

Debates Rage in Congress On HAVA Computer Vote Act

by Edward Spannaus

EIR has obtained two “Dear Colleague” letters, now circulating in Congress, on the subject of whether or not to amend the 2002 Help America Vote Act (HAVA), to require the printing of a paper record, which would allow an election to be audited and ballots to be recounted. The first, opposing any effort to amend HAVA, is being circulated by its original sponsors. The second is being circulated by some of the many sponsors of a bill which would require a “voter-verified paper trail.”

EIR believes that computerized voting must be *banned altogether* on an emergency basis, and that the November election must be conducted entirely with paper ballots, as the best means of preventing vote fraud and the theft of the 2004 elections. (A fuller explication of the fraud of HAVA and the need for its banning can be found in *EIR*, Feb. 27 and March 12, 2004.)

Nevertheless, we believe that the Congressional exchange of letters (excerpted here) is useful in illustrating how defensive the original sponsors of HAVA have become, in the face of growing public and Congressional opposition to touch-screen voting.

HAVA Sponsors

March 3, 2004

Dear Colleague:

As the principal authors of the Help America Vote Act (Public Law 107-252) (HAVA), signed into law by President Bush on October 29, 2002, we feel compelled to express our concerns about recent legislative efforts that promise enhanced electronic voting system security. Various proposals have been introduced in the House and Senate, but a common feature of these bills is they would amend HAVA to require that all voting systems, including electronic and computer-based systems, produce or accommodate a “voter verified paper record.” Not only are such proposals premature, but they would undermine essential HAVA provisions, such as the disability and language minority access requirements, and

could result in more, rather than less, voter disenfranchisement and error.

We are certainly aware of the alleged concerns that have been raised in recent months regarding security issues associated with computer-based voting systems and technologies, especially Direct Recording Electronic (DRE) voting systems. These concerns are neither new nor unanticipated by HAVA. To address security-related issues, HAVA creates a Technical Guidelines Development Committee, chaired by the Director of the National Institute of Standards and Technology (NIST), to assist the new Election Assistance Commission (EAC) in developing guidelines and standards to ensure the reliability of the computer technologies being employed in voting systems. These standards will focus not only on the security of computer and network hardware and software and data storage, but also on the detection and prevention of fraud and the protection of voter privacy. Additionally, HAVA provides that the testing and certification of voting system hardware and software must take place in accredited laboratories. NIST initiated this process with a two-day public conference this past December, 2003.

The goal of HAVA is to ensure that every eligible American has an equal opportunity to cast a vote and have that vote counted. HAVA does not mandate the use of DRE systems. It does require, however, that voting systems be enhanced to avoid the errors and accessibility problems associated with antiquated systems, such as punch cards. Computer-based voting systems have a demonstrated track record of achieving this goal, particularly for persons with disabilities. While there are risks associated with any technology, the solution is not to rush to judgment by returning to flawed systems. Rather, the answer is to allow the Commission, together with the active input of election officials, computer experts, and civil rights groups representing voter interests, to develop standards for ensuring the security of all voting systems, as required under HAVA.

The proposals mandating a voter-verified paper record would essentially take the most advanced generations of election technologies and systems available and reduce them



Brave new world of HAVA: elections by computer without valid record or recount. Congressional critics of the Act, which again resulted in corrupted election results on March 9, in California, are still not aiming to repeal it, as is needed to save constitutional elections.

to little more than ballot printers. While such an approach may be one way to address DRE security issues, it would, if adopted, likely give rise to numerous adverse unintended consequences. Most importantly, the proposals requiring a voter-verified paper record would force voters with disabilities to go back to using ballots that provide neither privacy nor independence, thereby subverting a hallmark of the HAVA legislation. There must be voter confidence in the accuracy of an electronic tally. However, the current proposals would do nothing to ensure greater trust in vote tabulations but would be guaranteed to impose steep costs on States and localities and introduce new complications into the voting process.

Questions regarding voting systems' security, as well as many others, need to be examined by the entity responsible for doing so under existing law, the Election Assistance Commission, before Congress begins imposing new requirements, just months before the 2004 Presidential and Congressional elections, that have not been fully considered. The security of voting technology is a non-partisan issue. We encourage you to allow HAVA to be implemented as enacted and provide those who are charged with ensuring the security of voting systems the time and flexibility needed to get the job done effectively.

Sincerely,
Representative Robert W. Ney (R-Ohio)
Representative Steny Hoyer (D-Md.)
Senator Mitch McConnell (R-Ky.)
Senator Christopher J. Dodd (D-Conn.)

HAVA Critics

March 9, 2004

A vote count with integrity—before it's too late.

Dear Colleague:

Recently, a letter circulated by Representatives Robert Ney and Steny Hoyer, and Senators Mitch McConnell and Chris Dodd, argued that legislation to amend the Help America Vote Act of 2003 (HAVA) to require a voter verified paper trail is "premature" and could be detrimental. It is understandable that the authors of the Help America Vote Act would be sensitive to amending that legislation. We supported it, and we still support it. But we do not support the suggestion that Congress should continue to sit by as an election after election is conducted with no meaningful way to audit the results.

