

**H.R.3552**

**Title:** To amend the Help America Vote Act of 2002 to clarify the treatment of provisional ballots cast in elections for Federal office, and for other purposes.

**Sponsor:** [Rep Holt, Rush D.](#) [NJ-12] (introduced 9/10/2009)      Cosponsors (None)

**Latest Major Action:** 9/10/2009 Referred to House committee. Status: Referred to the House Committee on House Administration.

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**SUMMARY AS OF:**

9/10/2009--Introduced.

Provisional Ballot Fairness in Counting Act of 2009 - Amends the Help America Vote Act of 2002 to revise requirements for the treatment of provisional ballots in federal elections.

Prohibits any election recount until all provisional votes have been counted. Requires the chief state election official, in determining whether to count a provisional vote, to review not only official registered voter lists but also any information an individual voter submitted during the registration process.

Requires a provisional ballot in a federal election to be treated as a voter registration application if it is rejected on the ground that the individual is not registered to vote in the election.

HR 3552 IH

111th CONGRESS  
1st Session  
**H. R. 3552**

To amend the Help America Vote Act of 2002 to clarify the treatment of provisional ballots cast in elections for Federal office, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

**September 10, 2009**

Mr. HOLT introduced the following bill; which was referred to the Committee on House Administration

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**A BILL**

To amend the Help America Vote Act of 2002 to clarify the treatment of provisional ballots cast in elections for Federal office, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

## **SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Provisional Ballot Fairness in Counting Act of 2009'.

## **SEC. 2. UNIFORM STANDARD FOR TREATMENT OF PROVISIONAL BALLOTS CAST AT INCORRECT POLLING PLACES.**

Section 302(a)(4) of the Help America Vote Act of 2002 (42 U.S.C. 15482(a)(4)) is amended to read as follows:

'(4) The provisional ballot of an individual who is a registered voter in a jurisdiction in a State and who is eligible to vote in an election for Federal office in the State shall be counted as a vote in such an election if the appropriate State or local election official to whom the ballot or voter information is transmitted under paragraph (3)--

'(A) in the case of an election for electors for President or for the office of a Senator, determines that the individual is registered to vote in the State in which the provisional ballot is cast; and

'(B) in the case of an election for the office of a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress), determines that the individual is registered to vote in the Congressional district in which the provisional ballot is cast.'

## **SEC. 3. MINIMUM CONTENTS OF PROVISIONAL BALLOTS.**

Section 302(a)(1) of the Help America Vote Act of 2002 (42 U.S.C. 15482(a)(1)) is amended by adding at the end the following new sentence: 'The provisional ballot shall include (at a minimum) all information required for the individual to cast a vote in each election for Federal office held at the polling place.'

## **SEC. 4. TREATMENT OF VOTERS WHO VOTE AFTER CLOSING OF POLLING PLACES.**

Section 302(c) of the Help America Vote Act of 2002 (42 U.S.C. 15482(c)) is amended to read as follows:

'(c) Equal Treatment of Voters Who Vote After the Polls Close- Any individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election shall cast the individual's ballot for the election in the same manner, and under the same terms and conditions, as any individual who votes in the election during the regular hours for the operation of polling places in the State, including the terms and conditions applicable to individuals permitted to cast provisional ballots under this section.'

## **SEC. 5. TREATMENT OF BALLOTS AFTER CASTING.**

### (a) Responsibility of Election Official To Notify Individual of Determination of Eligibility of Ballot-

(1) IN GENERAL- Section 302(a)(5) of the Help America Vote Act of 2002 (42 U.S.C. 15482(a)(5)) is amended to read as follows:

` (5)(A) Not later than 24 hours after determining whether or not the vote of an individual who casts a provisional ballot in an election will be counted in that election under this Act, the appropriate State or local election official shall notify the individual of the determination and (if the determination is made that the vote will not be counted) the reasons for the determination and the individual's right to challenge the determination under the procedures established under subparagraph (B).

` (B) Each State shall establish procedures, including a free access system (such as a toll-free telephone number or an Internet website), under which an individual who casts a provisional ballot in an election and who is notified by the appropriate State or local election official that the provisional ballot cast by the individual will not be counted as a vote in the election may challenge the determination prior to the final tabulation of ballots in the election.

` (C) In carrying out subparagraph (B), each State shall ensure that, in each jurisdiction of the State, an appropriate State or local election official operates open office hours for at least 8 hours on the day after the date of the election, during which a voter who cast a provisional ballot in the election may contact the official and challenge the determination under the procedures established under subparagraph (B).'

(2) CONFORMING AMENDMENT- Section 302(a) of such Act (42 U.S.C. 15482(a)) is amended in the matter following paragraph (5) by striking `The appropriate State or local official' and all that follows through `paragraph (5)(B).'

### (b) Prohibiting Initiation of Recount or Certification of Results Prior to Review of Provisional Ballots Cast; Standards For Determination of Acceptance of Provisional Ballots- Section 302(a) of such Act (42 U.S.C. 15482(a)) is amended by inserting after paragraph (5) the following new paragraphs:

` (6) The chief State election official may not make any determination regarding the applicability of any requirement under State law to conduct a recount of the results of any election for Federal office in the State, or certify the results of any election for Federal office in the State, until all of the votes cast by provisional ballot cast in the election which are to be counted pursuant to this Act have been counted.

` (7) In making a determination as to whether a vote cast by an individual by provisional ballot will be counted in an election, the chief State election official shall review not only the official Statewide list of registered voters but

any other information which was submitted by the individual in the process of applying to register to vote.'

(c) Treatment of Rejected Provisional Ballot as Application For Voter Registration- Section 302(a) of such Act (42 U.S.C. 15482(a)), as amended by subsection (b), is amended by inserting after paragraph (7) the following new paragraph:

` (8) If a provisional ballot cast by an individual in an election for Federal office is rejected on the ground that the individual is not registered to vote in the election, the ballot shall be treated (for purposes of this Act, the National Voter Registration Act of 1993, and applicable State law) as an application by the individual for voter registration in the appropriate registrar's jurisdiction with respect to the next election for Federal office held in the jurisdiction, under the same terms and conditions applicable to applications for voter registration under this Act, including section 303(b)(4) (relating to the treatment of incomplete forms).'

## **SEC. 6. EFFECTIVE DATE.**

Section 302(d) of the Help America Vote Act of 2002 (42 U.S.C. 15482(d)) is amended to read as follows:

` (d) Effective Date-

` (1) IN GENERAL- Except as provided in paragraph (2), each State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2004.

` (2) DELAYED EFFECTIVE DATE FOR CERTAIN PROVISIONS- To the extent that any provision of this section was amended by the Provisional Ballot Fairness in Counting Act of 2009, such provision shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.'

*END*