



STATE OF TENNESSEE
THE SECRETARY OF STATE

Nashville
37243-0305

RILEY C. DARNELL

March 30, 2007

The Honorable Zoe Lofgren
United States House of Representatives
Washington, D.C. 20515

Dear Representative Lofgren:

As the Tennessee Secretary of State I have some serious concerns about the election reform bill proposed by Representative Holt. While I disagree with having elections that should be verified by viewing a paper record or a paper ballot, I am also concerned about a number of other aspects of Congressman Holt's proposal:

Unfunded Mandate. First, in order to implement this bill I understand that it will cost the states roughly 1.1 billion dollars. (It will cost even more if the language in the bill requiring VVPATs to use archival quality paper is not changed to a requirement of using durable paper as proposed by Representative Holt.) States across the nation have already invested billions of dollars to upgrade voting systems in accordance with the mandates of HAVA. Many of these systems would not be compliant with the requirements of the Holt Bill and would need to be replaced or retrofitted. Note that Congress has still not appropriated the remaining \$800 million owed to states for the implementation of HAVA.

What Kind of Paper Trail. We have all seen the confusion that can occur when this technology is not used properly, but I ask you to consider whether that is sufficient reason to ban this technology altogether. Just because paper ballots can be (and have been) stolen, or paper ballots can be tabulated inaccurately by our election workers does not mean that we should abandon the use of paper ballots. I suggest that the same is true in this case. The country's election administrators can learn from the experience of the few countries that had problems with the thermal paper audit trail, but I question whether it is necessary to pay the costs of replacing or retrofitting this technology given that it has been used successfully in most places and meets the goal of an election that can be verified by viewing a paper record. The cost of using archival paper is estimated to be

ten times that of thermal paper. New thermal paper is available that will last for up to five years, well past the twenty-two months requirement.

Audit Requirements Should Be Managed By the State's Chief Election Official. The Holt bill proposes to create a new bureaucracy to oversee audits of the elections, by individuals who do not have any experience running elections. This will create a real danger of politicizing the audit process, and not accomplishing the underlying goal of ensuring public confidence in the election results. In addition, the level of procedural detail in the bill will be unnecessarily complicated to administer among states that each follow very different statutory deadlines and requirements when running elections. Tennessee has a State Election Commission composed of three democrats and two republicans to oversee the elections and they do a good job. I suggest that the bill require states to adopt audit procedures that meet the following minimum requirements:

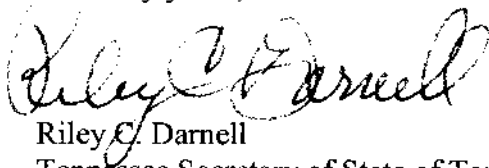
1. That at least 2% of all machines be subject to the audit.
2. That the machines be randomly selected for audit (meaning that the selection does not occur until after the election is held, and that the machines are picked by a number randomizer or out of a hat or some other similar method.)
3. That the hand count be conducted under the supervision of the Chief Election Official but that the ballots be hand counted by pairs of officials who are not members of the same political party, as now required in Tennessee having three democrats and two republicans on the local Election Commission.
4. That the audit be a public audit, meaning that the press and members of public would have the right to be present and observe all aspects of the audit – from the random pick of machines to the actual audit count, to the declaration of results, and that all of the records of the audit be open to public inspection (with the exception of the ballots themselves.)
5. That the results of the audit be publicly declared, and that if any anomaly is identified that the District Attorney General of the County be notified so that he or she could investigate and enforce any violation of election law or any other laws of the state.
6. In order to ensure that the audit creates the anticipated accountability and transparency (to deter fraud) the law might also require states to keep a record of who programmed or configured each machine.
7. The audit plan should be included as an amendment to the State Plan and sent to the EAC for publication, review and approval under the existing provisions for the treatment of State Plans.

Implementation Timeframe. Federal legislation should include reasonable and realistic timeframes for implementing state and local requirements or programs. Even if this legislation was passed by Congress and signed into law by the president by summer recess, many states have procurement rules and legislative session limits that would make it impossible for them to receive the required authority and conduct the required

contracting process to replace existing machines for 2008. We in Tennessee will find it impossible to meet a 2008 deadline for implementation.

I want to thank you for this opportunity to comment on the Holt Bill. I believe that federal legislation should not curtail state innovation and authority solely for the sake of creating uniform methods among the states; and that all legislation should grant states maximum flexibility in determining how to properly and effectively carry out the law and satisfy federally dictated outcomes. It is my hope that you will consider these basic principals as you grapple with the Holt Bill and with any other election reform proposals that you consider in the future.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Riley C. Darnell". The signature is written in a cursive style with a large, prominent initial "R".

Riley C. Darnell
Tennessee Secretary of State of Tennessee

Cc: Leslie Reynolds, Executive Director, NASS