

**Testimony of**  
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**U.S. Senate Rules Committee**  
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Senators:

I thank the Committee for this opportunity to address not only the specific legislation S. 1487, but also the condition of election administration in America.

In reviewing the legislation, I got wrapped up in the specifics and I shall return to some of those specifics later. It was more useful for me to step back and look at the overall legislation and the underlying principles of why it is necessary and what it hopes to accomplish. It seems to me that election legislation should rarely be aimed to trying to prescriptively manage specifics. The US Congress is more suited to establishing goals and objectives than to prescribe specifics in the administration of elections – because the specifics are simply too complex to fit every state in the same way and require considerable patience in understanding *why* policies and practices developed. That usually requires years of experience in what voters do that we didn't know they could do, or why a practice or procedure developed over many election cycles to assure that we are fair and impartial in the administration of the process. Simple “fixes” rarely work in any complex or complicated profession – they can be reasonable sounding, they can be plausible, but they are also most often wrong. Simple solutions in elections almost always result in unintended consequences that have an impact of disenfranchising voters, or creating situations where fairness is impaired, when the opposite was the goal.

My point is this: Congress rarely has the time for its members and its staff to first get a solid background, and then patiently look at “ideas” or concepts or specifics and then ask the administrators how that will work in an actual election setting. The Help America Vote Act was maybe one of those rare exceptions, because Congress took two years to fashion the legislation – and it was *very different* from the instant proposals that initially were contemplated or offered. And that legislation consumed the staff of the committees of jurisdiction for almost the full two years. For HAVA, Congress dealt with specific objectives and goals; it rarely delved into the specifics of election administration.

The role and objective of Congress is to assure Americans that the process serves voters and the democracy well. But if Congress begins to assume that it knows more about the management practices of elections, that it knows more about what will work than the local governments around the nation, that it wants it to be uniform across the United States, then democracy is in for a rough period. We should have it well established by this time that one size or one solution does not work well in all parts of America.

Now we have a new Congress and it wants to engage on elections issues and, for awhile, it seemed prepared to do so in a quick and decisive manner. But the US House of Representatives has had to slow its plans when the bill it passed out of Committee hit reality. As members began to hear from the elections professionals – and those election professionals represented in many instances the same political party as the members – it became more and more apparent that quick and decisive action may have so many unintended consequences that it actually does disservice to voters rather than making their lives or democracy better.

It is in this context that I marveled that the Senate bill was more measured than election legislation being offered in the House. We seem to be in an environment of unfounded and still unproven allegations of mismanagement of the elections process – but the energy of the vocal few continues to show up as rationale for continued election reform.

I want to apologize upfront for directing my comments in a “plain spoken” manner. I mean no disrespect to members, their staff, or to the impassioned advocates who blame election administrators or election policies and practices as the reason that candidates have succeeded or failed.

I know that all of us in this discussion are passionate about our viewpoints as relates to the way elections are conducted in America. Over the years, I have found it more useful to accept that people’s motives are pure and that they are as impassioned about the issues as we are. If and when it is a simple disagreement over the concepts, then the political process works as designed and decisions evolve that may or may not please us.

My concern, however, is that there seems to be little or no respect for those of us in this profession who actually have to do the mechanics of elections. The men and women who do this job throughout America are dedicated to the voters and to the process of democracy. They *feel* the importance of what they do to make it possible for voters to participate in government. They know and understand the importance of practices and procedures that level the playing field so that all voters, regardless of ethnic or racial background, regardless of education, regardless of financial status, regardless of philosophy as conservatives or liberals or in between, and regardless of political party. The men and women responsible for election administration in America have one overriding goal to ensure the election is an accurate reflection of the public will.

The notion that election administrators have somehow banded together to subvert the public’s will is not only misguided and troubling but I find it destructive. To believe that such an unfounded allegation is true, one has to assume that there has been massive collusion of election officials from *both parties* to make sure that only some candidates win. You have to make a quantum leap to assume they would willingly and knowingly band together and disregard their own status as locally elected officials as Democrats or Republicans, and ignore all the laws, ignore their own beliefs and philosophies, to make sure that only selected candidates get elected.

