



**Testimony of Commissioner Gail W. Mahoney
Jackson County, Michigan
Chair, NACo Finance and Intergovernmental Affairs Committee**

**Before the U.S. House of Representatives
Committee on House Administration
H.R. 811**

March 23, 2007

Chairwoman Millender-McDonald, Ranking Member Ehlers, and members of the House Administration Committee:

My name is Gail W. Mahoney. I am a county commissioner from Jackson County, Michigan and a member of the Board of Directors of both the Michigan Association of Counties and the National Association of Counties (NACo). I have served for more than a decade and am currently the chair of NACo's Finance and Intergovernmental Affairs Committee, which has jurisdiction on NACo policy regarding election reform.

I am pleased to provide testimony today on behalf of the nation's counties.

Established in 1935, the National Association of Counties (NACo) is the only national organization representing county governments in Washington, D.C.

Thank you for holding this hearing. I applaud your leadership and concern for ensuring public confidence in our democracy. County officials, members of Congress and American voters all want the same thing: to ensure public confidence in the accuracy and integrity of our elections. However, H.R. 811 will undermine public confidence in our elections by imposing impractical requirements under unrealistic deadlines and will needlessly subject counties to tremendous financial burdens. And county election officials must cope with these changes in the face of the fast-approaching and critical election of the next President of the United States.

Had the Help America Vote Act worked as intended, this committee would not likely be considering legislation to scrap more than a billion dollars of voting equipment and start over. But the Election Assistance Commission did not have the resources to issue voting

system standards in 2004 despite a statutory requirement to do so in the Help America Vote Act.

As a result, NACo supported legislation introduced more than two years ago, H.R. 3163, that would have postponed the implementation deadline for the Help America Vote Act. This legislation would have allowed counties to make decisions about voting equipment based on federal standards and independent testing. I would like to insert a copy of that legislation and our letter of support into the record.

And more than a year and a half ago the National Association of Counties, along with the California State Association of Counties, the County Commissioners Association of Pennsylvania and the Texas Association of Counties joined with VoteTrust USA and others represented here today in calling for a temporary enforcement reprieve until the Election Assistance Commission could complete research, standards development and testing of voting equipment. I would like to insert a copy of that letter into the record.

I wish we could turn back the clock and ensure that federal standards for new voting equipment had been written and sufficient time had been provided for states to test and certify that equipment before Congress required its use in elections for federal office. We cannot. But we can learn from the experience. I have asked that these materials be inserted into the record because, as it has often been said, “those who fail to learn from the mistakes of their predecessors are destined to repeat them.”

In this respect H.R. 811 would be *déjà vu*. Deadlines would precede standards for voting equipment. Section 2(b) directs the National Institute of Standards and Technology to issue guidelines for experimental new forms of ballot scanning technology by 2010, but every polling place in America would be expected to start using the equipment in 2008.

H.R. 811 also replicates another shortcoming of the Help America Vote Act – it would result in confusion and litigation over how to interpret vague statutory mandates. Section 2(c) adds a long list of new requirements for voting equipment to Title III of the Help America Vote Act. But it does not provide for any federal guidance, before these requirements would take effect in 2008, on such questions as the starting point for documenting the chain of custody for voting system hardware and software or the definition of archival quality paper. Nor does it provide flexibility for each state to determine its own answers to these questions.

If you want to ensure public confidence in the next generation of voting equipment, please do not require counties across the nation to purchase another round of voting equipment before we know what we’re buying. Work with the Election Assistance Commission, the National Institute of Standards and Technology and the states to write standards and test and certify voting equipment before you require that it be used to conduct an election for President of the United States.

Even if there were no requirement for next-generation technology – and this legislation simply required every state to use optical scan ballots and ballot-marking equipment that

other states are already using – several county election officials have told me that it would be impossible for them to replace their existing voting equipment by 2008. There simply is not enough time to enact state conforming legislation; meet testing and procurement requirements; develop training manuals; and train election officials, pollworkers and voters in the use of new voting equipment.

Deadlines and ambiguity are not our only concerns with H.R. 811. Neither is funding – although this legislation certainly presents an enormous unfunded mandate as Commissioner Feikert will testify. A third major area of concern is that this legislation offers a one-size-fits-all approach that simply would not fit all. There is no reason for legislation to require that a particular sign in the polling place be printed in boldface or in all upper-case letters. And a requirement for transparent audits and a random hand count of a percentage of ballots need not specify 14 pages of detailed, federally-mandated procedures. This kind of specificity is not just unnecessary but stifles innovation. By requiring states and counties to make dramatic, cumbersome and often completely unnecessary changes to their laws and procedures, it also increases opportunities for some part of the system to fail.

I would like to submit for the record a copy of a recent letter that we sent to every member of Congress. It includes the full text of our recent resolution opposing H.R. 811. I would also like to submit for the record a letter from both the National Association of Counties and the National Conference of State Legislatures citing our deep concerns with this legislation.

As that letter indicates the requirements of H.R. 811 are impractical and its deadlines are unrealistic. This legislation would:

- Erode the integrity of the voting process and diminish voter confidence;
- Rush new voting technology to market without testing or certification, and without adequate time for pollworker training and voter education;
- Exacerbate the spiral of escalating election administration costs that, for many counties, have doubled or even tripled in the last five years; and
- Undermine existing efforts by the National Institute of Standards and Technology and the Election Assistance Commission to develop meaningful federal standards for voting equipment and provide for independent testing and certification of voting systems.

Finally, I would like to submit for the record a report of the National Commission on Election Standards and Reform issued six years ago in the aftermath of the 2000 Presidential election. This Commission was formed by NACo and our affiliate organization that represents county election officials, the National Association of County Recorders, Election Officials and Clerks. Many of our specific recommendations were adopted as part of the Help America Vote Act of 2002. I urge the committee to review and consider the remaining recommendations, such as ongoing federal funding for the administrative costs of federal elections and a reduced postal rate for election mail.

The National Association of Counties would support legislation to ensure the accuracy and integrity of voting systems and the transparency of election audits that was developed in consultation with county officials across the nation who are responsible for administering federal elections. But I close with a quote from our 2001 report:

“The Commission recommends that reform should be undertaken within the present system rather than by creating new systems or imposing nationwide procedures on states and local governments. . . . [A]ttempts at nationwide uniformity, such as a uniform national ballot or standard voting equipment, would be impractical, stifle innovation for the future, and greatly magnify the effects of unintended consequences. . . . [O]ur nation should not look for a single dramatic solution but for a sustained effort to make improvements and eliminate sources of error.”

Thank you for the opportunity to provide testimony on behalf of the National Association of Counties. I look forward to answering any questions.