection process*—requires the random selection to be conducted in public (in a sense similar to public lottery drawings).

*Section 324(c)—Absentee ballot precinct*—provides that if a State establishes a separate precinct for absentee ballots, and if the absentee ballots are not sortable by precinct, then the absentee ballot precinct will be included in the precincts selected for audit.

*Section 324(d)—Publication of selection procedure*—requires the EAC to adopt and publish the random selection procedures in the Federal Register by March 31, 2008.

*Section 325(a)—Publication of Results*—requires the Audit Boards to announce and submit to the EAC for publication the audit results, in accordance with the following procedures:

(1) “as soon as practicable after the completion” of the audit, the Board is to submit to the EAC the results of the audit

(2) The announcement/publication shall include a comparison of the results as announced by the jurisdiction as well as a list of any discrepancies discovered . . . and an explanation for such discrepancies.

(3) The announcement/publication shall, include undervotes and spoiled ballots and be broken down by the categories of early, day-of, mail-in and provisional ballots

*Section 325(b)—Publication by Commission*—requires the EAC to publish the results “immediately after receiving” them.

*Section 325(c)—Delay in Certification of Results by State*—requires that the audits (and any additional audits) be conducted and completed, discrepancies be resolved in accordance with state procedures called for by Section 323(c), and the results sent to the EAC, prior to certification of results by a State and, in Presidential elections, prior to appointment of electors.

*Section 326—Payments to States*—provides that the EAC shall make payments to the states to cover the costs of the audits. In order to receive payments, the States must certify that it will conduct the required audits and submit a “notice of reasonable costs” of the audits. The EAC will then issue payment equal to “the reasonable costs.” The notice cannot be submitted until the ballots are final and include all of the candidates. Payment is due to the state within 30 days of receipt of the notice. \$100 million is authorized each fiscal year to make the payments.

*Section 327—Exception for Elections Subject to Automatic Recount Under State Law*—pre-empts the possibility that a recount that will commence prior to certification (including but not limited to recounts triggered automatically under state law due to a narrow margin of victory) could take place at the same time as an audit—especially a large audit as called for due to narrow margin of victory under the bill. Several states commence such automatically-triggered and other recounts or allow other recounts to commence prior to certification. The recount, however:

- Must commence prior to when the audit would have commenced;
- Must be by hand count of the paper ballots;
- Must include at least as many ballots as would have been called for by the audit and use the same random selection method called for by the audit section if the recount would be less than a 100% recount;
- Must be conducted in the same transparent manner as required by the audit section; and
- Must ensure that all discrepancies are reported and resolved prior to certification as called for by the audit section.

*Section 328—Effective Date*—establishes a November 2008 implementation date for the audits.

*Section 4(b)—Conforming changes to HAVA enforcement provisions*—further amends HAVA’s Section 401 (see Section 3 above) to clarify HAVA’s enforcement provisions.

*Section 4(c)—NIST Guidance re: Alternative Method*—NIST must develop and publish guidance with respect to the alternative ballot sampling method described in 322(b) by May 1, 2008; \$100,000 is authorized to NIST for such development.

*Section 5.—Repeal of exemption of Election Assistance Commission from certain government contracting requirements—Repeals HAVA’s exemption of the EAC from government contracting requirements, effective as of the date of enactment of H.R. 811.*

*Section 6.—Effective date—Provides that the implementation deadline for HR 811 is November 2008, except as otherwise provided in the bill.*

## IMPLEMENTATION SCHEDULE

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Within 90 Days of Enactment .....	Paperless States to certify how they will meet requirements of the legislation States to identify the number of non-compliant and partially-compliant precincts they have and describe how the State will use the funding under the bill to meet the requirements of the bill
January 2008 .....	Establishment of testing escrow account and fee schedule
March 2008 .....	EAC to publish procedures for random selection of precincts
May 2008 .....	NIST to publish guidance on best practices for alternative ballot sampling methods
August 2008 .....	EAC best practices for documenting secure chain of custody to be published States to publish produces by which they will resolve discrepancies in audits
December 2008 .....	NIST to complete accessible ballot verification study
January 2010 (First federal election in 2010) .....	States using paper-ballot based systems (thermal reel-to-reel and/or accessible systems that used or produced a paper ballot) in 2006 to be in compliance with durable paper and accessible paper ballot verification requirements of H.R. 811

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## COMMITTEE CONSIDERATION OF THE LEGISLATION

## INTRODUCTION AND REFERRAL

On February 5, 2007, Mr. Holt, along with 168 members of the House, introduced H.R. 811, which was referred to the Committee on House Administration. The Committee referred the legislation to the Subcommittee on Elections on March 23, 2007.

## HEARINGS

The Committee on House Administration Subcommittee on Elections held three hearings relating to issues encompassed in H.R. 811.

On March 15, 2007, the Subcommittee on Elections held its first hearing on matters relating to HR 811 titled "Election Reform Hearing: Machines & Software."

Members present: Subcommittee Chair Zoe Lofgren, Juanita Millender-McDonald, Susan Davis, and Kevin McCarthy.

*Witnesses:*

## Panel 1:

1. The Honorable Eric Clark—Secretary of State, State of Mississippi
2. Diane Cordry Golden, Ph.D.—Director, Missouri Assistive Technology
3. Ted Selker, Ph.D.—Director, Voting Technology Project, Massachusetts Institute of Technology
4. Mr. Kelly Pierce—Disability Specialist, Cook County (IL) State's Attorney Office

Panel 2:

1. Brit Williams, Ph.D.—Professor of Computer Science and Information Systems, Kennesaw State University
2. David Wagner, Ph.D.—Associate Professor, University of California, Berkeley
3. Mr. Brian Behlendorf—Founder and Chief Technology Officer, CollabNet
4. Mr. Hugh J. Gallagher—Managing Director, Election System Acquisition and Management Services, Inc.
5. Mr. Matt Zimmerman—Staff Attorney, Electronic Frontier Foundation

On March 20, 2007, the Committee on House Administration Subcommittee on Elections held its second hearing relating to the subject matter of H.R. 811 titled “Election Reform Hearing: Auditing.”

Members present: Subcommittee Chair Zoe Lofgren, Charlie Gonzalez, Susan Davis, Kevin McCarthy, and Vern Ehlers.

*Witnesses:*

Panel 1:

1. Ion Sancho—Supervisor of Elections, Leon County (FL)
2. Matt Damschroder—Director, Franklin County (OH) Board of Elections

Panel 2:

1. Candice Hoke—Director, Cleveland State University Center for Election Integrity
2. R. Doug Lewis—Executive Director, National Association of Election Officials
3. Lawrence Norden—Counsel, Brennan Center for Justice
4. Tammy Patrick—Federal Compliance Officer, Maricopa County (AZ) Elections Department
5. Pamela Smith—President, Verified Voter

On March 23, 2007, Committee on House Administration Subcommittee on Elections held its third hearing on matters relating to H.R. 811.

Members present: Subcommittee Chair Zoe Lofgren, Juanita Millender-McDonald, Charlie Gonzalez, Susan Davis, Kevin McCarthy, and Vern Ehlers.

*Witnesses:*

Panel 1:

1. The Honorable Charlie Crist, Governor of Florida

Panel 2:

1. The Honorable Rush Holt
2. The Honorable Tom Petri

Panel 3:

1. The Honorable Debra Bowen, Secretary of State of California
2. The Honorable Chris Nelson, Secretary of State of South Dakota

## Panel 4:

1. Tanya Clay House, Director of Public Policy, People for the American Way
2. George Gilbert, Director of Elections, Guilford County, North Carolina
3. Edward Felten, Ph.D., Professor of Computer Science and Public Affairs, Princeton University
4. Don Norris, Ph.D., Professor of Public Policy, University of Maryland, Baltimore County

## Panel 5:

1. Noel Runyan, President, Personal Data Systems
2. Dr. Harold Snider, Access for the Handicap, Inc.
3. Warren Stewart, Policy Director, VoteTrustUSA
4. Commissioner Gail W. Mahoney, Jackson County, Michigan; Chair, National Association of Counties

Also, full Committee Chairwoman Juanita Millender-McDonald and Ranking Member Vernon Ehlers hosted a voting machine forum on March 15, 2007, which gave Members of Congress and their staff an opportunity to learn more about voting systems first-hand. The companies in attendance were: Avante, Automark, Diebold Election Systems, Hart InterCivic, Inc., IVS—Vote by Phone, Perfect Voting System, Sequoia Voting Systems, Inc., Unisyn Voting Solutions.

Companies that were unable to attend but provided materials for distribution included: Election Systems and Software, Unilect Corporation, VoteHere, Inc.

## MARKUP

On Tuesday, May 8, 2007, the Committee met to mark up H.R. 811. The Committee favorably reported H.R. 811, as amended, by a recorded vote (6–3), a quorum being present.

## MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

## COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report. The first amendment introduced was an amendment in the nature of a substitute by Ms. Lofgren. All of the following votes, until the vote on the Lofgren substitute, were on amendments to the Lofgren substitute.

*Ehlers' Amendment to the Lofgren Substitute.*

The first recorded vote of the mark-up was on an amendment in the nature of a substitute to the Lofgren substitute offered by Mr. Ehlers. The amendment directs the EAC with the help of NIST to establish guidelines and standards for new Federal election equipment. The substitute also requires States to submit both audit plans and security implementation plans to the EAC that would be implemented in the states by the 2010 elections. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	—	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

*Record votes on additional amendments to the Lofgren Substitute*

The Committee then voted on Mr. Ehlers' Amendment #1, which would give election officials the choice of deciding what the official ballot of record should be in case of recount and audits. The vote was 3–6 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	6	—

The Committee then voted on Mr. Lungren's Amendment #1, which would allow states to continue the to use of electronic voting machines that use thermal paper in perpetuity. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	—	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. McCarthy's Amendment #1, which would allow states to continue use electronic voting machines not equipped with any voter verified paper ballots for early voting. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	—	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—

Member	Ayes	Noes	Present
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. Ehlers' Amendment #2, which would require states to submit audit plans to the Election Assistance Commission by the 2010 election cycle. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	—	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. Lungren's Amendment #2, which would allow states to continue the use of paperless electronic voting machines to comply with the disability access provisions of HAVA. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	—	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. Lungren's Amendment #3, which would remove the software code disclosure language entirely from the legislation. The vote was 3–6 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	6	—



The Committee then voted on Mr. McCarthy's Amendment #2, which would force voters to show government-issued photo identification at the polls by 2010. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	—	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. McCarthy's Amendment #3, which would require voters to show government-issued photo identification at the polls by 2010. If voters could not produce such identification, they must sign affidavits swearing to their identity. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	—	—
Mrs. Davis (CA) .....	—	X	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. Lungren's Amendment #4, which would remove the private right of action section of the legislation. The vote was 2–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	—	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	—	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	2	5	—

The Committee then voted on Mr. McCarthy's Amendment #4, which would suspend the requirements of the bill until the authorization amount is fully appropriated. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—

Member	Ayes	Noes	Present
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	—	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

The Committee then voted on Mr. Lungren’s Amendment #5, which would delay the implementation date until 2012. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	—	X	—
Ms. Lofgren .....	—	X	—
Mr. Capuano .....	—	X	—
Mr. Gonzalez .....	—	X	—
Mrs. Davis (CA) .....	—	—	—
Mr. Davis (AL) .....	—	X	—
Mr. Ehlers .....	X	—	—
Mr. Lungren .....	X	—	—
Mr. McCarthy .....	X	—	—
Total .....	3	5	—

#### *Lofgren Amendment in the nature of a substitute*

Offered by Ms. Lofgren. The substitute addresses a number of concerns that were raised by the minority, interest groups and other stakeholders during the timeframe between introduction of the original bill and the mark-up. For example, the amendment addresses many of the concerns regarding implementation dates and funding of the legislation. All jurisdictions that used any paper-ballot-based voting system in 2006, including thermal reel-to-reel systems and accessible systems that used a paper ballot in any manner have until the first election in 2010 to meet new requirements. Additionally, funding for the voting system requirements has been increased from \$300 million to \$1 billion. Furthermore, entities chosen by the State to conduct the audits must satisfy the requirements of “independence” set forth in the GAO’s “Government Accounting Standards.”

The Lofgren substitute changes the original bill in the following areas:

*Effective Date for New Requirements*—January 2008 deadline has been replaced with bifurcated deadline:

- All jurisdictions that used any paper-ballot-based voting system at all in 2006 (including thermal reel-to-reel systems and accessible systems that used a paper ballot in any manner) have until the first election in 2010 to meet new requirements;
- All jurisdictions that had no voter verified paper ballots at all in 2006 have until November 2008 to meet all of the requirements (and they are not entitled to a waiver).

*Funding for Voting System Requirements*—has been increased from \$300 million to \$1 billion.

*Ban on Internet connections*—has been expanded to include, in addition to devices upon which votes are cast, devices upon which votes are tabulated and ballots are programmed.

*Software disclosure*—the requirement that software be disclosed to any person has been replaced by a requirement that election-dedicated software be released to qualified persons who sign non-disclosure agreements protecting intellectual property rights and trade secrets.

*Extension of Authorization of EAC*—has been removed.

*Military and overseas voting*—overseas ballots are included in audits, but the requirement that the DOD and EAC develop protocols for treatment of paper ballots has been removed.

*Vote of Record language*—now provides that even if paper ballots have been demonstrated to have been compromised in numbers exceeding the margin of victory, “the electronic tally shall not be used as the exclusive basis for determining the official certified vote tally.”

*Audit Board*—The Audit Board has been removed, but it has been replaced with a requirement that the entity chosen by the State to conduct the audits satisfy the requirements of “independence” set forth in the GAO’s “Government Accounting Standards.”

*How many federal elections will be audited*—Unopposed elections and elections determined by more than an 80% margin of victory are not required to be audited.

*Audit procedures and ballot custody*—Audits must be conducted in the place where the ballots are stored and counted after the election, and in the presence of the ballot custodians.

*Funding for audits*—an explicit authorization of \$100 million annually has been added.