Not only does this defy logic, it is an insult to those professionals. It goes beyond being an insult because it suggests that election officials are dishonest or so incompetent that they can't possibly be trusted to do the job without "guidance." But the most dangerous aspect of this notion is that it erodes public confidence in the conduct of American elections.

**Titles I and II of the bill**

Why have I spent time on covering this? Simply because the illogical and unfounded allegations are the basis for which some groups claim and demand that Congress act on additional election reform.

HAVA resulted from a need to respond to conditions. Election reform was accepted as necessary and desirable by both Democrats and Republicans, by news organizations and by the general public and election administrators. And while HAVA is certainly far from perfect, it represented the best that Congress could fashion in a bi-partisan manner as a compromise on what should happen. But HAVA dealt in concepts and objectives, not specifics. It left it to the states and local governments to design the right solutions that would fit their conditions and would work best to serve their voters. There is no such generally accepted rationale for continued massive reforms. There is no provable foundation that warrants the intrusive specifics being offered in Congress.

I applaud Senator Feinstein and her staff for a more measured and deliberative approach to election legislation than has been exhibited in the House. I welcome the opportunity to work with the Senator as Chair since her reputation and work in the Senate is well respected by member of both parties. My concern is that the bill we are discussing today is still far too prescriptive in its approach. In some cases I think bill drafters simply may not have considered the language's true impact and that we can work with the staff to make adjustments. In some cases though the bill goes beyond working with concepts and establishes specifics that are likely to create new problems or compound problems which then lead to voter problems.

It defines electronic voting in such a manner that it all but eliminates the use of electronic voting devices in American elections for the foreseeable future. To make sure that you understand the consequences of the language of the bill on this subject, you must be aware of the following facts:

- More voters votes have been accurately cast and counted on electronic voting devices than at any other point in the history of elections;
- Inexperienced voters, limited education voters, voters with language challenges, voters with disabilities, and every voter group or subgroup shows distinct improvement in accurately registering their choices on electronic voting;
- Voter's mistakes are significantly reduced, which results in more of their votes being counted;

- Electronic voting has dramatically and almost virtually eliminated overvotes as a voter mistake – which means that more voters’ votes are being accurately cast and counted as a result;
- If we eliminate electronic voting, it makes it impractical to continue widespread early voting in urban areas – the requirements for paper ballots in enough ballot styles<sup>1</sup> would preclude the ability to effectively organize multiple location early voting sites. In many cases this means several hundred different printed ballots must be available at each location. In many of our more urban areas of the country that would mean 1100 to 1600 different ballot styles. Imagine pollworkers trying to make that happen correctly.
- If we eliminate electronic voting, it makes it far more unlikely for the Vote Center or Super Precinct concept to grow throughout the nation for the same reason: too many printed ballot styles to manage the concept effectively.
- If we eliminate electronic voting it makes it far more unlikely that we could expand the concept of counting provisional ballots regardless of where in the county they were voted. Electronic voting makes this a much simplified process and can lead to greater expansion of our ability to do it.
- If we eliminate electronic voting, or create electronic voting with paper as the official ballot, how do we resolve issues for the disabled? The bill mentions Braille but from what the disability advocates tell us Braille is only utilized by about 10% of the blind.
- If we get rid of electronic voting, its impact on language minorities becomes more troublesome: printed ballots in multiple languages are very expensive and to do so in hundreds or thousands of ballot styles means it is even more difficult to administer and assure that the voter gets a correct ballot.

If Congress wants to order that all states and jurisdictions that do not have a paper audit trail with electronic voting devices do so, then we can do that given certain conditions. We can even accomplish that by 2010. We are now too far along in the year to be ordering changes for the 2008 election since it will likely result in election problems when we can least afford it – during the largest election we have every four years. The impact of changes made now for 2008 is very likely to result in voter disenfranchisement and complicating what appears to be another in a series of close elections.

