

Dear \_\_\_\_\_

Election reform has assumed a prominent place on the Federal legislative agenda at the beginning of the new legislative session. Several election reform bills have been introduced that address different areas of concern and we are optimistic that progress can be made in this session toward restoring confidence in the election process. We applaud the efforts being made and encourage a thorough consideration of all legislative proposals.

[The National Ballot Integrity Project](#) is a non-profit, non-partisan 501c4 organization, dedicated to ensuring voting accessibility for all eligible voters, public accountability and oversight of all aspects of the election system, public awareness of election reform issues, accurate recording, counting and reporting of all votes cast and the adoption and enforcement of election procedures, laws and regulations that ensure that everyone who wants to vote is able to do so without hindrance and with full confidence that their vote will be counted as cast.

The National Ballot Integrity Project recognizes the urgency of enacting meaningful substantive changes to election procedures that will take effect before the 2006 elections. This urgency is driven not only because of the necessity of ensuring voters' confidence in the results of that election but also the looming deadlines for federal appropriations mandated by the Help America Vote Act of 2002 (HAVA). States are currently making purchasing decisions in order to use funds appropriated by HAVA that must be spent before January 1, 2006. There is an urgent need to pass legislation as soon as possible that will ensure that the HAVA money is not spent on another generation of paperless electronic voting machines.

Several omnibus comprehensive bills have been proposed that address a wide range of election reform issues, in particular Senator Clinton's [Count Every Vote Act S. 450 \(CEVA\)](#). Others focus more narrowly on verification and accuracy. Senator Ensign's [Voting Integrity and Verification Act S. 330 \(VIVA\)](#), though it is limited to merely establishing the requirement for a voter verifiable paper record in Federal elections, would be an important first step and we support it. However, the best of the bills focusing on verification and accuracy is Representative Holt's [Voter Confidence and Increased Accessibility Act, H.R. 550 \(VCIA\)](#). The language in VCIA is the result of years of ongoing dialogue with election reform advocates, computer specialists and a variety of organizations advocating for the disabled community and, if enacted, would significantly and immediately increase confidence in the accuracy of elections.

We strongly encourage your support of VCIA in the House. We are currently working to get the language of H.R. 550 introduced in the Senate and once that has happened we would similarly encourage your support of that bill. Such support need not be to the exclusion of support for CEVA. However, CEVA, like other comprehensive election reform bills currently introduced, is unlikely to pass in the current session due to the current political context and legitimate concerns about specific provisions in the bill. Given the urgent need for immediate legislative action, we feel that action directed

toward the passage of VCIA should be a priority for all concerned with restoring confidence in the election process.

## **OVERVIEW of CEVA and VCIA**

### **Political Realities**

The hard political realities of the 109th Congress dictate that any true election reform legislation that stands a chance of even reaching a floor vote must have bi-partisan support and preferably bi-partisan co-sponsorship. Further, potentially successful legislation that is supported by Democrats must be framed and perceived as non-partisan and motivated by the universal goals of integrity, accuracy and fairness and not as partisan reaction to the results of recent elections.

In lobbying for the Ensign Bill (VIVA), we have had tremendous success in promoting the importance of a voter verifiable paper record requirement with legislators of both parties by emphasizing the necessity of a ‘safety net’ in the case of machine malfunction and the confidence provided by the essential redundancy of a paper record.

Similarly it makes sense to many Republican legislators that once a requirement for a voter verified paper record has been established it is imperative that a mechanism be established that utilizes that voter verified paper record to check the accuracy of the electronic voting systems. Short of complete initial hand counts of the paper records, the best available solution is an automatic, random audit of some statistically significant sample of the paper records. Such an audit procedure should trigger further hand counts in the event that discrepancies are revealed that call the accuracy of electronic records into question.

Verification of the accuracy of the election process is an area of election reform that can easily be accepted and supported by citizens and legislators across the political spectrum. Other concerns about the election process, while no less important, are nevertheless more contentious and will therefore take much longer to achieve. Without in any way questioning the importance of the other significant issues addressed by omnibus, comprehensive bills like S. 450 we are concerned that widely supported measures aimed at ensuring confidence in the accuracy and integrity of the 2006 could get postponed if they are dependant on the unlikely passage of a comprehensive bill. Our first concern is establishing guidelines that will halt the purchase of another generation of paperless electronic voting systems so that we can protect our vote in time for the 2006 elections and for this reason we strongly encourage a ‘reality-based’ strategy that isolates issues and seeks bi-partisan support.