*Recounts that occur prior to certification (and might overlap with an audit)*—Section 327 requires that any pre-certification recount done instead of an audit be done by hand count of the paper ballots, and it has been expanded to provide that if the recount is not a 100% count, that at least as many ballots be counted, the selection of those ballots be just as random, the recount be just as publicly observable, and the results be published, all as is required of audits.

*Mandatory availability of paper ballots at the polls*—adds that any eligible voter shall be given the option by the election officials of casting a vote by a pre-printed paper ballot not produced by a direct recording electronic voting machine. The election officials shall, to the greatest extent practicable ensure that the waiting time to cast a vote on paper is not greater than the waiting period to cast a vote on a machine. It further requires the posting of notice regarding this right of voters to access the paper ballot, and additional poll worker training regarding this requirement. It exempts early voting, since voters exercising this option have a separate opportunity to access a paper ballot. The amendment takes effect in November 2010.

*Amendments to the Lofgren Substitute agreed to by voice vote*

The amendment offered by Mr. Capuano provides every voter voting in a polling place the opportunity to vote using a pre-printed paper ballot not produced by a direct recording electronic voting machine, regardless of the circumstance. It further requires the

posting of notice regarding the right of voters to access the paper ballot, and additional poll worker training regarding this requirement. It also exempts early voting, since voters exercising this option have a separate opportunity to access a paper ballot. The amendment takes effect in November 2010.

The amendment offered by Mr. Gonzalez makes two technical corrections to the Lofgren substitute. The first change, which was contemplated in an earlier version of the substitute, replaces the term “Commission” in a section where it should state “laboratory accredited under Section 231.” Mr. Gonzalez’s amendment also inserts the amended clause (iv) of Section 2(c)(1) of the substitute to read as follows: “(iv) At the request of the Commission—“(I) the appropriate election official shall submit information to the Commission regarding the State’s compliance with this subparagraph; and “(II) the manufacturer shall submit information to the Commission regarding the manufacturer’s compliance with this subparagraph.” Both are conforming changes that did nothing to affect the substance of the substitute

The Committee then voted on the amendment in the nature of a substitute, as amended, offered by Ms. Lofgren. The vote was 6–3 and the amendment was agreed to.

Member	Ayes	Noes	Present
Mr. Brady .....	X	—	—
Ms. Lofgren .....	X	—	—
Mr. Capuano .....	X	—	—
Mr. Gonzalez .....	X	—	—
Mrs. Davis (CA) .....	X	—	—
Mr. Davis (AL) .....	X	—	—
Mr. Ehlers .....	—	X	—
Mr. Lungren .....	—	X	—
Mr. McCarthy .....	—	X	—
Total .....	6	3	—

The Committee then voted to favorably report H.R. 811, as amended. The vote to report favorably was approved by a recorded vote (6–3).

Member	Ayes	Noes	Present
Mr. Brady .....	X	—	—
Ms. Lofgren .....	X	—	—
Mr. Capuano .....	X	—	—
Mr. Gonzalez .....	X	—	—
Mrs. Davis (CA) .....	X	—	—
Mr. Davis (AL) .....	X	—	—
Mr. Ehlers .....	—	X	—
Mr. Lungren .....	—	X	—
Mr. McCarthy .....	—	X	—
Total .....	6	3	—

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

representatives, are incorporated in the descriptive portions of this report.

#### GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 811 is to increase voter confidence in the election process by requiring an independent audit mechanism for all voting systems in Federal elections.

#### CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

#### EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI, H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007, does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

#### PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. H.R. 811 is intended to apply in all States and preempt laws to the contrary in their application to Federal elections.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

MAY 15, 2007.

HON. ROBERT A. BRADY,  
*Chairman, Committee on House Administration,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

PETER R. ORSZAG.

Enclosure.

*H.R. 811—Voter Confidence and Increased Accessibility Act of 2007*

Summary: H.R. 811 would amend the Help America Vote Act of 2002 to authorize the appropriation of more than \$1 billion for the

Election Assistance Commission (EAC) to provide grants to states to prepare permanent paper ballots for use in all federal elections beginning with the November 2008 federal election. H.R. 811 also would authorize the appropriation of \$100 million annually for states to audit the paper ballots. Finally, the legislation would authorize appropriations for the National Institute of Standards and Technology (NIST) and the National Science Foundation (NSF) to study voting technologies.

Assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing H.R. 811 would cost \$10 million in 2007 and \$1.3 billion over the 2007–2012 period. Enacting the bill would affect direct spending or revenues, however, CBO estimates that there would be no significant net budgetary impact from those effects each year. All provisions of H.R. 811 would be excluded from the Unfunded Mandates Reform Act (UMRA).

**Estimated cost to the Federal Government:** The estimated budgetary impact of H.R. 811 is shown in the following table. The costs of this legislation fall within budget functions 250 (general science, space, and technology), 370 (commerce and housing credit), and 800 (general government).

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>1</sup>						
Ballot Verification and Other Requirements:						
Authorization Level .....	1,000	0	0	0	0	0
Estimated Outlays .....	0	800	100	100	0	0
Audit Payments to States:						
Authorization Level .....	0	100	100	100	100	100
Estimated Outlays .....	0	60	40	60	40	60
Testing and Certification of Voting Systems:						
Estimated Authorization Level .....	0	10	5	5	5	5
Estimated Outlays .....	0	8	7	5	5	5
Other Reporting Provisions:						
Authorization Level .....	2	5	0	0	0	0
Estimated Outlays .....	0	4	3	0	0	0
Other Provisions:						
Estimated Authorization Level .....	0	10	8	8	9	9
Estimated Outlays .....	0	10	8	8	9	9
Total Proposed Changes:						
Estimated Authorization Level .....	1,002	125	113	113	114	114
Estimated Outlays .....	0	882	158	173	54	74

<sup>1</sup>H.R. 811 also would affect revenues and direct spending by authorizing an escrow account to collect fees from voting systems manufacturers and spend those fees to have testing laboratories verify the performance of the equipment. CBO estimates that the net budgetary impact of this activity would be insignificant each year.

**Basis of estimate:** For this estimate, CBO assumes that the bill will be enacted near the end of fiscal year 2007, that the necessary amounts will be appropriated each year, and that outlays will follow historical spending patterns for similar programs. CBO estimates that implementing H.R. 811 would cost \$1.3 billion over the 2008–2012 period, assuming appropriation of the specified and estimated amounts. (For this estimate, we assume that authorized 2007 funding would be provided late in the year, with no outlays until fiscal year 2008.)

#### *Ballot verification and other requirements*

H.R. 811 would authorize the appropriation of \$1 billion in fiscal year 2007 for grants to states to pay for the cost of providing a per-

manent paper record of each voter's ballot. Assuming appropriation of the authorized amounts, CBO estimates that implementing those provisions would cost \$1 billion over the 2008–2012 period (with no estimated outlays in 2007).

#### *Audit payments to States*

The bill would authorize the appropriation of \$100 million annually over the 2008–2012 period for payments to states to provide various audits of the paper ballots. This would include specific audit requirements for elections that are closely contested. Based on information from EAC, CBO expects that the audits would take place over a two-year period. Assuming appropriation of the authorized amounts, CBO estimates that implementing this provision would cost \$60 million in 2008 and \$260 million over the 2008–2012 period.

#### *Testing and certification of voting systems*

The bill would authorize the EAC to create a Testing Escrow Account that would be used by accredited laboratories to certify the performance of voting system hardware and software. The EAC would set a fee schedule for the voting equipment industry, receive fees from each manufacturer, and distribute the fees to laboratories to conduct testing. CBO expects that such fees would be recorded as federal revenues, and their expenditure would constitute direct spending. The net effect of those collections and their distribution would be insignificant in each year.

Based on information from the EAC, CBO expects that six laboratories would be accredited to test the equipment of 10 manufacturers. Assuming appropriation of the necessary amounts, CBO estimates that implementing this section would cost \$30 million over the 2008–2012 period for the EAC to administer the new program.

#### *Other reporting provisions*

H.R. 811 also would authorize the appropriation of \$3 million in fiscal year 2008 for the NIST to study and report to the Congress on ballot verification methods for individuals with disabilities and best practices for ballot auditing. In addition, the legislation would authorize the appropriation of \$1.5 million annually over the 2007–2008 period for the NSF to provide grants to study election voting software. Assuming appropriation of the specified amounts, CBO estimates that implementing those provisions would cost \$7 million over the 2008–2012 period.

#### *Other provisions*

Implementing H.R. 811 would increase the responsibilities of the EAC. The agency estimates that it would need more than 30 new staff primarily to oversee the certification of voting systems nationwide and to audit the new grant programs. CBO estimates that the additional staff and administrative requirements would cost \$45 million over the 2008–2012 period.

Intergovernmental and private-sector impact: Section 4 of UMRA excludes from the application of that act any legislative provisions that enforce the Constitutional rights of individuals. CBO has determined that the provisions of H.R. 811 would fall within that ex-

clusion because they would protect individuals' voting rights. Therefore, CBO has not reviewed this bill for mandates.

Estimate prepared by: Federal Costs: Matthew Pickford. Impact on State, local, and tribal governments: Elizabeth Cove. Impact on the private sector: Paige Piper-Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**HELP AMERICA VOTE ACT OF 2002**

\* \* \* \* \*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) \* \* \*

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

\* \* \* \* \*

**TITLE II—COMMISSION**

\* \* \* \* \*

**Subtitle C—Studies and Other Activities To Promote Effective Administration of Federal Elections**

Sec. 241. Periodic studies of election administration issues.

\* \* \* \* \*

Sec. 247. *Study and report on accessible ballot verification mechanisms.*

Sec. [247] 248. Consultation with Standards Board and Board of Advisors.

**Subtitle D—Election Assistance**

\* \* \* \* \*

**PART 7—GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE**

Sec. 297. *Grants for research on development of election-dedicated voting system software.*

\* \* \* \* \*

**TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS**

\* \* \* \* \*

**Subtitle C—Mandatory Manual Audits**

Sec. 321. *Requiring audits of results of elections.*

Sec. 322. *Number of ballots counted under audit.*

Sec. 323. *Process for administering audits.*

Sec. 324. *Selection of precincts.*

Sec. 325. *Publication of results.*

Sec. 326. *Payments to States.*

Sec. 327. *Exception for elections subject to recount under State law prior to certification.*

Sec. 328. *Effective date.*

\* \* \* \* \*



## TITLE II—COMMISSION

### Subtitle A—Establishment and General Organization

#### PART 1—ELECTION ASSISTANCE COMMISSION

\* \* \* \* \*

##### SEC. 205. POWERS.

(a) \* \* \*

\* \* \* \* \*

[(e) CONTRACTS.—The Commission may contract with and compensate persons and Federal agencies for supplies and services without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5).]

\* \* \* \* \*

### Subtitle B—Testing, Certification, Decertification, and Recertification of Voting System Hardware and Software

#### SEC. 231. CERTIFICATION AND TESTING OF VOTING SYSTEMS.

(a) CERTIFICATION AND TESTING.—

(1) IN GENERAL.—The Commission shall provide for the [testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories.] *testing of voting system hardware and software by accredited laboratories in connection with the certification, decertification, and recertification of the hardware and software for purposes of this Act.*

(2) OPTIONAL USE BY STATES.—At the option of a State, the State may provide for the [testing, certification, decertification, or recertification of its voting system hardware and software by the laboratories accredited by the Commission under this section.] *testing of its voting system hardware and software by the laboratories accredited by the Commission under this section in connection with certifying, decertifying, and recertifying the hardware and software.*

(b) LABORATORY ACCREDITATION.—

(1) RECOMMENDATIONS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—Not later than 6 months after the Commission first adopts voluntary voting system guidelines under part 3 of subtitle A, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the [testing, certification, decertification, and recertification] *testing* provided for under this section.

\* \* \* \* \*

(3) *PROHIBITING CONFLICTS OF INTEREST; ENSURING AVAILABILITY OF RESULTS.*—

(A) *IN GENERAL.*—A laboratory may not be accredited by the Commission for purposes of this section unless—

(i) the laboratory certifies that the only compensation it receives for the testing carried out in connection with the certification, decertification, and recertification of the manufacturer's voting system hardware and software is the payment made from the Testing Escrow Account under paragraph (4);

(ii) the laboratory meets such standards as the Commission shall establish (after notice and opportunity for public comment) to prevent the existence or appearance of any conflict of interest in the testing carried out by the laboratory under this section, including standards to ensure that the laboratory does not have a financial interest in the manufacture, sale, and distribution of voting system hardware and software, and is sufficiently independent from other persons with such an interest;

(iii) the laboratory certifies that it will permit an expert designated by the Commission to observe any testing the laboratory carries out under this section; and

(iv) the laboratory, upon completion of any testing carried out under this section, discloses the test protocols, results, and all communication between the laboratory and the manufacturer to the Commission.

(B) *AVAILABILITY OF RESULTS.*—Upon receipt of information under subparagraph (A), the Commission shall make the information available promptly to election officials and the public.

(4) *PROCEDURES FOR CONDUCTING TESTING; PAYMENT OF USER FEES FOR COMPENSATION OF ACCREDITED LABORATORIES.*—

(A) *ESTABLISHMENT OF ESCROW ACCOUNT.*—The Commission shall establish an escrow account (to be known as the "Testing Escrow Account") for making payments to accredited laboratories for the costs of the testing carried out in connection with the certification, decertification, and recertification of voting system hardware and software.

(B) *SCHEDULE OF FEES.*—In consultation with the accredited laboratories, the Commission shall establish and regularly update a schedule of fees for the testing carried out in connection with the certification, decertification, and recertification of voting system hardware and software, based on the reasonable costs expected to be incurred by the accredited laboratories in carrying out the testing for various types of hardware and software.

(C) *REQUESTS AND PAYMENTS BY MANUFACTURERS.*—A manufacturer of voting system hardware and software may not have the hardware or software tested by an accredited laboratory under this section unless—

(i) the manufacturer submits a detailed request for the testing to the Commission; and

(ii) the manufacturer pays to the Commission, for deposit into the Testing Escrow Account established under subparagraph (A), the applicable fee under the schedule established and in effect under subparagraph (B).