Congress should recognize the steps it takes to make changes related to voting equipment. There is at least one year of developing standards (and often longer) once Congress has acted on traits it wants voting equipment to contain. From the date of adoption of the Standards by the US EAC, it takes five additional years for the manufacturers to have equipment designed for and manufactured for delivery to local governments (including training and implementation time).<sup>2</sup> Congress must constantly

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<sup>1</sup> A different “style” is created when any one change in a candidate or a proposition creates a different ballot for some voters.

<sup>2</sup> See Election Technology Council paper on *Amendments to Help America Vote Act*, p. 8.

be aware that there is a *minimum* six year lag time for extensive new requirements of voting systems. Adding VPAT to existing technology was not a redesign issue for most of the vendors – but adding standards of how VPAT has to be designed to accomplish protections for the voters and then figuring out how to use a technology other than reel-to-reel will require the time because it involves significant re-engineering. Until the standards for those major changes are completed no manufacturer can proceed.

Paper voting has a long history in America and certainly we have some jurisdictions that still vote by hand and count by hand. More widespread, however, is paper voting that is counted by optical scan voting equipment. The movement to have voting devices count ballots, rather than humans, started at the turn of the century, because voting devices count more accurately than humans when handling large numbers of ballots. If we are to eliminate electronic voting it will have widespread effects. Here are the additional consequences of forcing more paper into the process:

- We had difficulty in getting printed paper ballots to the election jurisdictions in time during the elections of 2002, 2004, and 2006. The ballot printing industry is still limited enough in capacity to handle the volume of printing required to do all of America at the same time and to do it accurately and timely. With state legislatures positioning so many states to do late primaries, it makes it almost impossible to get a ballot accurately designed and printed in time for a general election. But we also had difficulties in ballot deliveries for the general election for states that had early primaries.
- The requirements of legislation that imply or force more paper ballots greatly increases the demand on an already stretched resources. Expect far more ballot printing errors, late deliveries (or maybe even no deliveries) until the industry can adjust to all the new demands. And that adjustment will not happen in the course of one election cycle – or it would have already been done. Since ballot printing is time sensitive, printing with no margin for error it is demanding and exacting, and it precludes printers from taking on any other business during the ballot printing time, it is not an industry where competitors flock to fulfill the need.
- The requirement of the legislation to provide emergency paper ballots in case equipment goes down also forces the same ballot style problems with hundreds or thousands of different ballots for pollworkers to correctly identify and offer to the voters.
- With paper ballots, Congress has to expect that voters will do what they have historically done – make voter mistakes that effectively eliminates their vote in some races or on some issues. This is a natural consequence and while election administrators have learned many methods to reduce voter errors, there will not be a zero error rate.<sup>3</sup>

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<sup>3</sup> Some studies over the years have indicated lost “ballots” or voided ballots when what was truly meant in most instances was that voters disqualified their votes (not the ballot) because they did not properly mark the ballot for a specific candidate or choice.

Madame Chair, your handling of the issue of transparency in voting system software is commendable. You have essentially fashioned a method by which responsible parties can and do have access to the essential software for elections. While there are some minor points that we can work with staff as suggestions to refine the language so it doesn't result in problems down the road, you have provided a foundation for revealing software source code and supporting structures so that government has access to it without destroying the nature of products whereby irresponsible parties could do much harm. It was well enough done that I recommended it to House leadership for House legislation in place of their current language.

***Audits of Elections.*** I did extensive testimony to the US House on March 20 of this year about audits of elections. While I will not duplicate all of that testimony on audits since it is readily available, I would like to make the following points:

- As an elections community, we are not opposed to audits on a conceptual basis. In fact 14 states actually do an “audit” as conceived in legislation. All states do a canvass of the vote and that too is a form of an audit of the election.
- Congress needs to know and understand what its objective is with an audit because audits in the prescribed time and manner suggested in Congressional legislation will be time consuming and very expensive. Its cumulative effect on local jurisdictions will be enormous and costly. Staff dedicated to such audit procedures will likely have to be additional staff because the closing of an election still has to proceed even while an audit is underway. Congress, if it actually forces these audits, is adding exponentially to the costs of conducting elections and unless Congress is setting these up as entitlements to the local jurisdictions for reimbursement of their costs, it could eventually become one of the largest unfunded or under-funded mandates of all time.
- What is to be accomplished with an audit that might not better be served in another way? Do we truly need an audit of a federal election that is won by 5 percent or 10 percent or more? Even 1 percent or 2 percent in populous states can mean tens or hundreds of thousands of votes. Who are we serving with audits in those instances? Certainly not the routine voters. Nor most candidates. Nor the news media. Nor the political parties. And yet we will be forcing for all future federal elections as an expensive solution to satisfy the curiosity of a narrow constituency. If that is what is intended, then that is what will be accomplished.
- Which is paramount – audit or recount? If the elections officers are tied up doing an audit, who handles the recount? If the audit delays a recount in a presidential election do the timelines force us back into the Supreme Court?

