



Because Everybody's Vote Should Count

April 20, 2004

Re: Proposed Legislation on Electronic Voting

Dear Member of Congress:

As a newly-formed coalition of civil rights advocates, election officials, academics, voting equipment experts, and other concerned citizens we are opposed to current bills that would require that all Direct Record Electronic voting systems produce a contemporaneous paper replica ("CPR"), euphemistically referred to as a "voter verified paper record." In particular, we urge you to **OPPOSE** H.R. 2239 (the Holt Bill) and S. 2313 (the Graham/Clinton Bill). Because we understand that a well-financed and aggressive lobbying campaign is now being mounted to support these bills, we are writing to explain the reasons why such legislation should be rejected.

While the signatories to this letter represent diverse constituencies, we share the goal of promoting secure elections in which all citizens may participate equally with confidence that their votes will be counted. The proposed legislation to require a CPR is antithetical to this goal. The CPR is an experimental concept that has not yet proven either workable or effective in improving election integrity. In the few jurisdictions that have even experimented with implementing this device, the CPR has caused serious problems due to printer jams, voter confusion and other operational difficulties.

The effect of legislation to require a CPR would be to prohibit the use of state-of-the-art electronic voting systems that provide enormous advantages for all voters – and especially for traditionally disenfranchised voters such as people with disabilities, non-English proficient citizens, and racial minorities. To require implementation of the CPR by 2004, as these bills would do, is a recipe for yet another election-day disaster.

Rather than passing legislation to require an unproven device in an overheated election-year climate, Congress should allow the mechanisms created by the Help America Vote Act of 2002 ("HAVA") to address all voting system concerns scientifically and systematically. As you are aware, HAVA created the Election Assistance Commission ("EAC"), the responsibilities of which include the development of guidelines for secure electronic voting equipment. As you are also aware, HAVA's four principal co-authors (Sen. Dodd, Sen. McConnell, Rep. Ney, and Rep. Hoyer), have written a joint letter asking that this process be allowed to function as HAVA contemplates. (<http://www.house.gov/cha/dearcolleaguemarch3-04.htm>.) We share their view that HAVA should be given a chance to work, and also agree with them that requiring a CPR would "undermine" and "subvert" the goals of HAVA.

For all these reasons, as supported and detailed in the pages that follow, we urge you to oppose H.R. 2239 and S. 2313. Thank you for your consideration of our views.

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* This letter expresses the personal and professional opinions of the signatories and does not necessarily represent the views of our employers, organizations or institutions.



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Electronic Voting: Security, Accuracy, and Accessibility

From the perspective of promoting accuracy and equal voting rights, Direct Record Electronic (“DRE”) voting systems provide substantial advantages over paper-based voting systems. The successful use of DRE voting for more than twenty years has demonstrated that these systems can be implemented safely and effectively when proper procedures are followed.

DRE systems can be much more user-friendly than their paper-based counterparts. In addition, they provide “second-chance” voting that allows voters to check their choices in the polling place before votes are cast to insure accuracy. While no voting system is perfect, DRE systems have the best track record of any system. In addition, surveys of hundreds of thousands of voters who have actually used DRE equipment consistently reveal that voters approve of these systems, and prefer them to the paper-based systems they previously used.

Electronic voting systems provide especially great advantages to traditionally disenfranchised populations, such as racial minorities, non-English proficient voters, and people with disabilities. Recent social science evidence shows that electronic voting systems eliminate the racial gap in unintentional non-votes, which tends to exist with other voting systems. Michael Tomz & Robert P. Van Houweling, “How Does Voting Equipment Affect the Racial Gap in Voided Ballots?” *47 Am. J. Pol. Sci.* 46 (2003). They also have the capacity to provide multilingual access, so that voters whose first language is not English may vote independently. Finally, electronic voting systems have accessibility features to allow voters with visual and manual disabilities to cast secret ballots for the first time in their lives. In light of the accessibility advantages of electronic voting systems, a federal court has recently held that the failure to make such technology available for voters with disabilities violates the Americans with Disabilities Act of 1990. *American Ass’n of People with Disabilities v. Hood*, 2004 WL 626687 (M.D. Fla. 2004).

