

**Testimony of
Eric Clark, Mississippi Secretary of State
Before United States House of Representatives
Committee on Administration
March 15, 2007**

Ladies and Gentlemen of the Committee, thank you for inviting me to testify before you today concerning voting systems, disability access, and more proposed changes to our nation's election systems through federal legislation. These issues were the subject of much discussion during several sessions at the winter conference of the National Association of the Secretaries of State (NASS) held recently here in Washington. I have been asked to focus specifically on issues related to disabled citizens, which I am happy to do. With your permission, I will also take this opportunity to speak briefly about more general concerns which we secretaries of state have concerning proposed legislation in your Committee. I serve as co-chair of the NASS Elections Committee. Many secretaries of state, including me, are deeply concerned about some of the proposals being discussed in Congress.

In Mississippi, two counties used touch screen machines prior to the adoption of the Help America Vote Act of 2002 (HAVA). Since passage of HAVA, 77 out of the 80 remaining counties have acquired touch screen voting machines with a voter verified paper audit trail. We have expended nearly \$16 million dollars to purchase new voting equipment in compliance with the goals of HAVA. This amount includes \$6 million in state funds which our Legislature provided last year, because third-year funding of \$800 million as authorized by HAVA was not appropriated by Congress. Now Congress appears to be poised to change the rules again and require the purchase of new voting equipment, some of which has not even been thoroughly developed, at tremendous costs to the states.

As reported recently in a CNN poll discussed at the NASS conference, more than 90 percent of the public likes the new voting equipment purchased in response to HAVA. According to a thorough survey done in Mississippi following our 2006 elections, 89.7 percent of our citizens said they found the new voting machines to be easy to use. To put it bluntly, in Mississippi, as in most of the country, the people have overwhelmingly accepted the new voting equipment and have confidence in it. Why destroy this confidence through new federal mandates?

In Mississippi, we decided to go with the touch screen voting machines for a variety of reasons, and one important reason was the accessibility of this equipment for disabled citizens. I appointed a task force which included citizens with disabilities, and their input weighed heavily on the selection of our new voting machines. We did not take the decision to spend \$16 million lightly. Ease of use for the voters, accuracy and accessibility were key factors we considered when purchasing this equipment. The disability community in our state is among the strongest supporters of our new voting machines. In particular, blind persons are able, through audio directions, to vote a secret ballot for the first time ever. Because we heard from the public that voter verified paper audit trails or VVPAT would give them more confidence in the system, our machines were purchased with this feature. Much of the conversation about touch-screen voting in Washington seems to overlook the ease of use factor for voters generally and especially for citizens with disabilities.

While well intended, legislation proposed to again change the voting systems has several major flaws. First and foremost, it would place enormous new federal mandates on the states for the 2008 elections in the areas of voting equipment and procedures without providing sufficient funds to make the required changes. The most money we have seen in any draft bill is \$300 million to implement equipment mandates. However, state election officials across the nation recognize that this sum is much less than what would be needed to accomplish the overly ambitious task.

Several specific requirements contained in proposed legislation regarding voting systems are ill conceived. Among the mandates proposed are:

- Requiring all voter verified paper audit trails to be accessible to disabled voters – even though such equipment currently does not exist. It defies logic that we would be required to add a component to an election system for an election year, not to mention a Presidential election year, when that component has not been developed, tested, piloted and manufactured.
- Another mandate seems to require that each voting precinct have more than one voting machine. This is a suggested best practice issued by my office to our county election officials, but it has not been mandated to our cash strapped counties, especially with the federal shortfall in HAVA funding.
- Proposed federal legislation also mandates that the paper used for the voter verified paper trail be “durable paper of archival quality capable of withstanding multiple counts and recounts without compromising the fundamental integrity of the ballots.” Mississippi bought the voter verified paper trail printer for all of the state-purchased voting machines. These printers use thermal paper which has proven to provide a high quality print, is inexpensive, easy to use, and lasts a minimum of five years. The language quoted above would require our counties to discontinue the use of this paper. Let me say that if the provision I just mentioned were amended to delete “durable” and “of archival quality,” I believe all of Mississippi’s 82 counties except two would qualify at the present time. **If Congress decides to mandate a voter-verifiable paper audit trail on all voting machines, please do not destroy the actions already taken by states that have successfully met that goal, at enormous expense, and require us – unnecessarily – to start over.**

Please allow me to mention one other serious problem with legislation that has been introduced in this Committee. I understand that this Committee will hold a hearing next week on the issue of post-election audits. Since I will not be here then, may I briefly address that topic now? I believe I speak for every secretary of state in the nation in expressing this concern.

Astonishingly, language has been proposed that would create a new level of state bureaucracy by mandating that the state auditor appoint an "Election Audit Board" which is required to go into selected counties to conduct thorough hand recounts of ballots in conformity with a detailed, mandated process. Furthermore, proposed legislation would prohibit any state or local election official – someone who might actually understand the election equipment and the election process – from serving on the Audit Board or conducting these hand recounts. It must also be pointed out that these federally required recounts must occur within a very narrow window, which could potentially impair the certification of election results within the time frame required by state law. Bringing a separate elected official into the process who has no role and no experience in conducting elections would make concluding our elections enormously more difficult and time-consuming – and possibly politicized -- and would be unwise almost beyond belief.

I want to emphasize at this juncture another critical problem with the proposed changes – all of these new federal election mandates would be required to be implemented by the 2008 federal elections. This would give the states less than one year prior to the first primaries to put into place massive changes in equipment and procedures. Congress wisely gave the states four years to implement HAVA. A further overhaul in our elections should be given at least that much time to find the proper contractors for new voting systems and change state laws to conform with any new mandates imposed by Congress.

Continued federal involvement by legislation means also seriously erodes the sovereignty of the states over elections issues, a bedrock principle of our democracy since our nation's founding. As you know, when it comes to elections, one size does not fit all. What works well in a state like New Hampshire, with its unique New England character and conventions, is often inapplicable to Mississippi, with our distinctive history and makeup. The states must have the flexibility to tailor our elections equipment and procedures to our citizens' desires and needs. Indeed, one of the best aspects of HAVA was the fact that it recognized and embraced this core canon – HAVA mandated certain key goals but left it to the states to determine the best means – both in terms of voting equipment and voting procedures – to achieve those goals. Proposed legislation that we have seen would deviate from this proven formula for success by mandating specifically the equipment and the procedures which the states must use.

Finally, all the proposed legislation has been drafted in a vacuum or at least without input from election officials. No input was requested from NASS or from any of the state election officials. This is incredible! My colleagues at the state and local level are election administration experts. Why not ask the people who run our elections, who know the nuts and bolts, who see what goes on at a local level, and who must deal with the implementation of any new federal requirements, to have a say in this process?

I urge you in the strongest possible terms to reconsider the proposed legislation, or to amend it to answer the concerns expressed above and to make sure that there is adequate funding to pay for any new federal mandates.

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In conclusion, the whole elections community in Mississippi - circuit clerks, election commissioners, disability groups, party officials, and the secretary of state's office - has worked extremely hard and effectively in a bipartisan manner to implement the Help America Vote Act of 2002. Representatives of the federal Elections Assistance Commission and the United States Department of Justice have repeatedly, publicly held Mississippi up as a good example of how to do HAVA well. Many other states have made similar progress. Please do not come along now and tear down the enormous progress we have made.

Thank you for your consideration and your attention.