(D) SELECTION OF LABORATORY.—Upon receiving a request for testing and the payment from a manufacturer required under subparagraph (C), the Commission shall select at random (to the greatest extent practicable), from all laboratories which are accredited under this section to carry out the specific testing requested by the manufacturer, an accredited laboratory to carry out the testing.

(E) PAYMENTS TO LABORATORIES.—Upon receiving a certification from a laboratory selected to carry out testing pursuant to subparagraph (D) that the testing is completed, along with a copy of the results of the test as required under paragraph (3)(A)(iv), the Commission shall make a payment to the laboratory from the Testing Escrow Account established under subparagraph (A) in an amount equal to the applicable fee paid by the manufacturer under subparagraph (C)(ii).

(5) DISSEMINATION OF ADDITIONAL INFORMATION ON ACCREDITED LABORATORIES.—

(A) INFORMATION ON TESTING.—Upon completion of the testing of a voting system under this section, the Commission shall promptly disseminate to the public the identification of the laboratory which carried out the testing.

(B) INFORMATION ON STATUS OF LABORATORIES.—The Commission shall promptly notify Congress, the chief State election official of each State, and the public whenever—

(i) the Commission revokes, terminates, or suspends the accreditation of a laboratory under this section;

(ii) the Commission restores the accreditation of a laboratory under this section which has been revoked, terminated, or suspended; or

(iii) the Commission has credible evidence of significant security failure at an accredited laboratory.

\* \* \* \* \*

(d) TRANSITION.—Until such time as the Commission provides for the [testing, certification, decertification, and recertification] testing of voting system hardware and software by accredited laboratories under this section, the accreditation of laboratories and the procedure for the [testing, certification, decertification, and recertification] testing of voting system hardware and software used as of the date of the enactment of this Act shall remain in effect.

## Subtitle C—Studies and Other Activities To Promote Effective Administration of Federal Elections

\* \* \* \* \*

**SEC. 247. STUDY AND REPORT ON ACCESSIBLE BALLOT VERIFICATION MECHANISMS.**

(a) *STUDY AND REPORT.*—The Director of the National Institute of Standards and Technology shall study, test, and develop best practices to enhance the accessibility of ballot verification mechanisms for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including best practices for the mechanisms themselves and the processes through which the mechanisms are used. In carrying out this section, the Director shall specifically investigate existing and potential methods or devices, including non-electronic devices, that will assist such individuals and voters in creating voter-verified paper ballots and presenting or transmitting the information printed or marked on such ballots back to such individuals and voters.

(b) *COORDINATION WITH GRANTS FOR TECHNOLOGY IMPROVEMENTS.*—The Director shall coordinate the activities carried out under subsection (a) with the research conducted under the grant program carried out by the Commission under section 271, to the extent that the Director and Commission determine necessary to provide for the advancement of accessible voting technology.

(c) *DEADLINE.*—The Director shall complete the requirements of subsection (a) not later than December 31, 2008.

(d) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to carry out subsection (a) \$3,000,000, to remain available until expended.

**SEC. [247] 248. CONSULTATION WITH STANDARDS BOARD AND BOARD OF ADVISORS.**

The Commission shall carry out its duties under this subtitle in consultation with the Standards Board and the Board of Advisors.

**Subtitle D—Election Assistance**

**PART 1—REQUIREMENTS PAYMENTS**

**SEC. 251. REQUIREMENTS PAYMENTS.**

(a) \* \* \*

\* \* \* \* \*

(c) **RETROACTIVE PAYMENTS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of this subtitle, including the maintenance of effort requirements of section 254(a)(7), a State may use a requirements payment as a reimbursement for costs incurred in obtaining voting equipment which meets the requirements of section 301 if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000[.], or as a reimbursement for any costs incurred in meeting the requirements of title III which are imposed pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007 or in otherwise modifying or replacing voting systems in response to such amendments.

\* \* \* \* \*

**SEC. 252. ALLOCATION OF FUNDS.**

(a) \* \* \*

[(b) STATE ALLOCATION PERCENTAGE DEFINED.—The “State allocation percentage” for a State is the amount (expressed as a percentage) equal to the quotient of—

[(1) the voting age population of the State (as reported in the most recent decennial census); and

[(2) the total voting age population of all States (as reported in the most recent decennial census).]

(b) STATE ALLOCATION PERCENTAGE DEFINED.—

(1) IN GENERAL.—*Except as provided in paragraph (2), the “State allocation percentage” for a State is the amount (expressed as a percentage) equal to the quotient of—*

(A) *the voting age population of the State (as reported in the most recent decennial census); and*

(B) *the total voting age population of all States (as reported in the most recent decennial census).*

(2) SPECIAL RULE FOR PAYMENTS FOR FISCAL YEAR 2007.—

(A) IN GENERAL.—*In the case of the requirements payment made to a State for fiscal year 2007, the “State allocation percentage” for a State is the amount (expressed as a percentage) equal to the quotient of—*

(i) *the sum of the number of noncompliant precincts in the State and 50% of the number of partially noncompliant precincts in the State; and*

(ii) *the sum of the number of noncompliant precincts in all States and 50% of the number of partially noncompliant precincts in all States.*

(B) NONCOMPLIANT PRECINCT DEFINED.—*In this paragraph, a “noncompliant precinct” means any precinct (or equivalent location) within a State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2006 did not meet either of the requirements described in subparagraph (D).*

(C) PARTIALLY NONCOMPLIANT PRECINCT DEFINED.—*In this paragraph, a “partially noncompliant precinct” means any precinct (or equivalent location) within a State for which the voting system used to administer the regularly scheduled general election for Federal office held in November 2006 met only one of the requirements described in subparagraph (D).*

(D) REQUIREMENTS DESCRIBED.—*The requirements described in this subparagraph with respect to a voting system are as follows:*

(i) *The primary voting system required the use of or produced durable paper ballots (as described in section 301(a)(12)(A)) for every vote cast.*

(ii) *The voting system provided that the entire process of paper ballot verification was equipped for individuals with disabilities.*

(c) MINIMUM AMOUNT OF PAYMENT.—*The amount of a requirements payment made to a State for a year may not be less than—*

(1) *in the case of any of the several States or the District of Columbia, one-half of 1 percent (or, in the case of the payment made for fiscal year 2007, 1 percent) of the total amount appro-*

appropriated for requirements payments for the year under section 257; or

(2) in the case of the Commonwealth of Puerto Rico, Guam, American Samoa, or the United States Virgin Islands, one-tenth of 1 percent (*or, in the case of the payment made for fiscal year 2007, one-half of 1 percent*) of such total amount.

\* \* \* \* \*

**SEC. 253. CONDITION FOR RECEIPT OF FUNDS.**

(a) **IN GENERAL.**—[A State is eligible] *Except as provided in subsection (f), a State is eligible to receive a requirements payment for a fiscal year if the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official, has filed with the Commission a statement certifying that the State is in compliance with the requirements referred to in subsection (b). A State may meet the requirement of the previous sentence by filing with the Commission a statement which reads as follows: “\_\_\_\_\_ hereby certifies that it is in compliance with the requirements referred to in section 253(b) of the Help America Vote Act of 2002.”* (with the blank to be filled in with the name of the State involved).

\* \* \* \* \*

*(f) SPECIAL RULE FOR FISCAL YEAR 2007.—*

*(1) IN GENERAL.—Notwithstanding any other provision of this part, a State is eligible to receive a requirements payment for fiscal year 2007 if, not later than 90 days after the date of the enactment of the Voter Confidence and Increased Accessibility Act of 2007, the chief executive officer of the State, or designee, in consultation and coordination with the chief State election official—*

*(A) certifies to the Commission the number of noncompliant and partially noncompliant precincts in the State (as defined in section 252(b)(2)); and*

*(B) files a statement with the Commission describing the State’s need for the payment and how the State will use the payment to meet the requirements of title III (in accordance with the limitations applicable to the use of the payment under section 257(a)(4)).*

*(2) CERTIFICATIONS BY STATES THAT REQUIRE CHANGES TO STATE LAW.—In the case of a State that requires State legislation to carry out any activity covered by any certification submitted under this subsection, the State shall be permitted to make the certification notwithstanding that the legislation has not been enacted at the time the certification is submitted and such State shall submit an additional certification once such legislation is enacted.*

\* \* \* \* \*

**SEC. 257. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—In addition to amounts transferred under section 104(c), there are authorized to be appropriated for requirements payments under this part the following amounts:

(1) \* \* \*

\* \* \* \* \*

(4) For fiscal year 2007, \$1,000,000,000, except that any funds provided under the authorization made by this paragraph shall be used by a State only to meet the requirements of title III which are first imposed on the State pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007, or to otherwise modify or replace its voting systems in response to such amendments.

\* \* \* \* \*

## **PART 7—GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE**

### **SEC. 297. GRANTS FOR RESEARCH ON DEVELOPMENT OF ELECTION-DEDICATED VOTING SYSTEM SOFTWARE.**

(a) *IN GENERAL.*—The Director of the National Science Foundation (hereafter in this part referred to as the “Director”) shall make grants to not fewer than 3 eligible entities to conduct research on the development of election-dedicated voting system software.

(b) *ELIGIBILITY.*—An entity is eligible to receive a grant under this part if it submits to the Director (at such time and in such form as the Director may require) an application containing—

(1) certifications regarding the benefits of operating voting systems on election-dedicated software which is easily understandable and which is written exclusively for the purpose of conducting elections;

(2) certifications that the entity will use the funds provided under the grant to carry out research on how to develop voting systems that run on election-dedicated software and that will meet the applicable requirements for voting systems under title III; and

(3) such other information and certifications as the Director may require.

(c) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated for grants under this part \$1,500,000 for each of fiscal years 2007 and 2008, to remain available until expended.

## **TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS**

### **Subtitle A—Requirements**

#### **SEC. 301. VOTING SYSTEMS STANDARDS.**

(a) *REQUIREMENTS.*—Each voting system used in an election for Federal office shall meet the following requirements:

(1) *IN GENERAL.*—

(A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall—

(i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and **counted** *counted, in accordance with paragraphs (2) and (3)*;

(ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and **counted** *counted, in accordance with paragraphs (2) and (3)* (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and

(iii) if the voter selects votes for more than one candidate for a single office—

(I) notify the voter that the voter has selected more than one candidate for a single office on the ballot;

(II) notify the voter before the ballot is cast and **counted** *counted, in accordance with paragraphs (2) and (3)* of the effect of casting multiple votes for the office; and

(III) provide the voter with the opportunity to correct the ballot before the ballot is cast and **counted** *counted, in accordance with paragraphs (2) and (3)*.

(B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(iii) by—

(i) \* \* \*

(ii) providing the voter with instructions on how to correct the ballot before it is cast and **counted** *counted, in accordance with paragraphs (2) and (3)* (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error).

\* \* \* \* \*

**[(2) AUDIT CAPACITY.—**

**[(A) IN GENERAL.—**The voting system shall produce a record with an audit capacity for such system.

**[(B) MANUAL AUDIT CAPACITY.—**

**[(i)** The voting system shall produce a permanent paper record with a manual audit capacity for such system.

**[(ii)** The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

**[(iii)** The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.]

**(2) BALLOT VERIFICATION AND AUDIT CAPACITY.—**

**(A) VOTER-VERIFIED PAPER BALLOTS.—**



(i) *VERIFICATION.*—(I) *The voting system shall require the use of or produce an individual, durable, voter-verified paper ballot of the voter’s vote that shall be created by or made available for inspection and verification by the voter before the voter’s vote is cast and counted. For purposes of this subclause, examples of such a ballot include a paper ballot marked by the voter for the purpose of being counted by hand or read by an optical scanner or other similar device, a paper ballot prepared by the voter to be mailed to an election official (whether from a domestic or overseas location), a paper ballot created through the use of a ballot marking device or system, or a paper ballot produced by a touch screen or other electronic voting machine, so long as in each case the voter is permitted to verify the ballot in a paper form in accordance with this subparagraph.*

(II) *The voting system shall provide the voter with an opportunity to correct any error made by the system in the voter-verified paper ballot before the permanent voter-verified paper ballot is preserved in accordance with clause (ii).*

(III) *The voting system shall not preserve the voter-verified paper ballots in any manner that makes it possible, at any time after the ballot has been cast, to associate a voter with the record of the voter’s vote.*

(ii) *PRESERVATION.*—*The individual, durable voter-verified paper ballot produced in accordance with clause (i) shall be used as the official ballot for purposes of any recount or audit conducted with respect to any election for Federal office in which the voting system is used, and shall be preserved—*

(I) *in the case of votes cast at the polling place on the date of the election, within the polling place in the manner or method in which all other paper ballots are preserved within such polling place on such date; or*

(II) *in any other case, in a manner which is consistent with the manner employed by the jurisdiction for preserving such ballots in general.*

(iii) *MANUAL AUDIT CAPACITY.*—(I) *Each paper ballot produced pursuant to clause (i) shall be suitable for a manual audit equivalent to that of a paper ballot voting system, and shall be counted by hand in any recount or audit conducted with respect to any election for Federal office.*

(II) *In the event of any inconsistencies or irregularities between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable voter-verified paper ballots produced pursuant to clause (i), and subject to subparagraph (B), the individual, durable voter-verified paper ballots shall be the true and correct record of the votes cast.*

(B) *SPECIAL RULE FOR TREATMENT OF DISPUTES WHEN PAPER BALLOTS HAVE BEEN SHOWN TO BE COMPROMISED.*—

(i) *IN GENERAL.—In the event that—*

*(I) there is any inconsistency between any electronic vote tallies and the vote tallies determined by counting by hand the individual, durable voter-verified paper ballots produced pursuant to subparagraph (A)(i) with respect to any election for Federal office; and*

*(II) it is demonstrated by clear and convincing evidence (as determined in accordance with the applicable standards in the jurisdiction involved) in any recount, audit, or contest of the result of the election that the paper ballots have been compromised (by damage or mischief or otherwise) and that a sufficient number of the ballots have been so compromised that the result of the election could be changed,*

*the determination of the appropriate remedy with respect to the election shall be made in accordance with applicable State law, except that the electronic tally shall not be used as the exclusive basis for determining the official certified vote tally.*

*(ii) RULE FOR CONSIDERATION OF BALLOTS ASSOCIATED WITH EACH VOTING MACHINE.—For purposes of clause (i), the paper ballots associated with each voting system shall be considered on a voting-machine-by-voting-machine basis, and only the paper ballots deemed compromised, if any, shall be considered in the calculation of whether or not the result of the election could be changed due to the compromised paper ballots.*

(3) **ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES.—**The voting system shall—

(A) \* \* \*

**[(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and]**

*(B)(i) satisfy the requirement of subparagraph (A) through the use of at least one voting system equipped for individuals with disabilities at each polling place; and*

*(ii) meet the requirements of subparagraph (A) and paragraph (2)(A) by using a system that—*

*(I) allows the voter to privately and independently verify the individual, durable paper ballot through the conversion of the human-readable printed or marked vote selections into accessible form,*

*(II) ensures that the entire process of ballot verification and vote casting is equipped for individuals with disabilities, and*

*(III) does not preclude the supplementary use of Braille or tactile ballots; and*

\* \* \* \* \*

(4) **ALTERNATIVE LANGUAGE ACCESSIBILITY.—**The voting system *(including the paper ballots required to be produced under paragraph (2) and the notices required under paragraphs (7) and (13)(C))* shall provide alternative language accessibility

pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).