If all the audit provisions are to stay in legislation then we will have a number of questions and clarifying concerns that need to be worked through.

**Recounts Rather than Audits.** However, I would suggest that you go to a federally triggered *recount* as a better solution. Establish a percentage of difference between the candidates whereby a recount becomes automatic. Whether that is 1%, or ½ of a percent or ¼ of a percent is a matter that can be chosen. But certainly it should not be higher than a 1 percent difference for a federal race.

By providing an automatic recount, candidates do not have to allege fraud or mismanagement (which is always damaging to the process in the mind of the public and rarely gets proven). State and local jurisdictions then serve the public and the candidates and the parties and the partisans (and the lawyers) by re-examining the election in detail. My suggestion to you is that the recount be ordered to be done first with voting equipment and recount the ballots by equipment first. Any ballots unable to be read by the machines would then be counted by hand.

If, in the opinion of the losing candidate, that is not sufficient evidence, then hand recounts of randomly selected precincts, could be done where every ballot is counted by hand. If that is still not convincing evidence, then the losing candidate could request a full blown hand recount of all ballots. The federal government then picks up the full costs of each level of recounts since this is for federal elections only. [Many states require candidates who want a recount to pay for them or justify them in order to have a recount. If Congress orders automatic recounts in certain situations, then having it federally funded makes sense and serves a useful purpose to the federal government.] Such a provision then serves everyone's interests including the candidates, the parties, the public, the media, the election officials, and especially the Congress, while costing far less than federally mandated audits that have little meaning except in the case of close elections. A provision has to be made in such a process that the losing candidate has a right to terminate the recount process at any stage where the candidate is willing to concede the results.

This still leaves the ability of candidates to pursue a contested election if they so desire without having had to expend vast resources first on obtaining and funding a recount.

As to auditing equipment, there are better procedures that can be developed through NIST and the Election Assistance Commission that can then be required of states to do on a limited random basis. Some of this is underway already in the development of test scripts independent of vendors or election officials, so additional requirements can be made to refine this.

Audits ought to serve a useful ongoing function or not be edicted by Congress. Recounts would better serve all Americans, better serve democracy, and save the local governments billions of dollars in the future.

There are numerous other concerns with provisions of Title I and II but I am assuming that the Committee and its staff are willing to hear what each of those are in meetings we can arrange with local and state election officials to refine the provisions for clarity and conformity.

### ***Title III***

***Absent Voting.*** Surely Congress does not mean to indicate that there can be no restriction on Absentee Voting other than a deadline date. Taken literally the language here would open Absentee Voting to no protections for democracy. No checking of signatures. No checking for eligibility. Sections (a) and (b) are in direct conflict with each other. By following the constructs here, legitimate voters could have their votes negated by ineligible voters. I hope and trust that this is not what was intended.

Implement by 2008. We are too far along the election cycle for states to have to absorb this idea and figure out how to do it responsibly by 2008. For about a third of the nation, the presidential primaries will be held in February and March.

***Third Party Registration.*** Well intended maybe but sorely misguided. The major abuses of 2004 and 2006 were the result of third party voter registration efforts. As election officials, we want and encourage third party registrations. We believe they contribute to the growth and outreach of democracy. But we also recognize that there absolutely must be some requirements placed on these efforts.

