

Madam Chair and Representatives:

Thank you for the invitation to appear before you to discuss potential changes in election practices of the states for future federal elections.

I don't purport to speak for the entire elections community nor all of the professional men and women who make this great democracy work so well. I have, however, been in the elections profession long enough to know where the majority of the elections community will fall on most issues of continuing "election reform."

Our concern, those of us who work day in and day out, to make this process work well for voters and work well for candidates and political parties, is that you use considered judgment when contemplating additional changes in this process.

Audits of Elections. I was invited here to talk about both the concept of an audit process as applied to elections and to talk about potential legislation to affect US elections.

Let's tackle the audit process first and then address the broader concerns.

Audits of elections is not a bad concept. I have said publicly that I personally have no problem with it as long as everyone understands that it lengthens the time to close an election and it adds significantly to the cost of doing the election. Finding out if your equipment is counting accurately or your people are counting accurately is not something you will find troublesome to elections professionals...as long as there is time provided in the process to do this.

So often it is said the "The Devil is in the details." The Devil is not just in the details, it is often in the definitions. What is an audit? Are we all agreed as to what is meant by the term audit? And do you do the audit as a matter of common practice or when questions are raised or when there is a close election? It makes a difference in cost structure and perceived value for the taxpayers paying for it.

Types of "Audits". Canvass Audits. For many election officials, the term "canvass the vote" is an audit and by that definition every election jurisdiction in America conducts a form of an audit. The canvass is to assure the numbers check against those who showed up in the precincts, looking at the number of ballots distributed, those retained as unvoted, the number returned, the number voted, that the totals are the same as those filled out in the official reports and if there are discrepancies, to get those reconciled. Canvass audits occur at both the local and state levels to check and recheck numbers to be sure the "official" vote totals are then reported. And you should know the election canvass/audit that currently occurs prior to certification of official results is a transparent process open to public observation.

Recounts as Audits. An audit is also a result of a recount and often in a contested election (these are two separate conditions in election terminology). In a recount, a race has to be close enough to

warrant handling the ballots again. But it is also examining the ballots by hand to assure that the equipment has counted legitimate votes and anything a machine can't count is usually processed separately and reexamined by humans to see if they can determine the problem. In the case of electronic voting, voters can rarely make errors on the equipment and there is little to recount. In the case of paper ballots processed by optical scan devices or by hand, voters can and do make substantial errors that may or may not be read by the device. If the optical scan equipment can't count a ballot or can't count a race on a ballot it can be "kicked out" and then reviewed by humans.

In the minds of many, a recount is the most effective audit of all. It is done only when there is a sufficient reason to do so. Therefore it is not an ongoing cost of conducting elections for the jurisdictions when there is no close election. Likewise, a contested election might also be required in a judicial process to recount ballots.

Audits of Voting Equipment. There is the concept of an audit to assure that the votes as counted by the voting equipment are accurate. In this instance you want to do enough to make sure that you have a confidence level that says there is nothing wrong and you proceed with the machine count. To establish a random process and to have that process work does not require ever increasing percentages of ballots to be counted however. If it is designed correctly and it is a "random" audit and is a uniform process throughout, then the audit can be performed one time for all races or a selection of races to show that the hand count matches the machine count.

But there is the rub. Humans count large numbers of ballots less accurately than voting equipment does. The higher you establish the "required" percentage to be counted the more you will find discrepancies ... and those discrepancies are rarely the voting equipment's numbers. It is because humans either make a mistake in counting or because a human interprets a ballot differently than the equipment. Humans get tired. Their minds wander when counting large numbers of ballots by hand. Even the same person counting ballots over a long period may count ballots differently during the early part of the audit process than the later part of the process because of mental and visual fatigue. Greater percentages require more and more people. And because of the potential for more mistakes, it forces additional counts to resolve the differences caused by human error.

Audits by Outside Agencies. HR811 calls for audits by State Auditors or by appointments through the AG of the state and not by election officials. We want to be kind here, but this may be the worst of the ideas that have been offered in election legislation. Under these provisions, you turn the process of live ballots over to people who have no idea of what goes into protecting those ballots, who have no experience in assuring the protection of the voters' votes, and who will be handling the ballots without the training of what to look for or what to do if there are problems with the ballots. Additionally, they are doing audits that then impact the "official" record of the votes. Name an election official in America who wants to be responsible for ballots that have not remained in their possession.

