

Statement of Representative Rush Holt  
to  
The Elections Subcommittee of the Committee on House Administration  
Hearing on the Voter Confidence and Increased Accessibility Act (H.R. 811)  
March 23, 2007

Chairwoman Lofgren, Ranking Member McCarthy, Members of the Subcommittee, I am pleased to be before you today, and deeply gratified that the Elections Subcommittee is taking such thorough and expeditious action on this critical legislation – the Voter Confidence and Increased Accessibility Act (H.R. 811). I must say that it amazes me that a concept so obvious – that we should be able to audit independently the accuracy of our election results rather than having simply to rely on the word of voting machine vendors as to that accuracy – would languish for four years in Congress without action. Thank you again for bringing it to action.

Free and fair elections are the very cornerstone of Democracy, and democracy works only if we believe it does. Today, if we have a question about the result, the voting system vendors simply tell us that the software counted the votes accurately and we have nothing to worry about. The voter does not believe the voter is in control.

Votes are in a sense the “currency” of Democracy, and they are inherently valuable. Anything valuable, such as bank records, or property records, must be independently auditable and regularly audited. We wouldn’t have it any other way. The same absolutely must be true of our votes.

Our legislation, the Voter Confidence and Increased Accessibility Act, would:

Require a voter verified durable paper ballot for every vote cast, to serve as the vote of record in all recounts and audits;

Require routine random audits in a percentage of precincts in every federal election, and an increased percentage of precincts when races are extremely close;

Require that voters be given paper emergency ballots immediately upon machine failure, to prevent disenfranchisement; such ballots are required to be counted as regular ballots;

Ban the use of wireless devices, undisclosed software and Internet connections to machines upon which votes are cast;

Preserve and enhance the accessibility requirements of the Help America Vote Act and fund the development of new accessible ballot marking and ballot reading technologies;

Authorize \$300 million to defray the cost of implementing the paper ballot and accessible verification requirements of the bill, and I would be happy with a higher authorization; and

Establish an escrow account through the Election Assistance Commission to create an arms-length relationship between vendors and test labs.

I’d like to present for you a not-so-hypothetical scenario. Let’s say it is November 2008. We are in a state that has brand new touch screen voting machines in every polling place, but no voter verified paper ballots are used or produced for the votes cast on the machines. The voting machines run on trade-secret-protected software. Now, it is the day after the election, and a Presidential candidate has been declared the winner by 500

votes. The losing candidate discovers that in numerous election jurisdictions in the state that tend to vote for candidates from his or her party, there was a vast under-vote in the Presidential race – altogether, say, 75,000 votes. The losing candidate sues, arguing that the intent of the voters was not reflected in the reported result because 75,000 votes are, inexplicably, missing.

How does the losing candidate prove this? The votes that showed on the screen surface all day long, which would have been verified by the voters while in the booth, evaporated into thin air the minute each voter hit the cast vote button and left the booth, leaving no tangible copy of anything that the voters verified. Can any election official, computer scientist, or voting system vendor reconstruct what that voter intended? No. The voter votes in secret. Because of the secret ballot, only the voter can verify that his or her intention is recorded correctly. Granted, the software translated all of the screen touches into records of votes, but (1) the software is trade-secret-protected, so it cannot be examined to determine whether it contained any flaws and (2) even if the software could be examined and revealed no flaws, that doesn't mean it made an accurate translation on election day. So-called "Trojan horses" are designed to erase themselves after accomplishing their function (for example, switching votes). What now, for our losing candidate? How can he or she prove what the intent of those 75,000 voters was? The thing is, in that scenario, it's impossible. It's impossible because there is no evidence of voter intent left.

The end result is that "lack of evidence" is the winner and "intent of the voters" is the loser. That is, even though neither the loser nor the winner has any evidence with which to prove what the intent of those 75,000 voters was, the "lack of evidence" will by default tip the scale in favor of the declared winner, and the "intent of the voters," because it cannot be proven to support one candidate or another, becomes irrelevant to the end result.

Therefore, we simply cannot go forward into another general election without addressing this problem head on. There are 15 States that do not use paper ballot based voting – 15 States that are in the same position as the hypothetical state described above. The outcome of the 2008 Presidential election might hang in the balance in one of those states. Will "lack of evidence" of voter intent hand the White House to one candidate simply because neither candidate can prove what the intent of the voters really was?

I am certain the Subcommittee will agree that we simply cannot let that happen. In addition, we can all agree that the time available to solve this problem before the 2008 elections is short. But the country can meet a short deadline.

You all recall the year 2000 computer conversion crisis, known as Y2K. As the prior century came to a close, a date loomed large in our collective conscious: January 1, 2000. The Office of Management and Budget had targeted March 31, 1999 as the deadline for federal agencies to have completed the conversion of their systems to address this system-wide "glitch." Congress appropriated \$3.35 billion dollars for fiscal year 1999 to fund the conversion, all of the agencies implemented the necessary changes to their systems, and Y2K came and went and there was no meltdown.

Isn't protecting and preserving the integrity of our electoral system at least that important? And frankly, isn't the problem we're facing here vastly simpler than re-programming every single computer in operation everywhere in the United States? There must be paper-ballot-based systems, along with accessible devices for those who need them, everywhere. Optical scan voting systems and ballot marking devices are widely in

use and readily available. Touch screen voting machines can be fitted with durable paper ballot printers.

We can do this. And if we care about the integrity of our democracy we will do this. And we will fund it, and we will implement it in time for the 2008 elections

The fundamental requirements of this legislation – a voter verified paper ballot for every vote cast and routine random audits as a check on the system -- have been endorsed or recommended by the bipartisan Carter Baker Commission on Federal Election Reform, the non-partisan Brennan Center for Justice at New York University School of Law, the National League of Women Voters, Common Cause, People For the American Way, VerifiedVoting.org, VoteTrustUSA, the Electronic Frontier Foundation, dozens of public interest and e-voting integrity groups, *The New York Times*, the *Washington Post*, *Roll Call*, the *Chicago Tribune*, the *Trenton Times* and many other newspapers. The bill is very carefully drawn. Every detail of the legislation has gone through meticulous review not only by Members of Congress, but also by lawyers, Secretaries of State, public interest groups, advocates for voters with physical disabilities, election reform advocates, and civil rights organizations. In the 109<sup>th</sup> Congress, a bipartisan majority of Members cosponsored it. Currently we have 200 cosponsors. This is not a partisan issue.

In addition, the country has done a veritable “about face” on this issue. When I first introduced this legislation in May of 2003, only a handful of states had a requirement for paper-ballot-based voting. Today, 27 states have such a requirement, and another eight used paper-ballot-based voting even though they do not mandate it. There are only 15 states that currently neither have such a requirement nor use paper-ballot-based voting, and it is time to bring those last few states into the fold so that all federal elections will be independently auditable. Also of those states now with auditable paper-ballot-based voting, only thirteen states currently conduct routine random audits, and the practice of routinely double-checking the accuracy of the results of computer-assisted elections too must become a national standard.

Again, it is my honor to be here with you today, to discuss this critical issue. I look forward to working with the Subcommittee and the Committee to bring this legislation to the floor as soon as expeditiously as possible.