### **Concern with Specific Language in CEVA**

Senator Clinton’s Count Every Vote Act of 2005 (CEVA) has received considerable attention since its introduction on February 17 – attention that it deserves for its scope

and boldness. CEVA is comprehensive legislation that addresses a staggering range of election reform issues – issues that deserve consideration and action. However in its effort to address such a wide range of issues it has failed to address issues of verification and accuracy to a satisfactory level of precision and detail, unfortunately resulting in unintended consequences that are actually counter-productive.

## 1. Verification

One of the problems with writing and interpreting legislation is fully understanding how different provisions in a bill are likely to interact with one another as well as with existing state and federal legislation. In studying the verification provisions in Section 101 of CEVA, we are concerned about several unanticipated consequences.

For example, CEVA requires that disabled voters be provided a means of verification that “shall not require the voter to handle the paper” though it goes on to add that this requirement “shall not preclude the use of Braille or tactile ballots for those voters who need them.” This would seem to preclude the use of ballot-marking devices like the AutoMark that enable visually impaired, illiterate and reading disabled people to independently and privately mark and verify optical scan ballots. Systems produced by three different manufacturers are currently completing the certification process. They have proven successful in tests with blind and disabled voters in the 2004 Arizona election and in demonstrations in Minnesota and elsewhere.

CEVA allows that these requirements “shall not apply to any voting system certified by the Independent Testing Authorities before the date of the enactment of this Act.” Assuming that the AutoMark is certified soon as expected, it would therefore be exempted from the ‘handling’ provision except that the bill earlier specifies that “any direct recording electronic voting system or other voting system ... shall produce ... an individual paper record which ... shall be available for visual, audio, and **pictorial** inspection and verification by the voter. (emphasis added)

There are currently no systems in this country that provide for pictorial verification of a voter’s vote, much less systems that stand any chance of development, testing, federal and state certification, manufacture, distribution in time for the deadlines imposed by CEVA (November, 2006). Quite apart from the inadvisability of mandating technology that does not exist, this provision, well-intentioned though it may be, would prohibit the use of systems that do currently exist that provide independent accessibility for almost all disabled voters, and likely result in litigation regarding the certification status of systems like the AutoMark.

Additionally, though this provision does call for the option of pictorial verification, there is no corresponding language in CEVA or HAVA requiring the initial vote to be cast using some sort of pictorial method. Since the pictorial option is apparently intended for illiterate voters, voters with limited language skills, or voters with disabilities that inhibit their ability to use a written language, it seems inconsistent to require this accommodation in the verification process while not requiring it in the initial voting

process. Needless to say, requiring all voting systems to accommodate pictorial voting in time for the deadlines imposed by CEVA would be financially and logistically impossible.

A further consequence of the pictorial requirements would be to force states that have single voting system provisions in their state election laws to retire their paper-based voting systems and buy a whole fleet of Direct Record Electronic (DRE) systems. Needless to say, we strongly oppose any legislation that would increase the employment of electronic voting machines.

Finally, CEVA shares with S. 17 and H.R. 533 verification requirements for disabled voters requiring that each machine to do many specific things (audio, pictorial, paper, etc.), rather than one thing (verification) in an accessible manner. No such voting systems currently exist. Even if they could somehow be invented, certified, manufactured and distributed in time for the deadlines imposed by CEVA, the fact that a variety of different forms of verification will be produced and preserved will create a confusing situation in audits and recounts, including those required by this bill.