In a review of Election 2004, a task force of the nation's election administrators at local and state levels clearly recognized that abuses have gotten worse.<sup>4</sup>

Voters are being disenfranchised as a result of third party efforts and Congress must act responsibly in this matter. Third party groups are holding onto validly completed voter registrations and turning them in too late to be processed adequately by the election offices. The result is that voters are then offered provisional ballots rather than regular ballots.<sup>5</sup> The latter will be counted whereas provisional ballots may or may not be counted based on whether the voter was actually registered in time and/or appropriately in accordance with law. Where third party groups collect registrations months or weeks in advance, the voter thinks he or she has done all that is necessary to be a qualified voter. Voter groups must be required to turn in registrations no later than three days from the time collected from the voter so that the elections office has time to verify information and to send the voter needed information to facilitate voting. In the last three days of registration, they need to turn them in daily so that voters are not disenfranchised.

Quoting from the report: "Late or lost registration applications from these groups generated distrust in the system and ultimately it was the voter that paid for this

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<sup>4</sup> *Election 2004 - Review and Recommendations by the Nation's Election Administrators*, National Task Force on Election Reform, p.4-6 and pages 11-18. Available on Election Center website: [www.electioncenter.org](http://www.electioncenter.org)

<sup>5</sup> *Ibid.* Page 12.



sometimes inefficient or unethical activity. In order for voter registration groups to continue to be a service to democracy, policy makers must be willing to identify and correct the weakness in this part of the process.”<sup>6</sup>

***Training of Poll Workers.*** Of all the concerns about the federal government getting into elections policies, this is one of those that concerns me greatly. Historically, states have had little to no role in poll worker training because it has been local election jurisdictions that have had the full responsibility for poll worker training. This is natural and necessary. States don’t hire and train poll workers because state governments don’t actually conduct elections (with perhaps one exception). Responsibilities for state election officials have not included training poll workers because it is the local jurisdiction that has to train on specific equipment, adjust to the polling sites available to them, has the specific ballot requirements, and a zillion other considerations that sometimes affect their poll workers differently from even a neighboring county. Training expectations are best directed to local governments. I strongly advise the Senate to back away from mandates in this area. Oregon doesn’t need poll workers (and soon Washington state may not either). What works in Topeka may not work as well in Wichita or Dodge City. With 1.4 million poll workers in the last presidential election, we know first hand the difficulties of training armies of part-time people to do poll work, most of whom are retirement age and older.

Our organization, the National Association of Election Officials, currently has a National Task Force on Training and Education, a key component of which is looking at ways to improve on poll worker education methods. Its work for an initial report will come during 2008 but work is likely to continue for some time as we discover newer and better ways to train older workers for ever changing election requirements. The US EAC just approved its Guidebook on Poll Worker Recruitment, Training and Retention and a separate Guidebook on Recruitment of College Poll Workers – to be released soon.

I would caution you to strike all federal involvement in poll worker training. Training in this instance is best left for local governments. Forcing the states to take a more active role in this with mandated training modules is likely to lead to fewer poll workers overall and becomes another barrier to overcome for local election officials in recruiting and retaining poll workers. We have been remarkably well served in elections by the civic minded men and women who essentially volunteer with pittance pay to work 14 to 16 hour days during elections. The Senate needs to concentrate its efforts elsewhere.

If you want to contribute usefully here, establish grants for local governments whereby they can study and experiment with training ideas toward developing more effective training. If Congress does it this way, there will be many “laboratories” working to develop, test, refine and showcase ideas that work. Encourage and fund developmental efforts rather than trying to prescribe results.

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<sup>6</sup> Ibid. Page 11.

***Equitable Allocation of Voting Systems, Poll Workers, and Election Resources.*** The part of this that is useful and desirable is the EAC studying the whole problem and trying to establish benchmarks. My guess is that we are going to find out there is not an easy or simple solution to doing this. But most of the election community will welcome such a study. There isn't an election administrator anywhere in America that wants voters to stand in line if there is a way to avoid such an occurrence. But be realistic in the deadline for results of the study. The EAC will need the involvement and cooperation of the state and local governments to study this area. There is no chance of them having a meaningful study completed by January 1 of 2009. Election officials at state and local levels will be so busy with Election 2008 that they won't have time to assist the Commission and for the EAC to have a report that has any validity to it, they must have the ongoing commitment of time of state and local election officials. Set the deadline for sometime in 2010. And give it sufficient funding that multiple efforts can occur concurrently throughout the nation for meetings and discussions.

