



ILLINOIS BALLOT INTEGRITY PROJECT

Make Every Vote Count . . . Count Every Vote

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Robert A. Wilson
State Chairman

Via Facsimile

April 14, 2007

Honorable Juanita Millender-McDonald
Chairwoman, Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

Re: HR 811 - Voter Confidence and Increased Accessibility Act of 2007

Dear Chairwoman Millender-McDonald:

I am writing to you today on behalf of the Illinois Ballot Integrity Project, to voice our concerns about HR 811, the "Voter Confidence and Increased Accessibility Act of 2007." While HR 811 contains some new or amended provisions that improve on its predecessor, HR 550, such as a ban on wireless communications, prohibiting voting machine companies from using secret software and requiring partial hand counts to check the accuracy of voting machines - it fails to resolve a number of long-standing problems and even creates some new ones. The Illinois Ballot Integrity Project opposes HR 811 as currently written for several important reasons:

- HR 811 threatens to vest control of federal elections in a four-person board of presidential appointees, concentrating dangerous rule-making authority over our elections in the executive branch. With federal regulatory powers, overriding those of state and local election jurisdictions, the EAC would determine:
 - Which voting systems are approved for use in our elections.
 - Who counts the votes in every election and how those votes are counted.
 - How recounts are administered and how the outcomes are determined.
- HR 811 allows and even mandates the continued use of electronic ballots by adding yet another layer of technology to Direct Recording Electronic (DRE) voting machines, the voter verifiable paper trail. However, this VVPAT, which HR 811 deliberately conflates as a "paper ballot," is created by an "add-on" printer and cannot solve the systemic problems inherent in DRE-based voting systems. The simple, incontrovertible fact is that the electronic ballot which is cast by a DRE is **invisible** and can **never** be verified by the voter. On-screen reviews and VVPATs are only purported representations of that invisible ballot – no voter can look inside a DRE and determine if that invisible ballot, which is the one that is tallied, matches his or her intent.

VVPAT printers, introduced in 2004, have proven to be a placebo rather than a reliable tool. These printers fail as often as the DREs themselves and because of these failures they cannot be relied upon to produce ballot printouts to be used for audits or recounts. The technology now contemplated under HR 811 is even more complex and potentially unreliable. The Conversion of Printed Content to Accessible Media device to supplement the VVPAT printer, has yet to be developed, creating an estimated \$4 billion unfunded mandate which will fall directly on the states.

Thus, HR 811, as written, would foster a fresh round of DRE development, rushed to market and virtually certain to continue the DRE's historical pattern of disenfranchising voters as well as wasting taxpayer dollars.

- HR 811 further attempts to deal with the inherent inaccuracies of DREs by instituting a complex auditing procedure which is, unfortunately, fatally flawed in both methodology and scope. While HR 811 increases the percentage of precincts audited from the 2% in HR 550 to 3%, this results in an audit sample that would confer only about 45% confidence of detecting outcome-altering miscount (through either mistake or fraud) in close races. For example, the current HR 811 audit protocol would have failed to detect results-altering miscounts in the majority of Congressional races in the general election of 2006 with a sufficiently high degree of probability. In 135 of those House races, the estimated probability of detecting an outcome-altering miscount would be less than 90%; in 49 races, the probability would be less than 50%. These low-confidence races include not only the very closest races, but others in which the winning margin was over 4%. In addition, mandating across-the-board audit percentages creates a mis-allocation of resources in which the very closest races do not receive the attention they deserve with audit samples higher than 3%, while resources are squandered on audits that are still conducted in races where the outcome is not in doubt.
- Much of the original intent of the Help America Vote Act of 2002 (HAVA) was couched in language that appeared to increase the accessibility and privacy of voters with disabilities, and emphasis was placed on electronic voting, specifically DREs. However, increased accessibility, privacy and independence for disabled voters has not proven to be the case - few disabled voters have used the DREs - and many have reported that they failed to perform "as advertised." Yet, HR 811 mandates the use of DREs for accessibility to the exclusion of other technologies, both high and low-tech that already exist and have proven to be reliable, such as ballot marking devices and template-based systems. Noel Runyan, a respected voting access technology engineer, authored a paper, "Improving Access to Voting," which has been endorsed by many disabled organizations. It concludes:

