

Testimony of Warren Stewart, Policy Director for VoteTrustUSA before the Senate Committee on Rules and Administration, February 7, 2007

Chairman Feinstein, Ranking Member Bennett, members of the Committee:

Thank you for giving me the opportunity to speak to you regarding citizen concern about the security and reliability of electronic voting systems. It is an honor for me to participate in this hearing with members of Congress, election officials, and distinguished computer and legal experts to speak on behalf of the primary stakeholders in America's elections – the voters.

I serve as policy director for VoteTrustUSA, a national nonpartisan network of state and local election integrity organizations across the country. These citizen-based groups have formed to raise public awareness about electronic voting and advocate for auditable elections with county boards, statehouses, and here in our Capitol. They have attended voting machine examinations and county election board meetings, developed cooperative relationships with local election officials and served as observers and poll workers. They have written articles and letters to newspapers, participated on legislative task forces, attended public hearings, conferences, and lobby days, and reached out to other public interest groups with the message that the integrity of elections is critical to our democracy.

By and large these groups are led by volunteers – dedicated, hard working Americans that care deeply about the great republic they live in - patriots willing to commit themselves to the cause of transparent elections. Though many of these groups are still young, they have already had a tremendous impact. For example: Citizens for Election Integrity Minnesota worked together with The League of Women Voters and the Minnesota Secretary of State in providing public observers for the state's post-election audit. TrueVote CT, a citizen group led by computer security experts and professors, worked with the state's Voting Technology Advisory Board and the Secretary of State in informing that state's voting equipment purchasing plans. The Sarasota Alliance for Fair Elections brought a successful charter amendment to the November ballot calling for voter verified paper ballots and audits in the county. Time does not permit a fuller account of the dozens of groups like these that have been working on elections in their states and counties and their accomplishments, and I beg them to forgive me for not mentioning them.

The process through which we cast and count votes has received a greater level of citizen interest and scrutiny in the past few years than ever before in our nation's history. This public awareness has arisen from personal experiences in polling places, news accounts of election problems, and a series of governmental and academic studies that have exposed the serious security vulnerabilities of electronic voting. While this broad based movement embraces a wide range of proposals and positions, it is unified in the conclusion that the direct electronic recording of votes to computer memory is inimical to democracy.

The Imperative of Transparency

Much of the distrust of election machinery rests on the lack of transparency of the software used to administer electronic elections. The Declaration of Independence boldly asserts that “Governments derive their Just powers from the Consent of the Governed”. The one and only mechanism by which the ‘Consent of the Governed’ is transferred from “the Governed” to those who govern is voting. When the counting of votes consists of running proprietary software to process vote data, neither voters nor the regulators and experts with whom the public places its trust can determine whether votes are being counted as the voters intended. It is not acceptable for the mechanism through votes are counted to be hidden in order to protect the commercial interests of private corporations. Elections belong to the voters.

For years, the manufacturers of voting equipment, state and local election officials, and the Election Assistance Commission (EAC) have stated that the testing done by the Independent Test Authority (ITA) labs was thorough and rigorous and thus ensured strict conformance of the qualified systems to federal standards. This testing and conformance to standards has often been the first line of defense against reports of security vulnerabilities in voting systems. But recently we have learned that the laboratory responsible for testing at least 70% of the voting system software used in the November election had not been adequately testing to those standards.

An assessment report submitted to the Election Assistance Commission last summer revealed that one laboratory’s test plan was incomplete, even after 10 years of testing voting systems and that they did not even have a copy of the latest, incomplete test plan that had been developed. Yet these alarming revelations were not shared with election officials or the public until the existence of the report was disclosed in the media last month. The culture of secrecy that has been allowed to exist among the voting industry, the testing laboratories, and the institutions that oversee them has bred a deep level of distrust among voters that must be addressed with rigorous oversight and a new commitment to transparency before the full confidence of voters can be restored.

State Level Initiatives

More than half the states now require the basic safeguard of a voter verified paper record of every vote and half of those also conduct mandatory random hand counted audits. Many states have already come to the conclusion that a paper ballot voting system, with ballots either counted by hand or with optical scanners is not only more accurate and reliable but it is also significantly less expensive. Innovative ballot marking devices and other assistive systems have allowed 17 entire states and jurisdictions in another 16 states to retain paper ballot systems while still providing voters with disabilities and language minority voters with the opportunity to cast their votes privately and independently.

Over the past year, two more states – New Mexico and Connecticut – have abandoned plans to purchase touchscreen voting machines in favor of statewide paper ballot systems.