The root causes of problems in election resource allocation is currently difficult to overcome. Here are samples of what causes these kinds of problems:

- State requirements on size of precincts. If a state allows a precinct to grow too large in size then lines result and perhaps too few machines are allocated. If a state mandates precincts that are too small, then poll worker recruitment is more difficult and the number of machines that can be bought and distributed stretches too thin.
- If states allow too many referendum, initiatives, or constitutional amendments to be placed on the general election ballot, then it is inevitable that long lines develop.<sup>7</sup>
- If county or city or state budget authorities don't allow the elections office to purchase enough equipment to take care of peak period voting, then it becomes a problem that simply cannot be resolved during an election. Purchasing voting equipment must occur, at a minimum, one year before an election where you are crystal gazing as to how many voters you believe will show up. Budget authorities have a nasty habit of reducing the numbers of voting equipment to less that the election officials tell them is needed. If 100 machines are required, government has a habit of funding 80 (or less) and then doesn't allow the local elections office to buy spares to use in case some of the equipment malfunctions. Government also likes to take averages such as there are 1,000 voters and polls are open 12 hours so you need to be able to vote just over 80 voters an hour, therefore you need only "x" number of machines. But voters don't show up in averages – they show up at poll opening, during the lunch hour and, typically, the tsunami occurs at the end of the day in the last 2 or 3 hours of the polls. If a race finally attracts the interest of voters and becomes a passionate contest in the late stages, then all the equipment has already been allocated and delivered.

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<sup>7</sup> For example, in November 2006, Sacramento had a 21 inch, 2 sided, 2 page ballot in two languages. Cities like Los Angeles have even more languages.

- Population growth also affects this. In areas where the population is increasing quickly, the local authorities sometimes can't keep up with it financially in time to take care of the problem by the next election. Look at areas of intense growth in many of the Sunbelt states and this becomes apparent. Usually high growth areas are able to overcome the problems in later elections because the increased tax revenue allows for increased resources.
- Long ballots due to high numbers of offices to be filled. Some locations simply have many more positions to be voted on than others and that variation is hard to address in a benchmark.
- Poll workers don't show up to open polls. This is the most troubling of all. We know it is likely to occur in urban areas because it usually does. We make provisions to recruit additional poll workers who can be sent to a site once you know you have a problem. But until that problem actually occurs – and you learn about it – there will be a lag time of responding to the problem and overcoming it. In some areas that may not get “fixed” for several hours due to poll worker shortages. We still haven't been able to employ enough mind readers and sooth-sayers to predict exactly where and when that will happen.

These are but a handful of the considerations that affect this. Clearly, we may also need to learn and to develop better management tools, so we welcome a study of this area. I assure you election officials want to get this right for voters. We want voters to have a good experience. We want voters satisfied with the process even if they are not always satisfied with the choices.

***Prohibition of Campaign Activities by Chief State Election Officials.*** This is probably a valid requirement. If not at the federal level, then perhaps at the state level. The situation is not easy for statewide office holders who are the Chief Election Official. Without a law to shield them, the office holder is left to the political wolves. If a CEO wants a political future outside of the election profession, and wants to seek higher state office or federal office, then party officials expect them to be “one of the team”. This expectation has affected members of both parties. And yet, if they are to assure the public of a fair and impartial election, it becomes difficult to assure that the appearance of impropriety is overcome if the official is also a spokesperson, or advertising endorser, or major contributor, or holder of a key campaign position for candidates other than themselves. Being shielded by law essentially takes them off the hook and allows them to focus solely on their official election responsibility. While I believe the state officials I have known over the years were able to separate their official duties from their campaign participation and to do that with integrity, it is certainly difficult to assure voters that correct decisions were made impartially. The law still won't assure or prevent that a political decision is made rather than an impartial process decision, but such a law at least gives the state official the presumption of neutrality on official vote counting decisions. Clearly there are some, however, that believe this is an infringement on the right of association and the right of free speech so it may have Constitutional considerations.