"Electronic ballot systems such as the direct record electronic (DRE) machines (formerly called "touch screens") now in use have quickly proven to be neither fully accessible to all voters nor secure and accurate methods of recording, tallying, and reporting votes. While the goal of private voting has been achieved by some voters, this has often been without meaningful assurance that our votes have been counted as cast. Additionally, many other voters have been disappointed and frustrated because we have not been able to vote privately and independently as we had hoped and as voting-system vendors had promised."
- While HR 811 properly prohibits wireless communications, a loophole in the bill allows Election Management Systems such as Diebold's GEMS, ES&S's Unity and Sequoia's WinEDS to be connected directly to the Internet, creating significant and well-recognized security issues. Vote theft may very well follow in the steps of Internet identity theft.
- The Special Rule for Votes Cast by Absent Military and Overseas Voters mandated by HR 811 overrides a state's prerogative to disallow fax and emailed ballots by enforcing a system that can not protect ballot privacy for military and overseas voters. States, such as Illinois, use paper ballots for the Military and Overseas voters in order to protect their voting privacy and the integrity of State elections.
- HR 811 also establishes impractical (if not impossible) timelines for implementation of the Conversion of Printed Content to Accessible Media (not yet invented as noted above), archival quality paper for VVPATs and certification of new voting systems and equipment. Even with \$3.8 billion in Federal grants, states struggled to implement the provisions of HAVA for the 2006 election cycle. It is unreasonable to expect that the minimal \$300 million funding now provided by HR 811 will allow for even more complex technology to be implemented in less than 18 months.

While the above may seem extensive, we have enumerated only the most egregious failures of HR 811 as written. This broad-brush approach is designed only to acquaint you with our major concerns. A significantly more thorough approach to the concerns of citizens should be adopted by the House

Committee on House Administration in its hearings to ensure that Members of Congress have a significantly improved knowledge base on which to reach an informed decision. In addition, IBIP would offer the following amendments to HR 811 which will assist in curing some of the problems inherent in the current legislation.

- It is imperative that HR 811 be amended to prohibit the use of Direct Recording Electronic (DRE) voting machines. As the foregoing demonstrates, these machines use high-tech, electronic "ballots," which voters cannot verify because these ballots are invisible, nothing more than electrical impulses inside a computer chip. The use of these unverifiable ballots has compromised our recent elections with voter disenfranchisement, lost votes and unresolved controversies over vote-flipping and machine malfunctions, resulting in the eroding of our confidence in the accuracy of election results. Direct Recording Electronic voting machines have proven to be unreliable, inaccurate and insecure – their use must be banned immediately.
- HR 811 must clearly mandate that only paper ballots that are marked by the voter's hand or an accessible non-tabulating, software-independent, ballot-marking device and counted either by hand or by an optical or digital scanner be used in all elections.
- Audit provisions must be amended to require a statistically significant portion (at least 10%) of all scanned ballots be hand-counted to ensure that the equipment correctly tallied the voters' selections. Such audits must be conducted in local precincts, immediately after the polls close, to ensure accuracy and preserve the chain of custody. Similar statistically significant audits must also be conducted of all centrally-counted ballots immediately upon closing of the polls.
- In the event of significant discrepancies between audits and machine results, an automatic and immediate full hand-count of all ballots shall be required and the results of such hand-counts shall be the only official tally.
- HR 811 should be amended to ensure that no candidate shall be sworn into office, nor any proposition have the effect of law, until such time as the results of the election pertaining to such office or proposition have been officially certified by the appropriate election official(s).
- The Election Assistance Commission has manifestly failed to perform its mission and should be disbanded in accordance with the original sunset provisions of HAVA.

While the above do not constitute a comprehensive agenda for election reform, these amendments would do much to cure the defects of HR 811 as currently written. Only by the prohibition of DRE voting machines and reasserting the primacy of the paper ballot, supplemented by meaningful audits and recount procedures can we hope to secure our democracy through fair, honest open and transparent elections.

The electoral process is the foundation of our democracy and must be defended. We urge, that as one of our elected representatives, you make this a top priority and oppose the adoption of HR 811 unless and until appropriately amended.

Sincerely,