Notwithstanding the acknowledged advantages of electronic voting, some have questioned the security of these machines and have urged legislation to require that they generate contemporaneous paper replica of the electronic ballot. As an initial matter, it should be emphasized that the current debate is not over whether electronic voting machines should have an audit capacity or even a *paper* audit record. Modern DRE systems already have redundant internal backups. Moreover, the Help America Vote Act of 2002 requires that DRE systems produce a “paper record . . . available as an official recount . . .”

The current debate is instead about whether to produce a *particular kind* of paper trail, to which its supporters have attached the label “voter verified paper record.” Under this prototype system, a contemporaneous paper replica (or CPR) would be printed at the time the electronic ballot is cast. This would require a special kind of attached printer capable of generating a paper printout behind a glass or plastic screen so that the voter could see it *but not touch it*. It is necessary that the voter not be permitted to touch the ballot, in order to prevent the voter from pocketing the paper ballot replica, and potentially using it in vote-buying or vote-selling schemes. Moreover, allowing the voter to handle the ballot would destroy its utility as an audit trail – the stated purpose behind the CPR requirement in the first place.

The CPR is at best an experimental device. There are no standards in place for certifying a CPR system. Nor have any jurisdictions successfully implemented this device to date. While three vendors are now marketing CPR prototype, experience teaches us that not every machine that looks good on paper works well in a real-world election environment. In the few places where election officials have attempted to implement a CPR system on a trial basis, they have run into serious problems. In Sacramento County, California, for example, the county registrar wrote a report assessing the experience. This report noted that voters found the CPR “confusing” because they thought they could take the paper replica with them. When the attached printers jammed, the machines had to be taken out of service, and “when the printed record stuck they had to be extracted with many creative tools that were on hand at the early voting site such as a windshield wiper or back scratcher.” A year later, a CPR system was tested in Wilton, Connecticut. During this trial, the Wilton deputy registrar reported that the voter interface issues were “appalling,” a situation that created “numerous problems for voters and placed great stress on the poll workers.”

Despite the fact that there are no CPR certification standards in place, that the CPR has yet to be successfully implemented anywhere, and that it has actually caused problems in the jurisdictions that have tested it, there are bills pending in both the House and Senate to *require* this novel device in time for the 2004 elections. Congress should not require a device that has yet to be proven workable or effective in any real-life election. Imposing such a requirement is particularly unwarranted, given that the problems that have caused some to recommend it are entirely hypothetical. Even the most fervent proponents of the CPR have acknowledged that the doomsday scenarios they envision have not emerged in any real-world election. By contrast, we are all too familiar with the very real problems that *have in fact occurred* with paper-based voting systems. These include not only lost votes – numbering in the millions according to the well-regarded report of the CalTech/MIT Voting Technology Project – but also numerous instances of ballot-stuffing and other instances of fraud.

The lesson to be drawn from such incidents is *not* that paper-based voting is inherently insecure. Rather, it is that any type of voting equipment is subject to fraud and error if proper procedures are not in place. The myopic focus on the equipment has caused some advocates to overlook the fact that the equipment used to cast votes is but one part of our election systems. These systems depend on human beings and machines to function properly. Regardless of what type of equipment is used, the integrity of that system depends on adequate procedures being followed to insure that votes are counted accurately.

To be clear, we strongly agree with the idea that voting systems should count votes accurately and that there should be an audit trail to ensure election integrity. We also support those jurisdictions that wish to experiment with different means of attempting to bolster system security. It would be a great error to lock in place any particular audit mechanism until that method has been proven workable and effective. It bears emphasis that the isolated problems that have occurred with DRE equipment – such as those which recently surfaced in some California counties during their initial use – would not have been avoided or resolved had a CPR been in place. The solution to such problems lies in better procedures, management, and poll worker training, not in the deployment of additional, unproven hardware.

To require a CPR in time for the 2004 election is particularly ill-advised. Forcing counties throughout the country to procure and implement such a system in less than seven months would demand the impossible. The ultimate effect of legislation to require a CPR at this time would therefore be to ban current electronic voting systems. Such a requirement would induce much more insecurity in the voting process than it could possibly prevent. This would leave election officials throughout the country scrambling to get entirely new systems in place in a few short months – and would undoubtedly trigger a replay of the problems witnessed in the 2000 election on a much wider scale.