

February 15, 2007

Honorable Representative Stephanie Herseth
331 Cannon Building
Washington DC 20515

RE: HR811 – Voter Confidence and Increased Accessibility Act of 2007

Dear Honorable Representative Herseth:

It is my understanding that HR811 has been introduced in the House of Representatives and may soon have a committee hearing. This Act would supersede the authority of state and county governments to determine the type of voting equipment to be used in their jurisdictions and micromanages state election procedures.

I ask you to oppose this bill. It is an unnecessary federal intrusion into state election procedures. The bill contains mandates which are unnecessary in South Dakota and degrade the federal-state relationship in regard to the administration of elections.

Section 2 of the bill requires each state to deploy voting machines which utilize a very specific type of “paper trail”. Fortunately the system that I have chosen for use in South Dakota - optical scan balloting combined with the AutoMark voter assist terminal - meets the requirements of this section. This narrowly written section will, however, force other states which have spent tens of millions of dollars in the last two years to throw out that equipment and buy new equipment similar to what South Dakota is using. The waste of tax dollars advocated by this section of the bill is shameful.

Subsection (8) of Section 2 would prescribe in federal law the exact language for a notification to be posted in each polling place. The format prescribed in the bill requires the notice to be in upper-case letters. Professionals who work with adults who are learning to read English say that this format is difficult for such readers to comprehend. Congress ought not be in the business of prescribing language and counterproductive formatting for polling place notices. Administration of election notices is currently within each state’s control and should remain so. South Dakota’s Board of Elections has provided very adequate notices for our polling places.

Section 3 expands federal regulation to the State administrative complaint procedures used to resolve citizen complaints regarding administration of the Help America Vote Act (HAVA). South Dakota already has a formal complaint resolution procedure. There is no need to involve the US Attorney General in matters which can be resolved at the state and local level. There is

also no need for this legislation to overtly establish a private right of action. Any problems which occur in the administration of HAVA can and should be resolved through a state-based complaint process, not through lawsuits against state and local election officials. This provision will only prove costly for taxpayers and accomplish nothing of value. There is NO record in South Dakota of any HAVA issues failing to be resolved by state and local election officials.

Section 5 is the most offensive part of the bill. It mandates audits of each federal election by persons who are in no way involved in the election process. The goal of this section apparently is to provide voters with assurance that their votes are being properly tallied. South Dakota has a statutory provision which accomplishes the same goal without the bureaucracy, expense, and time delay required by the language of this section. South Dakota's provision allows any three voters in a precinct to force a recount of their precinct if they suspect the results are not correct. This allows for voters to target any count suspected of inaccuracy without having to recount votes in areas where there is NO suspicion of error. Time and again recounts of races in South Dakota have proven that our vote-counting machinery and procedures are sound and accurate.

Additionally, Section 5 requires the establishment of a "state audit board" to randomly hand-count all of the ballots from at least one precinct per county. Under the requirements of this section, the legislature's auditor general would appoint audit board members with audit experience. This board would not have to be balanced by political party.

This state audit board would conduct a hand count of ballots from at least one precinct per county. The logistics of the count are impractical. Would the board travel to each of the 66 counties? If the board travels to each county, would board members be able to spend approximately thirty work days on this venture? Or would ballot boxes from each county (with associated costs and risks of ballot box security) be transported to Pierre for the count. In either case the audit would delay the final certification of the vote count and declaration of the winner.

Current recounts under state law are done by local boards appointed by the presiding judge of the circuit court. The counts are done by a board which is balanced by party. There are no ballot box transportation security issues because the counts are done at the local courthouse. Because each county has its own recount board, the time commitment for the board members is minimal. This is a system that works. There is no need to change it.

The section authorizes states to be reimbursed for the costs of the audit. While generous, there are two problems with this authorization. First, it is an unnecessary expenditure of tax dollars to "solve" a "problem" that doesn't exist. Second, considering the current experience of state and county election officials being shorted by Congress in the appropriation of funds authorized by the 2002 Help America Vote Act, there is great doubt that states will ever see the funds to pay for these new mandates. South Dakota has not received \$3,403,197 authorized by HAVA because of congressional appropriation failure.

I urge you to oppose this bill which is unnecessary, wasteful, and an intrusion of federal regulation on processes that are properly handled by state and local officials.

Thank you for your consideration of my comments.

Sincerely,

Chris Nelson
Secretary of State