\* \* \* \* \*

(7) *INSTRUCTION REMINDING VOTERS OF IMPORTANCE OF VERIFYING PAPER BALLOT.—*

(A) *IN GENERAL.—The appropriate election official at each polling place shall cause to be placed in a prominent location in the polling place which is clearly visible from the voting booths a notice, in large font print accessible to the visually impaired, advising voters that the paper ballots representing their votes shall serve as the vote of record in all audits and recounts in elections for Federal office, and that they should not leave the voting booth until confirming that such paper ballots accurately record their vote.*

(B) *SYSTEMS FOR INDIVIDUALS WITH DISABILITIES.—All voting systems equipped for individuals with disabilities shall present or transmit in accessible form the statement referred to in subparagraph (A), as well as an explanation of the verification process described in paragraph (3)(B)(ii).*

(8) *PROHIBITING USE OF UNCERTIFIED ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGIES; DISCLOSURE REQUIREMENTS.—*

(A) *IN GENERAL.—A voting system used in an election for Federal office in a State may not at any time during the election contain or use any election-dedicated voting system technology which has not been certified by the State for use in the election and which has not been deposited with an accredited laboratory described in section 231 to be held in escrow and disclosed in accordance with this section.*

(B) *REQUIREMENT FOR AND RESTRICTIONS ON DISCLOSURE.—An accredited laboratory under section 231 with whom an election-dedicated voting system technology has been deposited shall—*

- (i) hold the technology in escrow; and*
- (ii) disclose technology and information regarding the technology to another person if—*

*(I) the person is a qualified person described in subparagraph (C) who has entered into a non-disclosure agreement with respect to the technology which meets the requirements of subparagraph (D); or*

*(II) the laboratory is required to disclose the technology to the person under State law, in accordance with the terms and conditions applicable under such law.*

(C) *QUALIFIED PERSONS DESCRIBED.—With respect to the disclosure of election-dedicated voting system technology by a laboratory under subparagraph (B)(ii)(I), a “qualified person” is any of the following:*

*(i) A governmental entity with responsibility for the administration of voting and election-related matters for purposes of reviewing, analyzing, or reporting on the technology.*

*(ii) A party to pre- or post-election litigation challenging the result of an election or the administration or use of the technology used in an election, including*

but not limited to election contests or challenges to the certification of the technology, or an expert for a party to such litigation, for purposes of reviewing or analyzing the technology to support or oppose the litigation, and all parties to the litigation shall have access to the technology for such purposes.

(iii) A person not described in clause (i) or (ii) who reviews, analyzes, or reports on the technology solely for an academic, scientific, technological, or other investigation or inquiry concerning the accuracy or integrity of the technology.

**(D) REQUIREMENTS FOR NONDISCLOSURE AGREEMENTS.—**

A nondisclosure agreement entered into with respect to an election-dedicated voting system technology meets the requirements of this subparagraph if the agreement—

(i) is limited in scope to coverage of the technology disclosed under subparagraph (B) and any trade secrets and intellectual property rights related thereto;

(ii) does not prohibit a signatory from entering into other nondisclosure agreements to review other technologies under this paragraph;

(iii) exempts from coverage any information the signatory lawfully obtained from another source or any information in the public domain;

(iv) remains in effect for not longer than the life of any trade secret or other intellectual property right related thereto;

(v) prohibits the use of injunctions barring a signatory from carrying out any activity authorized under subparagraph (C), including injunctions limited to the period prior to a trial involving the technology;

(vi) is silent as to damages awarded for breach of the agreement, other than a reference to damages available under applicable law;

(vii) allows disclosure of evidence of crime, including in response to a subpoena or warrant;

(viii) allows the signatory to perform analyses on the technology (including by executing the technology), disclose reports and analyses that describe operational issues pertaining to the technology (including vulnerabilities to tampering, errors, risks associated with use, failures as a result of use, and other problems), and describe or explain why or how a voting system failed or otherwise did not perform as intended; and

(ix) provides that the agreement shall be governed by the trade secret laws of the applicable State.

**(E) ELECTION-DEDICATED VOTING SYSTEM TECHNOLOGY DEFINED.—**For purposes of this paragraph, “election-dedicated voting system technology” means “voting system software” as defined under the 2005 voluntary voting system guidelines adopted by the Commission under section 222, but excludes “commercial-off-the-shelf” software and hardware defined under those guidelines.

(9) *PROHIBITION OF USE OF WIRELESS COMMUNICATIONS DEVICES IN VOTING SYSTEMS.*—No voting system shall contain, use, or be accessible by any wireless, power-line, or concealed communication device, except that enclosed infrared communications devices which are certified for use in the voting system by the State and which cannot be used for any remote or wide area communications or used without the knowledge of poll workers shall be permitted.

(10) *PROHIBITING CONNECTION OF SYSTEM OR TRANSMISSION OF SYSTEM INFORMATION OVER THE INTERNET.*—No component of any voting device upon which ballots are programmed or votes are cast or tabulated shall be connected to the Internet at any time.

(11) *SECURITY STANDARDS FOR VOTING SYSTEMS USED IN FEDERAL ELECTIONS.*—

(A) *IN GENERAL.*—No voting system may be used in an election for Federal office unless the manufacturer of such system and the election officials using such system meet the applicable requirements described in subparagraph (B).

(B) *REQUIREMENTS DESCRIBED.*—The requirements described in this subparagraph are as follows:

(i) The manufacturer and the election officials shall document the secure chain of custody for the handling of all software, hardware, vote storage media, ballots, and voter-verified ballots used in connection with voting systems, and shall make the information available upon request to the Commission.

(ii) The manufacturer shall disclose to an accredited laboratory under section 231 and to the appropriate election official any information required to be disclosed under paragraph (8).

(iii) After the appropriate election official has certified the election-dedicated and other voting system software for use in an election, the manufacturer may not—

(I) alter such software; or

(II) insert or use in the voting system any software not certified by the State for use in the election.

(iv) At the request of the Commission—

(I) the appropriate election official shall submit information to the Commission regarding the State's compliance with this subparagraph; and

(II) the manufacturer shall submit information to the Commission regarding the manufacturer's compliance with this subparagraph.

(C) *DEVELOPMENT AND PUBLICATION OF BEST PRACTICES ON DOCUMENTATION OF SECURE CHAIN OF CUSTODY.*—Not later than August 1, 2008, the Commission shall develop and make publicly available best practices regarding the requirement of subparagraph (B)(i).

(D) *DISCLOSURE OF SECURE CHAIN OF CUSTODY.*—The Commission shall make information provided to the Commission under subparagraph (B)(i) available to any person upon request.

(12) DURABILITY AND READABILITY REQUIREMENTS FOR BALLOTS.—

(A) DURABILITY REQUIREMENTS FOR PAPER BALLOTS.—

(i) IN GENERAL.—All voter-verified paper ballots required to be used under this Act (including the paper ballots provided to voters under paragraph (13)) shall be marked, printed, or recorded on durable paper.

(ii) DEFINITION.—For purposes of this Act, paper is “durable” if it is capable of withstanding multiple counts and recounts by hand without compromising the fundamental integrity of the ballots, and capable of retaining the information marked, printed, or recorded on them for the full duration of a retention and preservation period of 22 months.

(B) READABILITY REQUIREMENTS FOR MACHINE-MARKED OR PRINTED PAPER BALLOTS.—All voter-verified paper ballots completed by the voter through the use of a marking or printing device shall be clearly readable by the voter without assistance (other than eyeglasses or other personal vision enhancing devices) and by a scanner or other device equipped for individuals with disabilities.

(13) MANDATORY AVAILABILITY OF PAPER BALLOTS AT POLLING PLACE.—

(A) REQUIRING BALLOTS TO BE OFFERED AND PROVIDED.—

The appropriate election official at each polling place in an election for Federal office shall offer each individual who is eligible to cast a vote in the election at the polling place the opportunity to cast the vote using a pre-printed paper ballot which the individual may mark by hand and which is not produced by a direct recording electronic voting machine. If the individual accepts the offer to cast the vote using such a ballot, the official shall provide the individual with the ballot and the supplies necessary to mark the ballot, and shall ensure (to the greatest extent practicable) that the waiting period for the individual to cast a vote is not greater than the waiting period for an individual who does not agree to cast the vote using such a paper ballot under this paragraph.

(B) TREATMENT OF BALLOT.—Any paper ballot which is cast by an individual under this paragraph shall be counted and otherwise treated as a regular ballot for all purposes (including, to the greatest extent practicable, the deadline for counting the ballot) and not as a provisional ballot, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot if the individual had not accepted the offer to cast the vote using a paper ballot under this paragraph.

(C) POSTING OF NOTICE.—The appropriate election official shall ensure that at each polling place a notice is displayed prominently which describes the obligation of the official to offer individuals the opportunity to cast votes using a pre-printed paper ballot under this paragraph.

(D) TRAINING OF ELECTION OFFICIALS.—The chief State election official shall ensure that election officials at polling places in the State are aware of the requirements of this

paragraph, including the requirement to display a notice under subparagraph (C), and are aware that it is a violation of the requirements of this title for an election official to fail to offer an individual the opportunity to cast a vote using a pre-printed paper ballot under this paragraph.

(E) *EXCEPTIONS.*—This paragraph does not apply with respect to—

(i) a polling place at which each voting system used in the administration of an election for Federal office uses only pre-printed paper ballots which are marked by hand and which are not produced by a direct recording electronic voting machine (other than a system used to meet the disability access requirements of paragraph (3)); or

(ii) a polling place in operation prior to the date of the election, but only with respect to days prior to the date of the election.

(F) *EFFECTIVE DATE.*—This paragraph shall apply with respect to the regularly scheduled general election for Federal office in November 2010 and each succeeding election for Federal office.

\* \* \* \* \*

[(d) *EFFECTIVE DATE.*—Each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.]

(d) *EFFECTIVE DATE.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006.

(2) *SPECIAL RULE FOR CERTAIN REQUIREMENTS.*—

(A) *IN GENERAL.*—Except as provided in subparagraph (B), the requirements of this section which are first imposed on a State and jurisdiction pursuant to the amendments made by section 2 of the Voter Confidence and Increased Accessibility Act of 2007 shall apply with respect to the regularly scheduled general election for Federal office held in November 2008 and each succeeding election for Federal office.

(B) *DELAY FOR JURISDICTIONS USING CERTAIN PAPER BALLOT PRINTERS OR CERTAIN PAPER BALLOT-EQUIPPED ACCESSIBLE MACHINES IN 2006.*—

(i) *DELAY.*—In the case of a jurisdiction described in clause (ii), subparagraph (A) shall apply to the jurisdiction as if the reference in such subparagraph to “the regularly scheduled general election for Federal office held in November 2008 and each succeeding election for Federal office” were a reference to “elections for Federal office occurring during 2010 and each succeeding year”, but only with respect to the following requirements of this section:

(I) Paragraph (3)(B)(ii)(I) and (II) of subsection (a) (relating to access to verification from the durable paper ballot).

(II) Paragraph (12) of subsection (a) (relating to durability and readability requirements for ballots).

(ii) JURISDICTIONS DESCRIBED.—A jurisdiction described in this clause is—

(I) a jurisdiction which used thermal reel-to-reel voter verified paper ballot printers attached to direct recording electronic voting machines for the administration of the regularly scheduled general election for Federal office held in November 2006 and which will continue to use such printers attached to such voting machines for the administration of elections for Federal office held in 2008; or

(II) a jurisdiction which used voting machines which met the accessibility requirements of paragraph (3) of subsection (a) (as in effect with respect to such election) for the administration of the regularly scheduled general election for Federal office held in November 2006 and which used or produced a paper ballot, and which will continue to use such voting machines for the administration of elections for Federal office held in 2008.

\* \* \* \* \*

## **Subtitle C—Mandatory Manual Audits**

### **SEC. 321. REQUIRING AUDITS OF RESULTS OF ELECTIONS.**

(a) REQUIRING AUDITS.—

(1) IN GENERAL.—In accordance with this subtitle, each State shall administer, without advance notice to the precincts selected, audits of the results of elections for Federal office held in the State (and, at the option of the State or jurisdiction involved, of elections for State and local office held at the same time as such election) consisting of random hand counts of the voter-verified paper ballots required to be produced and preserved pursuant to section 301(a)(2).

(2) EXCEPTION FOR CERTAIN ELECTIONS.—A State shall not be required to administer an audit of the results of an election for Federal office under this subtitle if the winning candidate in the election—

(A) had no opposition on the ballot; or

(B) received 80% or more of the total number of votes cast in the election, as determined on the basis of the final unofficial vote count.