***Standards for Purging Voters.*** This is an area where politics begins and election administrators get frustrated. What becomes an ineligible purge to some becomes ballot security and voter integrity to others. This battle usually is waged between the two national parties and as election administrators we listen to both sides and sometimes can agree partially with both sides.

The devil is in the details once again. As election administrators, people in our profession want to be sure that eligible voters remain eligible but we also want the ability to efficiently remove those we believe are no longer eligible. The trade offs are not easy for us in this regard. We want to maintain and encourage enfranchisement while also assuring that legally ineligible may not participate until legally entitled to do so.

Some conditions allow or encourage voters to register multiple times. But how do we know if John Jay Jones and J. Jay Jones and J.J. Jones and John J. Jones at a single address are one person or several people? The voter sometimes registers under more than one variation of their own name because the voter doesn't always remember if they are registered to vote. If they don't respond to any of the contacts we make with them, then what do we do? If the voter moves and fills out a Postal Change of Address Card do we assume that it was one of the eligible voters at that address or that all the variations of the name are now at a new address? Without a unique identifier such as a Social Security number, how do we *know* for certain who is whom and their eligibility unless they tell us?

My point here is that the language used to Sec. 306 B (i) (I, II and III) does not clarify how to resolve those difficulties and probably will lead to a situation of where no one could effectively be removed without a certified letter from the voter. That is not an ideal situation.

We know that college students change residences more often than the general public and in many of the college communities, they register at each and every address. We mail to both old and new addresses and don't hear from either. The current resident at the student's old address doesn't return the mail to the post office but simply discards it and the student doesn't respond to the new mailing either. Similar situations occur in large apartment complexes and leave the elections officials with swollen voter registration rolls of multiple registrations or people who have long since moved from the community.

Unfortunately for the election officials, court systems don't issue documents to felons officially establishing that their voting rights have been restored. So we have to ferret it out as best we can and sometimes we get that wrong. Felons also have been known to change their names without going to court to do so in order to avoid being identified as a felon. Is it then correct or incorrect that they are on the voter rolls?

Section 326. Public Notice. Do we seriously want to publish on the Internet the full names of voters who are to be removed? If a voter registers to vote, do they lose all presumption of privacy simply because they once registered to vote? I know that politicians and advocacy groups want access to information especially information about

voters. But election officials also have to be concerned for the voter's welfare and the voters' expectation of some privacy. We have to be careful here not to give voters another reason not to register to vote; does publishing their names on the Internet begin to lead to more people withdrawing from the process?

While election officials welcome voter protections and safeguards, is another layer of protection over that contained in NVRA necessary? I don't know the answer yet because it has not been widely considered by those in our profession. Clearly we have difficulty with list maintenance as a result of NVRA provisions. We can and do applaud NVRA for its contributing to greater ease of registration, but it also makes it cumbersome to maintain accurate rolls and leaves such uncertainty as to how to best provide a legitimate registry of eligible voters. We work through it and sometimes around it to assure eligible voters are appropriately maintained.

We are always ready to listen as to what creates a need for legislation that is not already covered by other federal legislation, but we currently have no compelling examples of a sustained problem that warrants additions in federal legislation.

***Election Observers.*** As election officials we believe in transparent processes and trained election observers who truly understand the federal *and* state processes and laws are not a conceptual problem. Our main concern is that there not be so many people in a polling place that they begin to intimidate voters, or overwhelm poll workers with questions and comments that then impede an orderly process for the elections. This is still about voters and being able to conduct an election. There likely has to be restriction on the numbers of such observers in any single location.

***Early Voting.*** Congress desire to expand the concept of early in-person voting is commendable. But tying that expansion to a prohibition on electronic voting makes this a difficult objective to fulfill. Early voting has served many voters well because it gives them options other than Election Day voting. As long as early voting is tied to some form of positive identification (since this is a privilege and a voter choice) it can be done well and with sufficient safeguards to protect voters and voted ballots. But forcing early voting and insisting on a paper solution creates all the problems previously mentioned. The bill requires uniform hours each day. If that means that each day will have the same uniform hours as previous days, then not too many states do it that way currently. Sundays are shorter days than week days for accommodation of religious activities. My guess is that Saturdays in urban areas would need to be adjusted also to accommodate the religious concerns of some voters. I would suggest the legislation eliminate this requirement.