## **2. Mandatory Audits**

CEVA was apparently based on the Restore Elector Confidence in Our Representative Democracy Act of 2004 (RECORD), which Senators Clinton and Boxer co-sponsored in the 108th Congress. CEVA is much more comprehensive than RECORD and addresses many concerns that were not part of the previous bill. Additionally CEVA greatly expands and improves on the most of the provisions in RECORD. Unfortunately the mandatory audit language, limited and poorly defined in RECORD, remains essentially unchanged in CEVA and significantly fails to respond to lessons learned in the 2004 recounts. CEVA does little more than require a 2% recount and the publication of the results of the recount. There is no mandated action should the results of the mandatory recounts reveal discrepancies between any electronic data and the data derived from voter verified records. There are also no provisions for funding, administering and implementing the mandatory recount.

CEVA gets a lot right in terms of verification and election security. We endorse the prohibition of thermal paper, unique to this bill and we also endorse the prohibition of undisclosed voting software and wireless communication shared with other bills. However, this bill falls short of the standards that we feel are necessary to restore voters' confidence in electronic voting systems. Fortunately there is another bill that addresses these concerns more precisely and successfully.

### **Concern with Verification Clauses in S. 17 and H.R. 533**

The verification language in two other omnibus bills S.17, introduced by Senator Dodd and H.R. 533, introduced by Representative Conyers, is even more problematic and completely unacceptable. Both bills mandate technology that does not exist, push back deadlines for compliance until after the 2006 elections (after the 2008 elections in S. 17)

and will result in the purchase of thousands of paperless electronic voting machines. Further, neither of these bills require the preservation of verified records nor establish the verified record as the true and correct record of the voter's vote. Finally neither of these bills mandate an automatic audit to use the verified records as means of verifying the accuracy of electronic data.

### **Why VCIA Deserves Your Support**

We strongly support the establishment of a voter verifiable paper record requirement as a necessary 'safety net' in the case of machine malfunction. The voter verifiable paper record requirement mandated by (VIVA) is only a first step. Once a requirement for a voter verified paper record has been established it is imperative that a mechanism be established that utilizes that voter verified paper record to check the accuracy of the electronic voting systems. Short of complete initial hand counts of the paper records, the best available solution is an automatic, random audit of some statistically significant sample of the paper records. Such an audit procedure should trigger further hand counts in the event that discrepancies are revealed that call the accuracy of electronic records into question.

The Voter Confidence and Increased Accessibility Act, H. R. 550 (VCIA). Introduced just three weeks ago, VCIA is the only election reform bill in the House to attract bi-partisan support and with over 100 co-sponsors already, this bill has more momentum than any other election reform legislation currently introduced. We are actively involved in getting the precise language of H.R. 550 introduced as a companion bill in the Senate and are confident that it will attract the same broad based support. The language of VICA and a list of current co-sponsors can be found at the link above.

VCIA is far more precise in defining the requirement for voter verified paper records than VIVA. The language shares CEVA's concern for disabled accessible verification but does so in a more practical way that does not result in the disqualification of voting systems that currently exist to assist disabled voters. The provisions for mandatory audits in VCIA are much more detailed and well considered than those in CEVA and more likely to result in a meaningful check on the accuracy of election results.

Specifically, VCIA would:

- Strengthen the HAVA current audit trail requirement by requiring that the voters have the opportunity to verify the accuracy of the recorded vote.
- Require that all voting systems produce a voter-verified paper record for use in manual audits, commencing in 2006 in accordance with HAVA's original deadline. (Funding of \$150 million is authorized to help states meet the cost of implementing this requirement.)
- Require random, unannounced, hand-count audits of the voter-verified paper records (conducted by the Election Assistance Commission) in 2% of all jurisdictions, including

at least 1 precinct per county. Such funds as may be necessary are authorized to fund the expense of the audits.

- Preserve HAVA's existing access requirements for voters with disabilities; clarify and enhance the security requirements demanded of systems to be used by voters with disabilities; and add the requirement that an accessible voter-verification mechanism be provided.
- Ban the use of undisclosed software and all wireless and concealed communications devices in voting systems, and prohibiting the connection of any voting machine component to the Internet.
- Require manufacturers and election officials to document the chain of custody with respect to the handling of software; prohibit the use of software or software modifications that have not been certified or re-certified; and prohibit political and financial conflicts of interest among manufactures, test laboratories, and political parties.

We urge your active support for VCIA in the House and for companion legislation in the Senate. Please feel free to contact me for any further information or clarification.

Best Regards,

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