(b) DETERMINATION OF ENTITY CONDUCTING AUDITS; APPLICATION OF GAO INDEPENDENCE STANDARDS.—The State shall administer audits under this subtitle through an entity selected for such purpose by the State in accordance with such criteria as the State considers appropriate consistent with the requirements of this subtitle, except that the entity must meet the general standards established by the Comptroller General to ensure the independence (including the organizational independence) of entities performing financial audits, attestation engagements, and performance audits under generally accepted government accounting standards.



(c) *REFERENCES TO ELECTION AUDITOR.*—In this subtitle, the term “Election Auditor” means, with respect to a State, the entity selected by the State under subsection (b).

**SEC. 322. NUMBER OF BALLOTS COUNTED UNDER AUDIT.**

(a) *IN GENERAL.*—Except as provided in subsection (b), the number of voter-verified paper ballots which will be subject to a hand count administered by the Election Auditor of a State under this subtitle with respect to an election shall be determined as follows:

(1) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is less than 1 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 10 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

(2) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is greater than or equal to 1 percent but less than 2 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 5 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

(3) In the event that the unofficial count as described in section 323(a)(1) reveals that the margin of victory between the two candidates receiving the largest number of votes in the election is equal to or greater than 2 percent of the total votes cast in that election, the hand counts of the voter-verified paper ballots shall occur in at least 3 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under subsection (b)) in the Congressional district involved (in the case of an election for the House of Representatives) or the State (in the case of any other election for Federal office).

(b) *USE OF ALTERNATIVE MECHANISM.*—Notwithstanding subsection (a), a State may adopt and apply an alternative mechanism to determine the number of voter-verified paper ballots which will be subject to the hand counts required under this subtitle with respect to an election, so long as the alternative mechanism uses the voter-verified paper ballots to conduct the audit and the National Institute of Standards and Technology determines that the alternative mechanism will be at least as statistically effective in ensuring the accuracy of the election results as the procedure under this subtitle.

**SEC. 323. PROCESS FOR ADMINISTERING AUDITS.**

(a) *IN GENERAL.*—The Election Auditor of a State shall administer an audit under this section of the results of an election in accordance with the following procedures:

(1) *Within 24 hours after the State announces the final unofficial vote count (as defined by the State) in each precinct in the State, the Election Auditor shall determine and then announce the precincts in the State in which it will administer the audits.*

(2) *With respect to votes cast at the precinct or equivalent location on or before the date of the election (other than provisional ballots described in paragraph (3)), the Election Auditor shall administer the hand count of the votes on the voter-verified paper ballots required to be produced and preserved under section 301(a)(2)(A) and the comparison of the count of the votes on those ballots with the final unofficial count of such votes as announced by the State.*

(3) *With respect to votes cast other than at the precinct on the date of the election (other than votes cast before the date of the election described in paragraph (2)) or votes cast by provisional ballot on the date of the election which are certified and counted by the State on or after the date of the election, including votes cast by absent uniformed services voters and overseas voters under the Uniformed and Overseas Citizens Absentee Voting Act, the Election Auditor shall administer the hand count of the votes on the applicable voter-verified paper ballots required to be produced and preserved under section 301(a)(2)(A) and the comparison of the count of the votes on those ballots with the final unofficial count of such votes as announced by the State.*

(b) *USE OF ELECTION PERSONNEL.—In administering the audits, the Election Auditor may utilize the services of election administration personnel of the State or jurisdiction, including poll workers, without regard to whether or not the personnel have professional auditing experience.*

(c) *LOCATION.—The Election Auditor shall administer an audit of an election at the location where the ballots cast in the election are stored and counted after the date of the election, and in the presence of those personnel who under State law are responsible for the custody of the ballots.*

(d) *SPECIAL RULE IN CASE OF DELAY IN REPORTING ABSENTEE VOTE COUNT.—In the case of a State in which the final count of absentee and provisional votes is not announced until after the expiration of the 7-day period which begins on the date of the election, the Election Auditor shall initiate the process described in subsection (a) for administering the audit not later than 24 hours after the State announces the final unofficial vote count for the votes cast at the precinct or equivalent location on or before the date of the election, and shall initiate the administration of the audit of the absentee and provisional votes pursuant to subsection (a)(3) not later than 24 hours after the State announces the final unofficial count of such votes.*

(e) *ADDITIONAL AUDITS IF CAUSE SHOWN.—*

(1) *IN GENERAL.—If the Election Auditor finds that any of the hand counts administered under this section do not match the final unofficial tally of the results of an election, the Election Auditor shall administer hand counts under this section of such additional precincts (or equivalent jurisdictions) as the Election Auditor considers appropriate to resolve any concerns resulting from the audit and ensure the accuracy of the results.*

(2) *ESTABLISHMENT AND PUBLICATION OF PROCEDURES GOVERNING ADDITIONAL AUDITS.*—Not later than August 1, 2008, each State shall establish and publish procedures for carrying out the additional audits under this subsection, including the means by which the State shall resolve any concerns resulting from the audit with finality and ensure the accuracy of the results.

(f) *PUBLIC OBSERVATION OF AUDITS.*—Each audit conducted under this section shall be conducted in a manner that allows public observation of the entire process.

**SEC. 324. SELECTION OF PRECINCTS.**

(a) *IN GENERAL.*—Except as provided in subsection (c), the selection of the precincts in the State in which the Election Auditor of the State shall administer the hand counts under this subtitle shall be made by the Election Auditor on an entirely random basis using a uniform distribution in which all precincts in a Congressional district have an equal chance of being selected, in accordance with procedures adopted by the Commission, except that at least one precinct shall be selected at random in each county.

(b) *PUBLIC SELECTION.*—The random selection of precincts under subsection (a) shall be conducted in public, at a time and place announced in advance.

(c) *MANDATORY SELECTION OF PRECINCTS ESTABLISHED SPECIFICALLY FOR ABSENTEE BALLOTS.*—If a State establishes a separate precinct for purposes of counting the absentee ballots cast in an election and treats all absentee ballots as having been cast in that precinct, and if the state does not make absentee ballots sortable by precinct and include those ballots in the hand count administered with respect to that precinct, the State shall include that precinct among the precincts in the State in which the Election Auditor shall administer the hand counts under this subtitle.

(d) *DEADLINE FOR ADOPTION OF PROCEDURES BY COMMISSION.*—The Commission shall adopt the procedures described in subsection (a) not later than March 31, 2008, and shall publish them in the Federal Register upon adoption.

**SEC. 325. PUBLICATION OF RESULTS.**

(a) *SUBMISSION TO COMMISSION.*—As soon as practicable after the completion of an audit under this subtitle, the Election Auditor of a State shall submit to the Commission the results of the audit, and shall include in the submission a comparison of the results of the election in the precinct as determined by the Election Auditor under the audit and the final unofficial vote count in the precinct as announced by the State and all undervotes, overvotes, blank ballots, and spoiled, voided or cancelled ballots, as well as a list of any discrepancies discovered between the initial, subsequent, and final hand counts administered by the Election Auditor and such final unofficial vote count and any explanation for such discrepancies, broken down by the categories of votes described in paragraphs (2) and (3) of section 323(a).

(b) *PUBLICATION BY COMMISSION.*—Immediately after receiving the submission of the results of an audit from the Election Auditor of a State under subsection (a), the Commission shall publicly announce and publish the information contained in the submission.

(c) *DELAY IN CERTIFICATION OF RESULTS BY STATE.*—

(1) *PROHIBITING CERTIFICATION UNTIL COMPLETION OF AUDITS.*—No State may certify the results of any election which is subject to an audit under this subtitle prior to—

(A) to the completion of the audit (and, if required, any additional audit conducted under section 323(d)(1)) and the announcement and submission of the results of each such audit to the Commission for publication of the information required under this section; and

(B) the completion of any procedure established by the State pursuant to section 323(d)(2) to resolve discrepancies and ensure the accuracy of results.

(2) *DEADLINE FOR COMPLETION OF AUDITS OF PRESIDENTIAL ELECTIONS.*—In the case of an election for electors for President and Vice President which is subject to an audit under this subtitle, the State shall complete the audits and announce and submit the results to the Commission for publication of the information required under this section in time for the State to certify the results of the election and provide for the final determination of any controversy or contest concerning the appointment of such electors prior to the deadline described in section 6 of title 3, United States Code.

**SEC. 326. PAYMENTS TO STATES.**

(a) *PAYMENTS FOR COSTS OF CONDUCTING AUDITS.*—In accordance with the requirements and procedures of this section, the Commission shall make a payment to a State to cover the costs incurred by the State in carrying out this subtitle with respect to the elections that are the subject of the audits conducted under this subtitle.

(b) *CERTIFICATION OF COMPLIANCE AND ANTICIPATED COSTS.*—

(1) *CERTIFICATION REQUIRED.*—In order to receive a payment under this section, a State shall submit to the Commission, in such form as the Commission may require, a statement containing—

(A) a certification that the State will conduct the audits required under this subtitle in accordance with all of the requirements of this subtitle;

(B) a notice of the reasonable costs incurred or the reasonable costs anticipated to be incurred by the State in carrying out this subtitle with respect to the elections involved; and

(C) such other information and assurances as the Commission may require.

(2) *AMOUNT OF PAYMENT.*—The amount of a payment made to a State under this section shall be equal to the reasonable costs incurred or the reasonable costs anticipated to be incurred by the State in carrying out this subtitle with respect to the elections involved, as set forth in the statement submitted under paragraph (1).

(3) *TIMING OF NOTICE.*—The State may not submit a notice under paragraph (1) until candidates have been selected to appear on the ballot for all of the elections for Federal office which will be the subject of the audits involved.

(c) *TIMING OF PAYMENTS.*—The Commission shall make the payment required under this section to a State not later than 30 days after receiving the notice submitted by the State under subsection (b).

(d) *RECOUPMENT OF OVERPAYMENTS.*—No payment may be made to a State under this section unless the State agrees to repay to the Commission the excess (if any) of—

(1) the amount of the payment received by the State under this section with respect to the elections involved; over

(2) the actual costs incurred by the State in carrying out this subtitle with respect to the elections involved.

(e) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Commission for fiscal year 2008 and each succeeding fiscal year \$100,000,000 for payments under this section.

**SEC. 327. EXCEPTION FOR ELECTIONS SUBJECT TO RECOUNT UNDER STATE LAW PRIOR TO CERTIFICATION.**

(a) *EXCEPTION.*—This subtitle does not apply to any election for which a recount under State law will commence prior to the certification of the results of the election, including but not limited to a recount required automatically because of the margin of victory between the two candidates receiving the largest number of votes in the election, but only if each of the following applies to the recount:

(1) The recount commences prior to the determination and announcement by the Election Auditor under section 323(a)(1) of the precincts in the State in which it will administer the audits under this subtitle.

(2) If the recount would apply to fewer than 100% of the ballots cast in the election—

(A) the number of ballots counted will be at least as many as would be counted if an audit were conducted with respect to the election in accordance with this subtitle; and

(B) the selection of the precincts in which the recount will be conducted will be made in accordance with the random selection procedures applicable under section 324.

(3) The recount for the election meets the requirements of section 323(e) (relating to public observation).

(4) The State meets the requirements of section 325 (relating to the publication of results and the delay in the certification of results) with respect to the recount.

(b) *CLARIFICATION OF EFFECT ON OTHER REQUIREMENTS.*—Nothing in this section may be construed to waive the application of any other provision of this Act to any election (including the requirement set forth in section 301(a)(2) that the voter verified paper ballots serve as the vote of record and shall be counted by hand in all audits and recounts, including audits and recounts described in this subtitle).

**SEC. 328. EFFECTIVE DATE.**

This subtitle shall apply with respect to elections for Federal office beginning with the regularly scheduled general elections held in November 2008.

## TITLE IV—ENFORCEMENT

**SEC. 401. ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF.**

**[The Attorney General]** (a) *IN GENERAL.*—The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and in-

junctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and nondiscriminatory election technology and administration requirements under sections 301, 302, and 303[.], or the requirements of subtitle C of title III.

(b) *FILING OF COMPLAINTS BY AGGRIEVED PERSONS.*—

(1) *IN GENERAL.*—A person who is aggrieved by a violation of section 301, 302, or 303, or subtitle C of title III, which has occurred, is occurring, or is about to occur may file a written, signed, notarized complaint with the Attorney General describing the violation and requesting the Attorney General to take appropriate action under this section.

(2) *RESPONSE BY ATTORNEY GENERAL.*—The Attorney General shall respond to each complaint filed under paragraph (1), in accordance with procedures established by the Attorney General that require responses and determinations to be made within the same (or shorter) deadlines which apply to a State under the State-based administrative complaint procedures described in section 402(a)(2).

(c) *CLARIFICATION OF AVAILABILITY OF PRIVATE RIGHT OF ACTION.*—Nothing in this section may be construed to prohibit any person from bringing an action under section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) (including any individual who seeks to enforce the individual's right to a voter-verified paper ballot, the right to have the voter-verified paper ballot counted in accordance with this Act, or any other right under subtitles A or C of title III) to enforce the uniform and nondiscriminatory election technology and administration requirements under sections 301, 302, and 303, or the requirements of subtitle C of title III.

(d) *NO EFFECT ON STATE PROCEDURES.*—Nothing in this section may be construed to affect the availability of the State-based administrative complaint procedures required under section 402 to any person filing a complaint under this subsection.

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## APPENDIX A

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,  
*Washington, DC, May 8, 2007.*

### OPPOSE 21ST CENTURY POLL TAX: DEFEAT EHLERS VOTER ID AMENDMENT

DEAR HOUSE ADMINISTRATION COMMITTEE MEMBER: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write in strong opposition to any amendment to H.R. 811 that would impose new requirements on voters to show photo identification prior to exercising their constitutional right to vote. We understand that Committee Ranking Member Rep. Vernon Ehlers (R-MI) intends to offer such an amendment. If so, we urge you in the strongest terms to defeat it.

Voters ID requirements represent one of the most serious threats in decades to our efforts to ensure the right of every eligible American to vote. They would encourage racial and ethnic discrimination at polling places, would prevent many eligible voters across the country from participating in our democracy, and would do nothing to combat genuine instances of voter fraud. Indeed, citing such concerns, federal courts have already struck down several state-level voter ID laws on constitutional grounds.