Congress also has to address these concerns: in the case of a court proceeding or an imposed recount, who has control of the ballots? The election official or the outside auditors? If the outside

agencies do this work, they will bill someone for the work. Is that to be local governments who pay the bill? Or state governments? Is Congress going to provide continuing funding to pay for these?

Additionally, election officials are trained to be neutral when processing votes in an election. We train our staff and our counting teams that we are protecting the ballots as the voters voted them. The process described in HR811 turns the auditing process, on which we must base the results, over to partisan offices. Having ANY non-election official responsible for handling live ballots is an incredibly bad idea. This is where the nation is best served by the professionalism and neutrality of election officials. If Congress wants to provide for outside observers of an audit process while in the hands of election officials, that is an acceptable and workable alternative, but we implore you to discard this notion of letting others handle live ballots. The temptations and opportunity for chicanery and possible manipulation of votes is too great a danger to attempt. Election officials are trained and live to the standards necessary to assure that the election is an accurate reflection of the public's will.

We know that when policy makers want changes that costs are rarely a genuine consideration. But in good conscience we must warn that audits by elections agencies will be more expensive in virtually every state and local jurisdiction in the nation. But to have outside audits done will be exponentially more expensive and someone other than local jurisdictions needs to bear the brunt of this and the other changes in HR811. This will become a huge unfunded mandate on local governments and even in the best of circumstances it will be a massively under funded mandate.

Additional Problems Caused by Outside Audits. Congress must understand that the kinds and numbers of audits specified in HR811 have the potential to drag an election past reasonableness – or to cause a Presidential election to end up before the Supreme Court again. The audits, and the requirements of them as prescribed in the legislation, have the potential to affect the time for a recount of an election beyond the period that the Electoral College must meet to determine the winner. What we learned in Election 2000 is that the current schedule is not sufficient for a real recount of a Presidential election. While states can attempt to shorten their canvass process to get more time for a recount, there is unlikely to be sufficient time with the audit process specified in HR811. And when that happens the courts become the recourse.

Simplify: Set Objectives, Not Administrative Methods

The process described in HR811 is unworkable and unnecessary. Simplify.

If an audit process is necessary and desirable -- and almost 70 percent of the states have not felt compelled to do an audit as it is being considered in legislation -- and if Congress wants to establish an audit process, then it needs to let the states and local governments figure out how best to do that. Simply tell the states that an audit process is required. Then back away and let them figure out how to do it best to serve their voters. The audits currently conducted by states range from states that randomly select a number of precincts and then reprocess the ballots in those precincts and chose

paces on which to do that, to the kind of audit done in California where the audit is one percent of all precincts and all races within the precinct.

But to run multiple audits at the same time for different races with different requirements as specified in HR811 is a nightmare that will have the opposite effect from the one intended. At some point you have to end the election. Voters need to know and want to know the results. And if elections offices are still doing multiple audits 30 days or later before they can report official vote totals, the public will begin to think the election is being manipulated in the interim. Additionally, candidates want immediate results and don't want to understand imposed delays – almost all of which are the result of legislation.

When anything gets too complicated, it breaks more often. Be careful here. Go after the objective if you want, but dump the prescriptive methodology. If the objective is more confidence in elections, then don't create a situation that is more than likely to lead to less confidence.

Problems with Audits of DREs with paper ballots. If the audit called for in HR811 is to include paper records produced by DRE (electronic) voting equipment, then be prepared to wait much longer times to finish an audit. So far every jurisdiction that has tried to audit or recount paper records produced by DRE's, and has to do so with humans instead of technology, the counts are taking exponentially longer times to complete than any other form of voting. Please know that as election officials we have been, and continue to be, seriously concerned about audits and/or recounts of paper ballots produced by DREs. This is far more difficult than is being acknowledged and is a slow, grinding process. The solutions for this are not yet sufficient and the design of the systems is not yet conducive to making this a quick process.

We tend to forget why we moved to voting equipment. It is more accurate. It is more difficult to manipulate – despite the allegations to the contrary. It counts faster. Machines make few errors, humans make many.

Realistic Timetables: Trying to implement these provisions by 2008 will be unrealistic. The changes required through HR811 are major feats and taken separately, if Congress were to specify these kinds of objectives, the implementation deadlines need to be realistic. We take a real risk in trying to make changes of a major nature in a Presidential election cycle. Your colleagues in previous Congresses on HAVA did not push for 2004 because they knew they put the election process in danger by doing so and instead ordered all changes by 2006 so the jurisdictions could have practice before the Presidential election of 2008. If any one of these objectives is key, then let that first one be implemented by 2010 and then stagger any other changes to occur in elections beyond 2012.