Last week, the Governor of Florida announced his budget recommendation allocating \$32.5 million to replace touch-screen voting machines with optical scan machines in all precincts statewide. Also last week the Virginia Senate passed a bill that would phase out the future purchase of direct recording electronic voting machines. Legislative initiatives have been proposed in Massachusetts, Iowa, Pennsylvania, Georgia, Maryland, Kentucky, and other states that would prohibit paperless electronic voting systems and require mandatory audits of election results.

The 2006 Elections

The other members of the panel can speak more directly to technical and legal issues related to electronic voting systems. Instead, I want to share with you the experiences of voters and poll workers in the past election cycle.

Throughout the 2006 primary season, state after state experienced problems as the result of computerized voting systems. In the Texas primaries, counties across the state experienced programming problems, ballot issues, and administrative difficulties that led to delays in reporting and questions about the accuracy of the vote. Not least among these problems occurred in Tarrant County, where voting systems somehow added over 100,000 votes to the totals.

In March, Cook County Illinois waited over a week and candidates of both parties questioned results, leading officials to deny further payment to the vendor that had supplied their equipment until the problems were addressed.

The delivery of uncertified software for the Indiana primaries led to investigations and fines imposed on two voting machine manufacturers. Similar problems in Arkansas' primary and subsequent run-off election created what one election official described as "A royal mess" and also led to investigations by the legislature and the Secretary of State.

Had an election official in Pottawattamie County Iowa failed to investigate anomalous electronic totals in the Republican primary in June, a ballot programming error would have resulted in nine candidates on the November ballot that had not been chosen by the voters.

Memory card failures discovered in advance of Ohio's primaries in May were overshadowed by the chaos that ensued on Election Day. Two reports were issued after the primary with one concluding that "[r]elying on this system in its present state should be viewed as a calculated risk."

The primary season culminated in Maryland in September where problems with new electronic poll books, and the failure of election officials to provide "smart cards" required for voting on the touch screen machines, delayed the opening of many polling places. Thousands of voters were turned away or forced to vote provisionally on makeshift ballots torn from voter guides, leading to several legal challenges.

The Voice of Voters and Pollworkers

I have submitted for the record an account of e-voting in the 2006 mid-term elections that draws from surveys submitted by participants in the volunteer Pollworkers for Democracy project, reports from voters who called the Election Incident Reporting System and VoterAction hotlines, and reports collected by VotersUnite.Org from the national and local media. While the direst of pre-election predictions may not have been realized on Nov. 7, the range and severity of the problems that did occur serve as a warning that action must be taken to ensure meaningful reform before the next federal election cycle.

Widespread problems were reported with electronic equipment in New Jersey, including Essex County, where machines broke down or failed to boot up in over half the towns and cities. Confusion about emergency paper ballots led to many voters being turned away without an opportunity to vote.

In Cuyahoga County, Ohio, over 100 machine failures led to at least 43 of the county's 573 polling places either failing to open on time or being unable to use voting equipment. Though many polling places were kept open late, there is no way to determine how many voters were unable to vote as a result of the failures. In Pennsylvania, thousands of machines failed on Election Day, leading to a call from the state's Republican party to impound equipment in 27 counties.

In Denver, the poorly designed and under tested software running electronic poll books overloaded, resulting in voters waiting for hours with an estimated 20,000 leaving without casting a vote.

Voting machines failed at thousands of polling places in over half the states - including an entire county in Indiana - and the problems caused such severe delays in eight states that the voting hours were extended.

In addition to the situation in Sarasota Co. Florida, voters in 15 other states reported that their votes had been recorded for the wrong candidate or did not appear on review screens at the end of the voting process.

One of the strongest messages of this report is the fundamental difference between problems encountered with ballot scanners and those encountered with direct recording electronic, or DRE, voting systems. When a scanner failed to operate for any reason, voters could still mark their paper ballots. When a DRE failed, voters could not vote. If there was a systemic problem with all the machines in a polling place - no one could vote resulting in long lines and voters turned away.

The report demonstrates that the promise of easier voting, more accurate tallies, and faster results with electronic systems has not been fulfilled. An increasing number of

voters, poll workers, and election officials are finding the election process to be more difficult, not easier, and confidence in the final tallies has been undermined. The report, while hardly comprehensive, is indicative of the widespread failure of electronic voting systems across the country and how this failure affected the experience of voters.

I am encouraged by the prompt attention that these concerns have received through the convening of this hearing and the legislative initiatives that have been proposed. I deeply appreciate the opportunity to address these concerns to the members of the Committee and want to emphasize the desire of VoteTrustUSA and the organizations we represent to work together with you as you establish election safeguards and security procedures that will ensure the accuracy, accessibility, and auditability of our elections.