We oppose the Ehlers voter ID amendment for the following reasons:

First, no citizen should have to pay to vote. Many U.S. citizens either do not have or cannot easily access documents that prove their identity, such as a passport or birth certificate. Proposals that would give free ID to voters who cannot afford it are not sufficient, as our most cherished civil right should never depend on the annual appropriations process. Furthermore, citizens would still be faced with the expense and time involved in getting the documentation required to obtain photo ID. While the Voting Rights Act eliminated poll taxes, the Ehlers amendment would bring them back.

Second, photo ID requirements will disproportionately disenfranchise people of color, the elderly, individuals with disabilities, rural and Native voters, the homeless, low-income people, and married women, who are less likely to carry a photo ID. They also give poll workers an unacceptable level of discretion, opening the door to discrimination at the polls against racial, ethnic, and language-minority voters.

Third, while supporters of stronger photo ID requirements argue that they are needed to combat voter fraud, the evidence clearly establishes that current anti-fraud laws work. Moreover, while there

is no question that election misconduct exists, including improper purges of voters, distributing false information about when and where to vote, stuffing ballot boxes, and tampering with registration forms, there is no evidence that the type of fraud that the Ehlers amendment purports to address—voters who misrepresent their identity—is anything but an anomaly.

The right to vote, and to have your vote counted, is the most important civil right of all. Photo identification requirements are one of the greatest threats to fair and equal voting rights today. Congress should be in the business of encouraging full participation of our citizenry, not developing ways to limit the right to vote. For these reasons, we urge you to oppose any photo identification amendment that may arise during the consideration of H.R. 811.

Thank you for your consideration. If you have any questions, please contact Rob Randhava, LCCR Counsel, at (202) 466-6058 or at [randhava@civilrights.org](mailto:randhava@civilrights.org).

Sincerely,

WADE HENDERSON,  
*President & CEO.*  
NANCY ZIRKIN,  
*Vice President/Director of  
Public Policy.*



## APPENDIX B

PEOPLE FOR THE AMERICAN WAY,  
*Washington, DC, May 8, 2007.*

House Administration Committee,  
*House of Representatives,*  
*Washington, DC.*

DEAR COMMITTEE MEMBER: On behalf of the more than one million members and activists of People For the American Way (PFAW), we write in support of the Voter Confidence and Increased Accessibility Act of 2007 (H.R. 811) introduced by Representative Holt, and also to oppose any photo-identification amendments that may be offered to this worthwhile bill. This much needed legislation is likely to lead to major improvements over the status quo, diminishing voting machine problems and making elections safer and more secure.

Unfortunately—with millions of voters disenfranchised each election cycle—our citizens have lost confidence that their votes are counted accurately—or even counted at all. The recent debacle in Sarasota County, where some 18,000 votes were inexplicably not recorded on the paperless voting machines, is only the tip of the iceberg. Poll after poll shows the impact of voting irregularities on people's faith in our electoral system. H.R. 811 addresses this national crisis.

Most importantly, H.R. 811 gives voters a chance to verify that their vote was recorded properly before they leave the booth. Under H.R. 811, all voting machines must produce a paper ballot that would count as the official ballot for purposes of all recounts. In addition, H.R. 811 contains two very important safeguards. It requires voting machine vendors to provide independent access to their machines source codes to permit inspections to verify the integrity of elections without compromising ballot secrecy. And it requires manual audits of all voting machines pursuant to established federal standards.

H.R. 811 also goes a long way toward protecting voters with disabilities and language minority voters' access to the ballot box. Voters whose primary language is not English will be able to make the best and most informed choice at the polls. It will also allow voters with disabilities to cast their ballots with the privacy and dignity we all expect.

Additionally, in the spirit of moving H.R. 811 forward in a bipartisan fashion, we urge you to oppose any amendment that would add to this legislation language requiring that voters provide photo identification before casting a ballot. Such requirements are unnecessary and harmful. They impose a severe burden and are likely to disenfranchise poor, minority, elderly and young voters, who are

less likely to have photo identification and move more frequently. The data is clear:

- Approximately 6 to 10% of the American electorate does not have any form of state identification.
- African Americans are four to five times less likely than whites to have photo identification.
- Young adults (age 20–29) move almost 6 times more frequently than adults over 55, and minorities move 50% more frequently than whites.
- In Georgia, it is estimated that nearly 40% of seniors lack photo identification.

The purported reason for enacting such restrictive voting measures to counteract voter fraud is unsubstantiated. Virtually every academic study of voter fraud concludes that it is not close to being a significant problem. In fact, in 2002 the Bush Justice Department launched the “Voting Access and Integrity Initiative,” which directed Justice Department attorneys, including those in U.S. Attorneys’ offices, to prioritize investigations of alleged voter fraud. Despite being a top priority, this initiative resulted in only 24 convictions for illegally voting nationwide from 2002 to 2005, compared to the hundreds of millions of votes cast during that period. Even bipartisan experts contracted by the Election Assistance Commission (EAC) similarly found, in a report they submitted to the EAC in 2006, that there is no widespread existence of voter fraud.

Furthermore, when questioned regarding the existence of voter fraud in states where it was used as the justification for requiring restrictive voter identification, supporters of voter identification have been consistently forced to testify that they cannot prove that any widespread voter fraud exists. Examples include:

- The State of Indiana, and its Republican Secretary of State Todd Rokita, in defending the voter identification law in court documents, admitted that it could not find one single instance of voter impersonation fraud in the history of the state. *Indiana Democratic Party v. Rokita*, 2006 U.S. Dist. LEXIS 20321 (S.D. Ind. 2006).
- The Republican Governor of Missouri, who had formerly been the Secretary of State (and run Missouri’s elections), admitted that elections in Missouri were “fraud-free,” before unsuccessfully defending the restrictive voter identification laws in court. *Weinschenk v. Missouri*, 203 S.W.3d 201 (Mo. 2006). Missouri’s Secretary of State agrees, noting in a recent report that “As in previous elections, the absence of reports of voting impersonation or voting fraud in the 2006 election in Missouri was notable.”
- The State of Arizona and its counties, in defending their restrictive voter registration laws and voter identification laws, admitted that, of the over 2.7 million registered voters in Arizona, not one had been convicted of registering to vote illegally, and not one instance of voting by an ineligible non-citizen.

Voter identification proposals unnecessarily erect barriers to the ballot and are likely to be enforced in discriminatory ways against poor and minority voters to intimidate, misinform, stigmatize, and ultimately suppress the vote. The right to vote is fundamental and Congress should be focused on ways to open the franchise to all eli-

gible citizens. Consistent with this view, PFAW urges that photo identification requirements be opposed in hopes of passing a bipartisan H.R. 811.

Make no mistake: the need for election reform in this country is urgent. Americans deserve to know that the next time they cast a vote it will be counted—and, if necessary, recounted, by fair and independent observers. Nothing less than the integrity and fairness of the 2008 elections is at stake. Congress must act immediately to pass H.R. 811. We urge you to support H.R. 811 as it moves toward passage by voting in favor of it during the committee markup.

Sincerely,

RALPH G. NEAS,  
*President.*  
TANYA CLAY HOUSE,  
*Director, Public Policy.*

## APPENDIX C

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NATIONAL NETWORK FOR ELECTION REFORM,  
*May 8, 2007.*

DEAR MEMBER OF CONGRESS: Attached is a letter sent by the National Network for Election Reform in response to the most recent attempt to pass additional photo-identification requirements in the 109th Congress. It is our understanding that a similarly focused amendment will be offered during the markup of H.R. 811, the Voter Confidence and Increased Accessibility Act of 2007. On behalf of the National Network for Election Reform, we wish to reiterate our continued opposition to such attempts and encourage Committee members to oppose any such amendment should it be offered. Thank you.

Signed,

TANYA CLAY HOUSE,  
*Director, Public Policy, People For the American Way.*  
JONAH GOLDMAN,  
*Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights Under Law.*

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NATIONAL NETWORK FOR ELECTION REFORM,  
*September 19, 2006.*

DEAR MEMBER OF CONGRESS: We write on behalf of the National Network for Election Reform in strong opposition to H.R. 4844, the deceptively titled "Federal Election Integrity Act of 2006." The National Network is a coalition of organizations committed to providing Americans with a responsive and fair election system. As written, the bill will sacrifice the integrity of our electoral process by imposing an unfunded mandate on the states and blocking countless eligible seniors, minority voters, poor voters, students and young voters, and voters with disabilities from the polls. Moreover, H.R. 4844 will do nothing to address the shortcomings with America's electoral infrastructure. Instead, by passing H.R. 4844, Congress will create a 21st Century poll tax.

In August, Congress demonstrated its commitment to a fair and open democratic process by reauthorizing the expiring provisions of the Voting Rights Act with unprecedented bi-partisan unity. Passing H.R. 4844 will undermine that noble pursuit by disfranchising the very Americans that the Voting Rights Act protects.

H.R. 4844 will require nearly every eligible American voter to navigate a new and complex bureaucracy in order to cast a ballot. Additionally, this measure will force the vast majority of states to

implement an incredibly costly new process for issuing identification. The bill's central provision requires all eligible voters to produce a government-issued photo identification before participating in the electoral process. According to the mandates of the bill, the only acceptable form of identification is one that requires proof of citizenship as a condition of its issuance and indicates citizenship status on the face of the identification. Currently, the only types of identification that satisfy this requirement are a few states' driver's licenses, and a United States Passport which, according to the Bureau of Consular Affairs, only 25–27% of Americans have. For the rest of the country, state governments will have to develop and issue new identification in order to facilitate voting in federal elections.

Designing and implementing a program that will facilitate identification to comply with H.R. 4844 will be an unprecedented burden on state governments. A recent example portends the drastic complications that states will have to navigate in order to meet the demands of H.R. 4844. In 2002, Congress created the Transportation Workers Identity Credential, a program to provide identification similar to that required by H.R. 4844 for the nation's 750,000 critical sea, air and land transportation facility workers by the end of 2003. Nearly three years past the deadline, fewer than 5,000 of these workers have been issued this identification and the program costs have skyrocketed, nearly doubling from the original projections. This demonstrates that requiring the vast majority of states to engage in this type of endeavor for nearly 200 million Americans is not only unworkable, but irresponsible.

The unfunded mandate that this bill will create, coupled with the financially precarious situation of many state budgets, means that citizens will be burdened with the increased cost of this program. In addition to the high price that many voters will be forced to pay to obtain this new form of identification, each voter will also be required to produce proof of citizenship. Official citizenship documents, such as birth certificates, passports or naturalization papers, are expensive and time-consuming to obtain. While this burden is heavy on all Americans, voters in poor and minority communities, seniors, students and young voters, voters with disabilities, and Americans in rural areas are the voters who are least likely to have documents that prove their citizenship and are the least likely to be able to afford the increased cost of obtaining both the underlying documentation and the new identification required by H.R. 4844. Requiring citizens to pay for these documents as a prerequisite to voting constitutes a poll tax in violation of the Twenty-Fourth Amendment to the United States Constitution.

Proponents of H.R. 4844 claim that this measure is necessary to prevent misconduct in elections; that assertion, however, is contradicted by overwhelming evidence. There are no facts to suggest our elections are plagued by a wave of individuals voting multiple times or voting as someone else. Likewise, despite detailed investigations across the country, there is almost no evidence of non-citizens voting. This is not surprising since each act of this type of voter fraud carries with it possible penalties of five years in prison and a \$10,000 fine. Individuals know that the risk is not worth the cost. In addition to these harsh penalties, non-citizens would sac-

rice their ability to become citizens or remain in this country legally. Undocumented immigrants would risk announcing their presence to a government official each time they attempted to register or vote. Effective safeguards are already in place to protect election results from being manipulated by ineligible voters.

H.R. 4844 will do nothing to address the systemic problems that plague our democratic process nor will it effectively secure our election administration system. Because of the bill's failure to address the needs of American voters, it will not restore public confidence in the electoral process. Since the presidential election in 2000, voters across the country have begun to notice the shortcomings in our electoral system. Congress has the opportunity to address the real obstacles that voters face each time they go to the polling place; unfortunately, H.R. 4844 chooses instead to create additional barriers.

We oppose H.R. 4844, the "Federal Election Integrity Act of 2006," because it imposes an unfunded mandate on the states and blocks countless eligible voters from the electoral process. We urge you to oppose H.R. 4844. For more information, please contact Jonah Goldman, Lawyers' Committee for Civil Rights Under Law, (202) 662-8321 or Tanya Clay House, People For the American Way, (202) 467-2341.

Signed,

African American Ministers in Action.

American Association of University Women.

American Jewish Committee.

Anti-Defamation League.

Asian American Justice Center.

Asian American Legal Defense and Education Fund.

Brennan Center for Justice.

Common Cause.

Demos.

Electronic Frontier Foundation.

FairVote.

Jewish Council for Public Affairs.

Lawyers' Committee for Civil Rights Under Law.

League of United Latin American Citizens.

League of Young Voters Education Fund.

Mexican American Legal Defense and Educational Fund.

MassVote.

NAACP.

National Congress of American Indians.

National Council of Jewish Women.

National Disability Rights Network.

National Education Association.

National Voting Rights Institute.

People For the American Way.

Project Vote.

Rock the Vote.

Service Employees International Union.

The Arc of the United States.

Union for Reform Judaism.

United Cerebral Palsy.

United Church of Christ Justice & Witness Ministries.

U.S. PIRG.  
Vote By Mail Project.

## APPENDIX D

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### 2005 VOLUNTARY VOTING SYSTEM GUIDELINES

#### GLOSSARY DEFINITIONS FOR SELECTED TERMS

“voting system software:” All the executable code and associated configuration files needed for the proper operation of the voting system. This includes third party software such as operating systems, drivers, and database management tools. See also “dynamic voting system software,” “semi-static voting system software,” and “static voting system software.”

“dynamic voting system software:” Software that changes over time once it is installed on the voting equipment. See also voting system software.

“semi-static voting system software:” Software that may change in response equipment on which it is installed or to election-specific programming.

“static voting system software:” Software that does not change based on the election being conducted or the voting equipment upon which it is installed, e.g., executable code.