Clearly we still have states that are struggling to meet the requirements of HAVA and it is not because they have been unwilling to comply. It simply takes more time than HAVA allowed – and we warned Congress then that some of the expectations of timelines were too aggressive for the conduct of elections to high standards that are required in US elections.

Other Concerns About HR811

Security Issues: As to other parts of HR811, our message to you is this: if you want to achieve voting systems security, this is probably not the right answer. You can better accomplish that task by instructing the US Election Assistance Commission (EAC) to work with the National Institute of Standards and Technology (NIST) and tell them to develop methods for assuring security of voting systems and election software.

Paper Records on DREs: If the objective is truly to force paper into the voting process regardless of the technology, then HR811 is not the way to do that. When discussing the requirements for DREs to have paper, it is my understanding from my colleagues around the nation there is no state yet which could comply with the paper trail system as specified in HR811. So the 27 states that have previously taken action would have to scrap what they have already done and spend hundreds of millions of dollars to revamp once again. Surely this Congress does not intend for that to happen. And what could they buy if they wanted to continue with DREs? From what we're told, nothing currently manufactured as a DRE can comply.

Other Election Reforms Require Use of DREs: Congressional leaders have introduced legislation that includes an "election reform wish list" of changes to be accomplished -- such as every state conducting early in-person voting and a greater expansion of the Vote Center or Super Precinct concept -- that cannot be accomplished in urban areas without safe and secure DREs. What objectives does this Congress have in relation to these stated goals and how is it to achieve them? Some of these cannot be accomplished with Optical Scan or hand voted paper ballot systems.

Confidence of Voters. If confidence in the process was lost as a result of Election 2000, then it had fully returned by Election 2006. Yes, there were some problems in a relatively small number of places in the more than 7,800 jurisdictions that work with federal and state elections. And some of those problems were "doozies". But remember, those problems were the exceptions in 2006, not the norm.

Elections in 98.6% of the jurisdictions in America worked exactly as intended, and served voters and served candidates and served democracy exceedingly well.

But we are continuously told in some quarters that there is a "crisis of confidence" for voters. Polls conducted in 2006 immediately after the election say that allegation simply does not stand up. If there was a crisis in voter confidence, then why did 88% of the voters tell CNN in exit polls that they "had full confidence that their vote was counted accurately and fairly in Congressional elections" ?

I have been looking at those confidence numbers for more than 30 years and that number has never been higher than 88%. There are and have been segments of our society who do not have the same kind of faith in voting but the overwhelming majority of actual real voters clearly tell us they have confidence in American democracy.

And, the process must work pretty well. Each of you serving in this Congress got elected by this process. It must have been fair and honest and open, or we would still be in courts throughout the land fighting about what happened.

What is interesting to contemplate is if the process is working, and it is, and if the public has overwhelming confidence in it, and it does, then should we be in a rush to make additional and invasive changes?

The reason that it took almost two years to fashion and pass the Help America Vote Act was that Congress became aware of the complexity of the process and wanted its actions to do no harm. I trust that this Congress will want to be deliberative in considering the additional proposed changes offered in legislation.

Too Much Change on Top of Massive Change May Break the System. The election process in America has undergone the most massive restructuring in the history of elections in the United States. The passage of the Help America Vote Act made more fundamental and direct changes in the way elections are conducted than at any other time in the last 100 years. Important and needed legislation such as the Civil Rights Act and the Voting Rights Act profoundly changed democracy for the better in America.

But those Acts did not reshape and transform the entire process of election administration in the manner and to the extent that the Help America Vote Act did. Elections in the United States are still digesting the sweeping massive HAVA requirements put on the states and local governments: to this day, many of the states continue working either to establish or perfect statewide voter databases. Many states are still perfecting the provisional voting process mandated for the nation. HAVA established voting requirements for voters with disabilities that allow for independence and privacy as afforded to other voters and we have not yet fully achieved the goals for that mandate. HAVA's goals of dramatically changing the types of voting methodologies and the use of technology different from the technology used over the past 30 to 100 years, forced major voting equipment upgrades for virtually every jurisdiction in America. HAVA gave states far more responsibility for the actual conduct and results of elections than had previously existed and states are still working to build their experience levels for such a significant operational shift from local governments to the state level for many functions.