To specify early voting for all states and then let the states work out the details would be far preferable to try to establish uniform policies in federal law.

***Counting of Provisional Ballots.*** Clearly this provision of the bill establishes that the voter may vote from anywhere in the state and have the voter's ballot counted if the voter is otherwise eligible to vote. Currently, we have no established methods of how to

accomplish this provision in most of our states. If electronic voting is prohibited, it is difficult to have a voter get his or her appropriate ballot wherever they happen to be on Election Day. Even with electronic voting, it may be virtually impossible to program each and every machine with all the ballot styles required. In a state like California that could be tens of thousands of ballot styles. It is also far more complex to get that voted paper ballot back to the correct jurisdiction for inclusion in their votes (and states where it requires all ballot to be reported within the precinct of the voter it become even more difficult to accomplish). The law also seems to imply that the State counts the ballots. Other than Alaska, I don't think states count ballots. Local jurisdictions count ballots. In Michigan that is 1,500 local elections offices and in Wisconsin it is 1,600. In New England they are counted in townships and cities. In the rest of the country they are counted by county election officials. Does the bill truly want states to start counting the ballots rather than through their established plans?

**Conclusion.** Congress will be better off and democracy will be better off if Congress moves slowly, cautiously, and reluctantly to engage continued changes mandated at the federal level.

There is a good and compelling reason for this process to remain in the hands of state and local governments. It has stood the test of time and weathered well. The compelling necessity for election legislation that resulted in HAVA in 2002 is not evident today. Despite the claims of vocal and vociferous doubters, elections are in remarkably good shape and the public has high confidence in their votes being counted accurately and fairly.<sup>8</sup>

When Congress does engage in further legislation it should be about objectives and goals and not specifics. Let state and local governments and election professionals figure out how to make this best work for the voters of America and its individual states. Much better democracy will be the result. Don't get prescriptive and try to dictate how it will be done. America's elections have a long history of success due to the abilities of state and local election officials to find the right answer that assures their voters of full participation and accurate elections.

While it is tempting to legislate on additional election "reform", America has undergone massive changes in elections practices and procedures as a result of HAVA. We truly need a cooling off period where the country can absorb all the changes brought by HAVA. The Help America Vote Act was the single largest change in American history since the Civil Rights and Voting Rights Acts of the 1960s. And those Acts, while important to a healthy democracy, did not impact the day-to-day operations of elections like HAVA did. We are still trying to get parts of HAVA implemented and successful.

If Congress wants to do a limited bill that compels electronic voting machines to have paper trails, then we can absorb that change and accommodate it, but not before 2010. Even then it leaves the blind without a good solution for privacy and independence. It

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<sup>8</sup> See CNN Exit Polls where voters reported 88% percent to 11% that they believed the votes cast for Congressional elections in 2006 were counted accurately and fairly.

will indeed complicate a recount situation because the solutions to paper with electronic voting are not ideal yet. If we maintain electronic voting, the manufacturers and the election officials will figure out ways to make the process go smoothly even for recount situations. But that will take a more time to perfect.

Trust the people who do this job. They are honest and decent Americans who are under appreciated. They truly believe in an honest and fair democracy. And regardless of political party affiliation and regardless of political philosophy, the Democrats and Republicans and Independents and liberals and conservatives and moderates who make elections their profession serve voters well. Trust them and their abilities while continuing a transparent and public process. Those who choose to observe the work in the process predominantly leave the observation with greater confidence in the accuracy and integrity of the process. Ask the local election officials from your home state what they think of the men and women who do this job. You will find them confident in and complimentary of their colleagues throughout America.

Trust state and local governments to get it right – and allow them the opportunity to demonstrate the integrity and accuracy of the processes they oversee. That is why democracy is healthy and vibrant in America.

Thank you for your time to listen and for your concern about American elections.