“commercial off-the-shelf (COTS):” Commercial, readily available hardware devices (such as card readers, printers or personal computers) or software products (such as operating systems, programming language compilers, or database management systems).



## APPENDIX E

### ELECTION ASSISTANCE COMMISSION

#### VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM MANUAL VERSION 1.0, EFFECTIVE JANUARY 1, 2007

5.4. Pre-Certification Requirements. Before an Initial Decision becomes final and a certification is issued, Manufacturers must ensure certain steps are taken. They must confirm that the final version of the software that was certified and which the Manufacturer will deliver with the certified system has been subject to a trusted build (see Section 5.6), has been delivered for deposit in an EAC-approved repository (see Section 5.7), and can be verified using Manufacturer-developed identification tools (see Section 5.8). The Manufacturer must provide the EAC documentation demonstrating compliance with these requirements.

5.5. Trusted Build. A software build (also referred to as a compilation) is the process whereby source code is converted to machine-readable binary instructions (executable code) for the computer. A “trusted build” (or trusted compilation) is a build performed with adequate security measures implemented to give confidence that the executable code is a verifiable and faithful representation of the source code. A trusted build creates a chain of evidence from the Technical Data Package and source code submitted to the [Voting System Test Labs (VSTLs)] to the actual executable programs that are run on the system. Specifically, the build will do the following:

5.5.1. Demonstrate that the software was built as described in the Technical Data Package.

5.5.2. Show that the tested and approved source code was actually used to build the executable code used on the system.

5.5.3. Demonstrate that no elements other than those included in the Technical Data Package were introduced in the software build.

5.5.4. Document for future reference the configuration of the system certified.

5.6. Trusted Build Procedure. A trusted build is a three-step process: (1) the build environment is constructed, (2) the source code is loaded onto the build environment, and (3) the executable code is compiled and the installation device is created. The process may be simplified for modification to previously certified systems. In each step, a minimum of two witnesses from different organizations is required to participate. These participants must include a VSTL representative and vendor representative. Before creating the trusted build, the VSTL must complete the source code review of the software delivered from the vendor for compliance with the VVSG and must produce and record file signatures of all source code modules.

5.6.1. Constructing the Build Environment. The VSTL shall construct the build environment in an isolated environment controlled by the VSTL, as follows:

5.6.1.1. The device that will hold the build environment shall be completely erased by the VSTL to ensure a total and complete cleaning of it. The VSTL shall use commercial off-the-shelf software, purchased by the laboratory, for cleaning the device.

5.6.1.2. The VSTL, with vendor consultation and observation, shall construct the build environment.

5.6.1.3. After construction of the build environment, the VSTL shall produce and record a file signature of the build environment.

Loading Source Code Onto the Build Environment. After successful source code review, the VSTL shall load source code onto the build environment as follows:

5.6.2.1. The VSTL shall check the file signatures of the source code modules and build environment to ensure that they are unchanged from their original form.

5.6.2.2. The VSTL shall load the source code onto the build environment and produce and record the file signature of the resulting combination.

5.6.2.3. The VSTL shall capture a disk image of the combination build environment and source code modules immediately before performing the build.

5.6.2.4. The VSTL shall deposit the disk image into an authorized archive to ensure that the build can be reproduced, if necessary, at a later date.

5.6.3. Creating the Executable Code. Upon completion of all the tasks outlined above, the VSTL shall produce the executable code.

5.6.3.1. The VSTL shall produce and record a file signature of the executable code.

5.6.3.2. The VSTL shall deposit the executable code into an EAC-approved software repository and create installation disk(s) from the executable code.

5.6.3.3. The VSTL shall produce and record file signatures of the installation disk(s) in order to provide a mechanism to validate the software before installation on the voting system in a purchasing jurisdiction.

5.6.3.4. The VSTL shall install the executable code onto the system submitted for testing and certification before completion of system testing.

5.6.4. Trusted Build for Modifications. The process of building new executable code when a previously certified system has been modified is somewhat simplified.

5.6.4.1. The build environment used in the original certification is removed from storage and its file signature verified.

5.6.4.2. After source code review, the modified files are placed onto the verified build environment and new executable files are produced.

5.6.4.3. If the original build environment is unavailable or its file signatures cannot be verified against those recorded from the original certification, then the more labor-intensive process of creating the build environment must be performed. Further source code review may be required of unmodified files to validate that they are unmodified from their originally certified versions.

[5.7 Additional Elements.] After EAC certification has been granted, the VSTL project manager, or an appropriate delegate of the project manager, shall deliver for deposit the following elements in one or more trusted archive(s) (repositories) designated by the EAC:

5.7.1. Source code used for the trusted build and its file signatures.

5.7.2. Disk image of the pre-build, build environment, and any file signatures to validate that it is unmodified.

5.7.3. Disk image of the post-build, build environment, and any file signatures to validate that it is unmodified.

5.7.4. Executable code produced by the trusted build and its file signatures of all files produced.

5.7.5. Installation device(s) and file signatures.

5.8. System Identification Tools. The Manufacturer shall provide tools through which a fielded voting system may be identified and demonstrated to be unmodified from the system that was certified. The purpose of this requirement is to make such tools available to Federal, State, and local officials to identify and verify that the equipment used in elections is unmodified from its certified version. Manufacturers may develop and provide these tools as they see fit. The tools, however, must provide the means to identify and verify hardware and software. The EAC may review the system identification tools developed by the Manufacturer to ensure compliance. System identification tools include the following examples:

5.8.1. Hardware is commonly identified by model number and revision number on the unit, its printed wiring boards (PWBs), and major subunits. Typically, hardware is verified as unmodified by providing detailed photographs of the PWBs and internal construction of the unit. These images may be used to compare with the unit being verified.

5.8.2. Software operating on a host computer will typically be verified by providing a self-booting compact disk (CD) or similar device that verifies the file signatures of the voting system application files AND the signatures of all nonvolatile files that the application files access during their operation. Note that the creation of such a CD requires having a file map of all nonvolatile files that are used by the voting system. Such a tool must be provided for verification using the file signatures of the original executable files provided for testing. If during the certification process modifications are made and new executable files created, then the tool must be updated to reflect the file signatures of the final files to be distributed for use. For software operating on devices in which a self-booting CD or similar device cannot be used, a procedure must be provided to allow identification and verification of the software that is being used on the device.

5.9. Documentation. Manufacturers shall provide documentation to the Program Director verifying that the trusted build has been performed, software has been deposited in an approved repository, and system identification tools are available to election officials. The Manufacturer shall submit a letter, signed by both its management representative and a VSTL official, stating (under penalty of law) that it has (1) performed a trusted build consistent with the

requirements of Section 5.6 of this Manual, (2) deposited software consistent with Section 5.7 of this Manual, and (3) created and made available system identification tools consistent with Section 5.8 of this Manual. This letter shall also include (as attachments) a copy and description of the system identification tool developed under Section 5.8 above.

MINORITY VIEWS OF THE HONORABLE VERNON J. EHLERS, THE HONORABLE DANIEL E. LUNGREN, AND THE HONORABLE KEVIN MCCARTHY

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H.R. 811, VOTER CONFIDENCE AND INCREASED ACCESSIBILITY ACT OF 2007

On Tuesday, May 8, 2007, the Committee on House Administration ordered favorably reported to the House H.R. 811, the “Voter Confidence and Increased Accessibility Act of 2007,” as amended, on a 6–3 party-line vote. In our view, H.R. 811 would not accomplish the objectives that the majority purports are needed to ensure integrity and increased voter confidence in U.S. elections. In fact, this bill would do everything to promote a false sense of security and diminish confidence in our elections. H.R. 811 would undermine the goals and the true reforms of the bipartisan Help America Vote Act of 2002<sup>1</sup> (HAVA) that improved elections and increased voter participation. Furthermore, H.R. 811 would roll back significant strides allowing disabled voters to cast ballots both independently and privately for the first time. If the goal is to provide a secure fraud-proof election process, which we support, H.R. 811 as currently written falls woefully short and in the words of one election official in one of the largest counties in the nation, is “ill-conceived and unworkable.”

PREFACE

H.R. 811, under the guise of providing voters with a paper mechanism to independently verify their vote, would create serious unintended consequences that will hinder the administration of the upcoming 2008 Federal elections. Most of the bill’s provisions have absolutely nothing to do with independent verification of votes cast on machines at the polls on Election Day. Rather, these alterations are aimed at limiting the use and value of electronic voting systems, weakening intellectual property rights, infringing on state’s rights, federalizing and micro-managing the administration of elections, expanding enforcement by private parties and ultimately waste taxpayer dollars.

H.R. 811 would deny state and local election administrators the ability to determine what voting system is preferable in their specific locale based on demographics. Instead H.R. 811 creates a one-size-fits-all voting scheme that is tailored to nowhere and no one and considers all thoughts and viewpoints from Washington, D.C. as being definitive, inerrant and prescient. What may work well in urban areas of California or New York may not be administratively

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<sup>1</sup>Pub. L. No. 107–252, 116 Stat. 1666 (2002).

feasible in rural areas of South Dakota or North Carolina; the bill ignores that fact.

It has been five years since the enactment of HAVA. Regrettably, there are states that have yet to fully comply with the requirements. Until the requirements of HAVA are fully implemented, we are unable to accurately measure its successes and shortcomings. It would be hasty and potentially detrimental to implement new Federal standards until we can closely examine the current system. With approximately 18 months until the 2008 General Elections, forcing states to adopt change is now foolish, particularly when so many states are reconsidering their Presidential election process and timelines.

H.R. 811 does not enjoy the type of bipartisan or industry support that Federal election modification deserves. In 2002, HAVA affected meaningful change that met the shared goals of both the majority and minority parties to improve our nation's voting systems. Unlike HAVA, which was reported out of the Committee on a truly bipartisan vote of 8–0, H.R. 811 is the majority's hasty attempt at election restructuring that received insufficient deliberation from their members and zero support from Republican members of the Committee. Not only have election officials in over 35 states opposed H.R. 811, industry experts, the disabled community and other interest groups have expressed concerns and highlighted the myriad of problems associated with the bill. The Republican members of the Committee realize the bill's shortcomings and offered a substitute amendment as well as 12 additional amendments to address the concerns raised by these groups in an effort to reach a bipartisan consensus. Rather than address these concerns or seek compromise, the majority charged forward with blinders, ignoring the very people who are responsible for administering our nation's elections: city clerks, county clerks, state election officials and secretaries of state. Below is a more detailed review of the major deficiencies and flaws contained in H.R. 811.

#### PRINCIPAL FLAWS OF H.R. 811

##### PAPER AS THE OFFICIAL BALLOT OF RECORD

H.R. 811's reliance on paper as the official ballot of record for all Federal elections is misguided. We have all learned from the 2000 Presidential recount in Florida that paper ballots (punch cards, in this case) are not the answer for instilling confidence in our voting system. The primary reason that the nation moved from paper ballots to more mechanical voting machines in the last century was because of fraud associated with paper ballots and frequent problems with discerning voter intent. Paper ballots are more susceptible to being lost, stolen or damaged.

When paper ballots are the official ballot of record, history has shown, there is increased risk of disenfranchising voters and producing inconsistent election results.<sup>2</sup> The Director of Elections for Franklin County, Ohio, in his testimony before the Committee on

<sup>2</sup>Dr. Donald F. Norris, Ph.D., testified before the Committee on House Administration's Elections Subcommittee on March 23, 2007 that, "In nearly every election where recounts are undertaken of paper ballots, the vote tallies completed manually by human beings produce inconsistent and sometimes conflicting results."

House Administration's Subcommittee on Elections, advised members of problems with relying on paper for the recounts and stated (Voter Verified Paper Audit Trails) VVPATs should be used only as an audit device to prove an electronic record.<sup>3</sup> In discussing the procedures for the recount conducted in Ohio's 15th Congressional District, he demonstrated how having VVPATs as the official ballots of record would make it possible for properly cast ballots accurately recorded by Direct-Recording Electronic Voting Machines (DREs) to be ignored during recounts. In a close election, paper jams or poll worker errors in loading the paper backwards could cause erroneous results.<sup>4</sup> Congress should not support a voting system that has the potential of disenfranchising voters.

#### MANDATED VOTING MACHINE REPLACEMENT

H.R. 811 mandates replacement of paperless DREs by 2008 and DREs equipped with current VVPATs by 2010. The only voting machines that meet the durable paper ballot requirement under H.R. 811 are paper-based optical scan voting machines. The motivation for the change back to a paper ballot system is based largely on unfounded claims and unsubstantiated fears that electronic voting systems are not secure. Computer scientists have stated that the software contained in electronic voting systems is, in fact, harder to manipulate than a paper ballot would be during an election.<sup>5</sup> While there may have been isolated instances of voting machine problems in 2006, there was no evidence of rampant electronic voting system malfunction, including DRE voting machines, in the 2006 elections. Most of the incidents on Election Day were a direct result of human errors, including poll worker errors, voter mistakes or poor ballot design. While optical scan machines satisfy the auditable paper audit trail provisions of H.R. 811, these machines do not always provide 100% accurate results and can fail due to calibration problems or be difficult to count due to ballot marking by voters that make voter intent unclear.<sup>6</sup>

Since the 2000 presidential elections, contrary to the majority's allegations, Americans have increased confidence in our voting system. Exit polls conducted for CNN in the 2006 election found that 88 percent of voters said that they had "full confidence" that their votes were counted accurately.<sup>7</sup> In November 2006, there were

<sup>3</sup>During the Committee on House Administration's Elections Subcommittee hearing on March 20, 2007, Matt Damschroder, Director of Elections for Franklin County, Ohio, further discussed, "the question 'what constitutes a vote' having long been determined in Ohio for punch cards and optically scanned paper ballots, it seemed wrong to introduce a new voter intent question that could cause a voter's properly cast and accurately recorded vote to go uncounted."

<sup>4</sup>Testimony from Matt Damschroder, Director of Elections, Franklin County, Ohio, House Administration's Elections Subcommittee hearing on March 20, 2007.

<sup>5</sup>Testimony from Dr. Michael Shamos, Committee on House Administration Hearing, September 28, 2006.