The Voter Confidence and Increased Accessibility Act (H.R. 2239 and S. 1980) has bipartisan support and more than 120 bipartisan cosponsors. Seventy organizations have endorsed the companion bills, including chapters of political parties from one end of the political spectrum to the other. Dozens of newspapers from across the country have editorialized in their favor. In addition to S. 1980, two other bills on the subject are pending in the Senate. The breadth and depth of support for H.R. 2239 and S. 1980 are due to their promise to restore confidence and accountability to our elections. Without an independent, voter-verified paper trail, we will be able only to guess whether votes are accurately counted.

HAVA's authors have suggested that we are advocating "a return to flawed systems." This is not the case. The Voter

Confidence and Increased Accessibility Act requires paper ballot systems in November 2004 only in the jurisdictions whose electronic equipment is not yet capable of producing a voter verifiable paper record. More importantly, paper ballot systems are not “flawed.” A 2001 Caltech/MIT study found paper ballot systems have lower error rates than all other voting methods, including direct recording electronic (DRE) machines. By 2006, all jurisdictions would be required to deploy the certified voter-verified paper trail system of their choice. . . .

Notwithstanding the foregoing concerns expressed by HAVA’s authors, there is broad support for the requirement of voter-verified paper trails among public interest and disability groups. The following statement, in fact, has been endorsed by more than forty civil rights, public interest and disability advocacy groups:

“New voting machines should provide a ‘voter-verifiable paper audit trail’ and incorporate ‘data-to-voice’ technology to ensure full access by all.”

In addition, the United States Department of Justice issued an opinion in October 2003 that, although it did not mention the Voter Confidence and Increased Accessibility Act, confirmed the legal soundness of what the bill seeks to mandate. It concluded:

A direct recording electronic voting system that produces a contemporaneous paper record, which is not accessible to sight-impaired voters but which allows sighted voters to confirm that their ballots accurately reflect their choices before the system officially records their votes, would be consistent with the Help America Vote Act and with Title II of the Americans with Disabilities Act, so long as the voting system provides a similar opportunity for sight-impaired voters to verify their ballots before those ballots are finally cast.

HAVA’s authors urge you to wait for the Election Assistance Commission (EAC) to empanel the required Technical Guidelines Development Committee, which they suggest will “ensure the reliability of the computer technologies being employed in voting systems.” But how can it? HAVA required jurisdictions to request funding to replace obsolete equipment by April 2003 and, without a waiver, deploy their new equipment by November 2004. Millions of dollars in HAVA funding to replace obsolete voting equipment were requested, and disbursed, in the early part of 2003. Purchasing decisions were being made, equipment was being deployed. And all the while, there was no EAC, and there was no Technical Guidelines Development Committee.

The EAC Commissioners themselves were not appointed until December 2003, and to this day there is no Technical Guidelines Development Committee. Even if there were, it is not required to produce guidelines until nine months after its members have been appointed. Even if it released guidelines

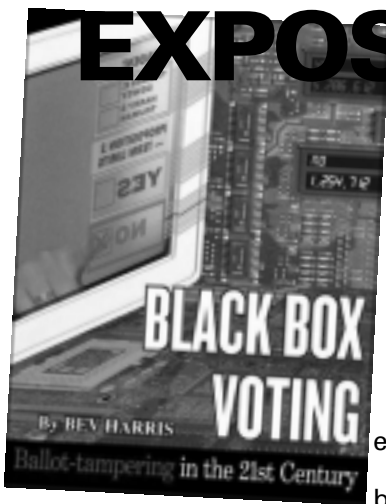
tomorrow, the guidelines are voluntary, as determined by HAVA’s authors, and could be changed with the stroke of a pen.

We believe that the Technical Guidelines Development Committee has an important role, and we look forward to the day it is empanelled. We are working, in fact, to ensure that the EAC receives all the funding it needs as expeditiously as possible. But the core of the solution to the electronic voting security crisis is already on the table, and a broad cross-section of the voting public has already spoken out in its favor with a resounding voice. They want a vote count with integrity. They want a voter-verified paper trail.

Unless Congress addresses this problem immediately by requiring voting machines to produce a paper record that voters can verify, November 2004 will make November 2000 look like a fond memory. Indeed, we have already seen elections across the country suffer from one irregularity after another after implementing unauditible electronic voting machines. Allowing ourselves to repeat these mistakes in 2004 would be bad for the public, bad for our democracy, and bad for both political parties.

That is why we have introduced H.R. 2239 and S. 1980, The Voter Confidence and Increased Accessibility Act of 2003, bills to amend HAVA to require a voter-verified paper record for all votes cast in Federal elections. . . .

Sincerely,
Representative Rush Holt (D-N.J.)
Senator Bob Graham (D-Fla.)



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