My point is that we, the nation and the elections community, are still in the process of absorbing a major restructuring and until we get a chance to learn how to perfect all the massive changes, it is dangerous to assume that we can continue to pile major change upon major change and not have it result in seriously damaging unintended consequences.

As a profession, we are used to change. And rather than working with people who always want the "status quo", it has been election officials who have prompted and promoted virtually every election

innovation of the last 50 years. But we believe in “orderly change” so the process serves voters well and that confidence can be maintained.

Our lesson from HAVA is that it left the local jurisdictions “holding the bag” and having to pay substantial increased costs of conducting elections not just in 2004 or 2006 but for every election in the foreseeable future. Yes, HAVA pumped almost \$3 billion into the process – much of which will have been wasted if the provisions of HR811 are enacted as written – but it left local jurisdictions with on-going costs that approach almost a third of that during every election cycle.

HR811 Underestimates the Cost of Its Mandates. Why is that important? Because as Congressional representatives, you need to know that additional federal legislation that mandates changes such as those in HR 811 will once again result in changes so massive that it is likely to exceed the amount required for HAVA. You cannot, in good conscience, accept that such changes are limited to \$300 million as proposed in the legislation. It is more likely that it will be as much as HAVA – or more – for its short and long term impacts.

Conclusion: The question is not whether we should change elections policy and practices. We can do that from time-to-time and absorb individual changes. But the question has to be is should Congress be the one specifying not only the changes, but the practices, the implementation, and the deadlines?

Establish Objectives, Not Methodologies: A more prudent way to do this is for Congress to establish basic values that it wants the election process to have such as fairness, transparency, auditability, security and what it wants the process to do for voters. If you want security of voting systems, then establish that as the mandate and then let the states and local jurisdictions figure out how best to accomplish that. Don't get prescriptive and establish exactly how that will get done. The genius of the American democracy is that it is so diverse and it proves continuously that there is almost always more than one right answer. It is such a wonderful laboratory that virtually every great advancement in elections has come because the states do this very differently and it creates new ideas such as “early voting” or vote centers. Congress needs to know that virtually all of the major HAVA requirements were based on existing state initiatives such as statewide voter databases and provisional voting.

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.

Let States Decide: Regardless of whether you are a liberal or a conservative or somewhere in between, whether you are a Democrat or a Republican, whether you come from a large state or a small state, by now you have heard from your local and state election officials especially since

Election 2000. The people you and your political and governmental colleagues have chosen to administer the process in your home state and home jurisdiction have told you time and again, that the process works best when it can be structured to serve the voters in each state. You can talk with members of your own party who serve in the elections community and they will confirm that as the truth.

Lessons Learned From the Recent Past: We must resist the temptation to assume that those in Washington know best how to administer elections in the 7,800 jurisdictions. If we learned nothing else since Election 2000 we should have learned by now that this is a vibrant but often fragile process. Making this process work well for voters has been continuously evolving during the 231 years of the nation and frankly we have learned lessons that have shaped it well.

Election Officials Have the Same Goals: Finally, please know that election officials are not the enemy. We want what you want. We want voters to have a good experience. We, like you, want the process to be fair, honest, and accurate. We, like you, want it to be transparent. We, like you, want it to work flawlessly. While we strive for perfection, a process that involves 168 million registered voters, 122 million voters who go to the polls at 200,000 polling sites in 7,800 separate jurisdictions, using 800,000 voting devices and employing 1.4 million poll workers is likely to have occasional problems.

But don't assume that the 18,000 professional election officials employed to do this job in America are nameless, faceless bureaucrats. These are decent, caring and dedicated people who take their responsibility to voting, to voters, to democracy and to freedom seriously. They believe in this process. They believe in service to voters. They make the process work even when they are not given adequate resources to do so. They make it work even when some groups and individuals vilify their efforts and their dedication. Listen to their advice. The advice is not born of partisanship but of respect for the dignity of the voters who participate in this great democracy. They are willing to work with you to see that a healthy democracy survives into the next century.

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The Election Center is a national nonpartisan, nonprofit organization working with the nation's elections administrators to improve the administration of democracy. Its members are the government employees at the township, city, county and state level who are responsible for the conduct of voter registration or election administration. As the largest elections related organization in America, it works with both domestic and international democracies to improve the professionalism of elections and serves as the certification body for the profession for those who earn the status of Certified Election/Registration Administrator (CERA), the nation's highest achievement for those in elections. Doug Lewis, CERA, has served as the Executive Director of The Center since 1994.