<sup>6</sup>Dr. Norris also notes problems with optical scan voting systems in an editorial that appeared in the Baltimore Sun on February 26, 2007. He states in relevant part, "Voters are more likely to select the wrong candidate or commit "undervotes" or "overvotes" when voting on paper than when using the state's touch screen system. The evidence further shows that voters who try to change their votes or cast write-in votes also make more errors when using paper. This may be because, unlike touch screen systems, opscan [optical scan] systems have no review screen. And in the event of a controversy, recount discrepancies can occur with the interpretation of paper ballots, as we well know from Florida in 2000 and Washington State in 2004."

<sup>7</sup>Testimony during the Committee on House Administration's Elections Subcommittee hearing on March 20, 2007, from R. Doug Lewis, Executive Director of the National Association of Election Officials. Dr. Ted Selker during the Committee on House Administration's Elections Sub-

many Federal candidates elected on electronic voting machines not equipped with a verified paper audit trail, and all 435 Congressional results were certified by their respective states for being free and fair elections. The mere fact that electronic voting machines did not provide paper verification should not be the rationale for placing doubt on election results or the justification for requiring states to change their preferred voting system.

Many states enjoy the benefits of using DRE voting machines for their elections. DREs have made it administratively feasible for states and local jurisdictions to successfully implement early voting programs, provide multiple language ballots and meet the accessibility requirements for disabled voters under HAVA. Prohibiting the use of DREs will not only frustrate the administration of elections at the local levels, it may likely contribute to longer lines at polls.

We are not opposed to the idea of a redundant method of capturing vote totals; in fact we welcome it. But we believe all avenues should be explored to accomplish duplicate capture of this information, not just paper ballots. The goal of HAVA was to provide the states with the flexibility to choose the voting system that best fits its needs. Congress should not be the judge, nor require one type of voting system for all elections, nor should we outlaw voting machines that have recently been purchased to meet 2006 HAVA mandates.

#### UNFETTERED ACCESS TO PROTECTED INTELLECTUAL PROPERTY

H.R. 811 allows access to sensitive and security-related voting machine software to a broad spectrum of parties, some of whom may not have real interest in the software or the security of elections. While the majority believes this expanded access will make elections more transparent, it poses serious security threats to our election system. Allowing access to the source code for voting machines will give the blueprint for manipulation of elections and the ability to irrationally criticize the software to the point that it negatively affects voter confidence.

The level of access provided in H.R. 811 also sets new precedents for intellectual property disclosure requirements. Software disclosure of this nature and magnitude does not apply to the Central Intelligence Agency, National Security Agency, the Department of Defense, or even the airline industry. People's lives and national security are at stake in each of those cases. It is unclear why the majority is authorizing different treatment for election-related intellectual property that provides fundamental protections to one of our most precious rights as United States citizens; the right to vote. Although H.R. 811 requires non-disclosure agreements to be signed by qualified individuals who wish to review election dedicated software, it does not provide for any enforcement actions or criminal penalties for disclosure breaches or trade secret violations.

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committee hearing on March 15, 2007, also stated that exit polls show "that people are comfortable with the voting systems they use." candidates elected on electronic voting machines not equipped with a verified paper audit trail, and all 435 Congressional results were certified by their respective states for being free and fair elections. The mere fact that electronic voting machines did not provide paper verification should not be the rationale for placing doubt on election results or the justification for requiring states to change their preferred voting system.



Furthermore, it provides no protections against nefarious attempts to “hack” the computer code.

Expanded access to election dedicated software essentially takes away the proprietary rights of companies and gives them away. This is contrary to the whole premise of our free enterprise system. Moreover, H.R. 811’s disclosure requirements will limit the desire of election industry companies to continue to develop new technologies and improve their existing systems.

#### DISENFRANCHISEMENT OF DISABLED VOTERS

H.R. 811 severely limits voter accessibility among disabled voters. HAVA required states to deploy at least one voting system in each polling location that allowed individuals with disabilities to vote independently and privately, a right that they had not had before. Many states purchased DRE voting machines to satisfy the accessibility requirement. The provisions contained in H.R. 811 prohibit the use of the paperless DRE voting machines. While proponents of H.R. 811 state there are accessible paper-based voting systems currently on the market that accommodate individuals with disabilities, these systems fall short of providing these individuals with the ability to cast or verify a ballot independently or privately. Testimony presented before the Committee demonstrated that access problems with paper ballots and paper trails still exist.<sup>8</sup>

It is the Republican members’ view that if Congress is going to require accessible machines for the disabled to be equipped with a paper backup, it must first ensure that these machines meet accessibility standards for all disabled voters before requiring states to purchase such technology. Congress should not roll back the significant progress made for disabled voters and risk disenfranchising this group of American voters.

#### UNREASONABLE FEDERAL ELECTION AUDITING PROTOCOLS

H.R. 811 requires states to administer hand-counted audits of virtually all Federal races before certifying official election results. Under this mandatory audit plan states must administer audits for at least 3% of all precincts after every Federal election unless a candidate wins by at least 80% or runs unopposed. This one-size-fits-all approach is severely flawed as it fails to consider the statutory requirements and deadlines states have in place to administer elections.

State and local administrators testified to the difficulty in auditing Federal races under the scheme mandated by H.R. 811. Testimony presented to the Committee revealed that these requirements would not accomplish the goals the majority seeks. First, mandating a hand-counted audit for virtually every Federal race would take weeks to administer and would cause significant delays in cer-

<sup>8</sup>During the March 15, 2007 hearing before the Committee on House Administration’s Elections Subcommittee, Dr. Diane Golden, disability access and technology witness, testified, “there are two access problems that we have still got in existing products related to print. It is not going to work to have an accessible electronic vote record or ballot and an inaccessible paper one. You just see the problem with that. It is clearly lack of equal access. When you add paper into that process (speaking about the EAC system standards), we currently don’t have equipment on the market readily available that delivers all of those access features when a paper ballot is involved.”

tifying official election results.<sup>9</sup> Second, the tiered audit scheme contained in H.R. 811 has never been piloted in any state's Federal election and has not been proven to be statistically relevant to the objectives cited by the majority for conducting hand-counted audits. It is imprudent and costly to require every state to administer this method of manual election audits without empirical evidence of its effectiveness and feasibility. Several states have already instituted a mandatory audit of their respective elections,<sup>10</sup> while a majority of states administer automatic recounts of races where the margin of victory between two candidates is within a certain percentage.<sup>11</sup> Permitting this overly prescriptive hand-counted audit process will not only stifle the ability of election officials to administer elections and report results, but will also eliminate audit programs that have been successful in certain state and local jurisdictions. Furthermore, as cited earlier, hand counting ballots has been shown to be inaccurate.

#### UNNECESSARY CREATION OF A FEDERAL PRIVATE RIGHT OF ACTION

H.R. 811 creates a private right of action under 42 U.S.C. § 1983 against any state to enforce provisions of Title III of HAVA. This provision authorizes a system that would not benefit voters, but rather would result in endless Federal litigation. Perhaps the only beneficiaries would be attorneys. Individuals who are disenfranchised by their state's election process or claim their jurisdiction is not following the provisions under Title III of HAVA already have a means for filing claims. Currently under HAVA, states are required to establish administrative grievance procedures to provide sufficient Federal and state enforcement of HAVA requirements. We also have grave concerns whether the Department of Justice has adequate staffing to timely and successfully respond to the volume of potential claims; this might result in delays of election results. Moreover, creating a Federal private right of action will impose an additional administrative burden on local and state election officials, and it may force local governments to spend millions of dollars on politically or financially motivated lawsuits.

#### INSUFFICIENT FUNDING

H.R. 811 authorizes \$1 billion dollars for voting equipment replacement and \$300 million for audit reimbursement. HAVA au-

<sup>9</sup>During the March 20, 2007 hearing before the Committee on House Administration's Elections Subcommittee, when asked if he would audit every race Florida Election Administrator Ion Sancho said "No, I would randomly select races." Guilford County Election Administrator George Gilbert opined: "We have counted paper ballots by hand before, and we know how difficult—it is the most difficult aspect of conducting an election."

<sup>10</sup>During the March 20, 2007 hearing before the Committee on House Administration's Elections Subcommittee, Tammy Patrick, Federal Compliance Officer for Maricopa County Elections Department in her testimony discussed Arizona's statutory hand audit requirement of 2% of the precinct-cast ballots and 1% of early ballots.

<sup>11</sup>For example, the Ohio Election Code provides "If the number of votes cast for the declared winning candidate in a district election does not exceed the number of votes cast for the declared losing candidate by a margin of one-half of one percent or more of the total vote, a recount shall be conducted. If the number of votes cast for the declared winning candidate in a statewide election does not exceed the number of votes cast for the declared losing candidate by a margin of one-fourth of one percent or more of the total vote, a recount shall be conducted. Any candidate who was not declared elected may submit an application for a recount of the votes. Any group of five or more qualified electors may also file an application for a recount of the votes at an election upon any question or issue, provided that they either voted "Yes" or in favor of an issue that was defeated or they voted "No" or against an issue that was adopted." Ohio Revised Code § 3515.01–3515.071

thorized \$3.86 billion for states to replace punch card and lever machines, provide training for poll workers, provide voter education, and improve the administration of Federal elections. To date, states have not received the final \$800 million needed to meet all the HAVA mandates, and have had to resort to using state funds to meet all of the 2006 compliance deadlines.

Clearly, the amount of funding provided in H.R. 811, which a number of election experts have deemed inadequate, will leave taxpayers holding the bill. Congress has a duty to spend the public's money wisely, and not to use it to attempt to implement legislation that the states have told is unnecessary and unworkable. Not considering the full implementation of our actions, is utterly irresponsible.

#### UNATTAINABLE STATE COMPLIANCE DEADLINES

H.R. 811 places unrealistic deadlines on state and local election officials to effectively administer the 2008 elections. Testimony presented to the Committee suggests that the changes that are required under this bill would take approximately 18 months to 4 years to accomplish. This Committee was well aware of the potential danger of implementing major changes in elections during a presidential election year. HAVA gave states more than four years to acquire new voting systems. H.R. 811 is forcing states to again replace their newly purchased voting equipment under a time frame of less than 18 months.

Other than optical scan voting machines, there is no other voting system currently certified and in use in the United States that meets the very specific requirements proposed in H.R. 811. Not one witness over the course of three hearings before the Committee on House Administration's Elections Subcommittee was able to identify a DRE equipped with a VVPAT or an accessible voting machine that ensures independent verification that: (1) is available in the marketplace, (2) has been used in an election in the United States and (3) can be appropriately tested and certified for use through the Election Assistance Commission Voting System Certification Program by 2008. It is clear that the intent of H.R. 811 is to move toward nationwide deployment of optical scan voting machines which directly contradicts the flexibility HAVA provided to the states in administering elections.

Since the implementation of HAVA, states have endured major changes to their election process, including the replacement of voting machines, implementation of statewide voter registration systems and steps to increase the accessibility to polling locations. Many states have already enacted legislation that requires their voting systems to be equipped with a voter verifiable paper audit trail. In addition, a number of states have also enacted mandatory manual audits.<sup>12</sup> It is unnecessary to mandate Federal changes when states are already adopting requirements that are similar to those in H.R. 811. Moreover, requiring them to comply with the

<sup>12</sup> During the March 20, 2007 hearing before the Committee on House Administration's Elections Subcommittee, Pamela Smith, President, VerifiedVoting.org testified that there are 16 states that require post-election manual audits: Alaska, Arizona, California, Connecticut, Colorado, Kentucky, Hawaii, Illinois, Minnesota, Missouri, New Mexico, New York, North Carolina, Pennsylvania, Washington and West Virginia.

provisions contained in H.R. 811 is not only unattainable, but may result in utter chaos in the 2008 election cycle.<sup>13</sup>

#### CONCLUSION

H.R. 811 directly undermines the valuable gains from HAVA and takes us back to 19th Century election systems and procedures. Congress should craft legislation and utilize technology to strengthen, secure, and improve our nation's voting systems, not revert back to requirements of problematic paper ballots. It has been 5 years since the enactment of HAVA, and there are still states that have yet to fully comply with HAVA's requirements. It is foolhardy to believe that states will have the ability to implement all the requirements of H.R. 811 for the 2008 election cycle. To resort back to a pure paper voting system, without additional research into alternative technologies that may be more reliable for voter verification, would be ill-advised. Instead of rushing to implement a paper voting system that has been historically mired with problems, we should allow the marketplace to develop new technologies and solutions to enhance our voting systems.<sup>14</sup>

Republicans have been most willing to work with the Democrats to draft election-related legislation that increases confidence and ensures security and integrity in our nation's voting system. We are dismayed that our offer was rebuffed. We believe H.R. 811 is a step backwards, and is far from accomplishing its primary objective of increasing voter confidence. If H.R. 811 becomes law, Americans just could bear witness to the most dysfunctional administration of Federal elections in our nation's history.

VERNON J. EHLERS.  
DANIEL E. LUNGREN.  
KEVIN MCCARTHY.



<sup>13</sup>During the March 15, 2007 hearing before the Committee on House Administration's Elections Subcommittee, Secretary of State Eric Clark of Mississippi testified, "There is no way under the sun we [state election administrators] can make the kind of changes that are contemplated in [H.R. 811] by next year's elections." During the March 23, 2007 hearing before the Committee on House Administration's Elections Subcommittee, George Gilbert, Director of Elections for Guilford County North Carolina stated, "We are concerned that implementation date of 2008 would actually collapse the election system." Mr. Gilbert further stated, "We do not believe that it would be feasible nationwide to implement the kinds of changes, both procedural and technological that [H.R. 811] proposes by 2008."

<sup>14</sup>For example, during the March 15, 2007 hearing before the Committee on House Administration's Elections Subcommittee Dr. Selker describes a voter-verified audit trail which is accessible to individuals with disabilities and contains a tape drive which "is a much more reliable drive than any of the printers that we have been able to find." In addition, VoteHere, a division of Dategrity Corp has developed a DRE Audit Trail that provides equal accessibility to voter verification.