

State of Wisconsin \ Elections Board

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Sent by Fax

The Honorable Juanita Millender McDonald, Chair
House Committee on Administration

The Honorable Vernon Ehlers, Ranking Member
House Committee on Administration

Subject: H.R. 811, Voter Confidence and Increased Accessibility Act of 2007

Dear Chairwoman Millender-McDonald and Committee Members:

As the Chief Election Official for the State of Wisconsin, I am writing to you to express my serious concerns about the current form of H.R. 811, Representative Rush Holt's Voter Confidence and Increased Accessibility Act of 2007. While the explicitly stated purpose of the bill, to amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot, is a worthy goal, in its present form the contents of the bill create myriad administratively-difficult demands compounded by a fatal element the implementation deadline of 2008.

Voter-Verified Paper Ballots

A primary concern is the requirement for voter-verified paper ballots that allow "*the voter to privately and independently verify the content of the permanent paper record through the conversion of printed content into accessible media; and ensure that the entire process of ballot verification and vote casting is equipped for individuals with disabilities.*" This requirement is premature as the technology to adequately comply is not presently viable for implementation in 2008. The wording of H.R. 811 itself appears to acknowledge the uncertain status of such technology in Section 247, which calls for a study and report on the accessible ballot verification mechanisms by the National Institute of Standards and Technology. Yet, this report is not due to be released until after January 1, 2010 while the implementation of the technology is to take place before any 2008 Federal elections.

For the State of Wisconsin, this would require massive equipment upgrades in less than one year in order to comply by the February 2008 Presidential Preference Primary. The current paper trail practices used in states like Wisconsin, do not meet the accessibility requirements of H.R. 811. Requiring such hurried implementation will undoubtedly promote the use of under-tested and potentially unreliable equipment in the immediate future. Moreover, innovative solutions to accessibility concerns may be stifled and costly redesigns will be likely following the release of the 2010 NIST report.

Audits

The mandatory manual audits prescribed by Section 5 ignore many unique methods currently utilized to administer elections from state to state. The use of the word "precinct" is ambiguous and applies blanket requirements to diverse practices. The specific details of the audit requirement are not administratively feasible in terms of cost and manpower to sufficiently comply within a narrow time frame.

For example, in the State of Wisconsin elections are conducted at the municipal level. There are 1849 municipalities in Wisconsin. Municipalities break their results into reporting units that reflect combinations

of wards within the municipality. These reporting units change from election to election. In November 2006, there were 3565 reporting units. This suggests, according to the provisions of Section 322(a), audits will occur in at least 55 and up to 185 municipalities or at least 107 reporting units up to 357 reporting units. Furthermore, the delay in certification creates confusion of schedules between elections and may force some states to alter their election dates and practices.

H.R. 811 establishes an Election Audit Board for each state. This requirement has been widely criticized and for good reason. The March 20, 2007 testimony by Doug Lewis of The Election Center accurately reflects my own opinion on this requirement when he said, "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' vote, and who will be handling ballots without the training of what to look for or what to do if there are problems." The creation of an additional state agency poses a slew of questions regarding bureaucratic action which ultimately may be ineffective.

Finally, many states, like Wisconsin, already have implemented or have planned future implementation of post-election voting equipment audit processes. These processes are state-specific and are coordinated to reflect the administrative needs of the state. States should be allowed administrative flexibility under any such requirement – a belief that was recognized under the original mandates of HAVA.

Costs

Even if it were feasible to eliminate the barriers of unrealizable equipment modifications and administratively-doomed audits, the costs of this achievement would be monumental. Certainly, the price tag for adjustments across the nation would surpass the \$300 million dollars currently allotted by H.R. 811. Based on the time frame offered, costs would soar as states scramble to comply with requirements by 2008, only to have to reassess compliance following technological changes and requirements. State budgets do not have the resources, nor is it politically-wise, to invest in changes that are not guaranteed to improve the current status without adequate federal funding for new federal requirements.

In conclusion, HAVA has changed nearly every aspect of election administration across the nation. Election officials at every level have worked tirelessly to adapt to these changes and the progress has been remarkable. Wisconsin, like many other states, has responded in parallel to HAVA requirements by adopting state laws to improve accessibility, security, and transparency of the entire electoral process. While containing admirable goals, strengthening voter confidence and improving accessibility, the intent of H.R. 811 is lost in myopic, unworkable requirements that are better suited to state-specific implementation.

I thank you for your consideration of my concerns. I encourage you to contact me directly at 608-266-8087 or kevin.kennedy@seb.state.wi.us if you have questions.

Sincerely,



Kevin J. Kennedy
Executive Director
Wisconsin State Elections Board

cc: Representative Rush Holt, (D-NJ)
Representative Tom Petri, (R-WI)
Representative Tammy Baldwin, (D-WI)

bcc Leslie D. Reynolds, Executive Director, NASS
Doug Lewis, Executive Director, The Election Center