

Don't Let the 2004 Election Be Stolen: EIR Submits Testimony Against HAVA

EIR submitted testimony to the House Government Reform Committee's Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census, whose hearing on "The Science of Voting Machine Technology: Accuracy, Reliability, and Security" was on May 12. The testimony was given by EIR Law Editor Edward W. Spannaus, on May 12, 2004.

On May 5, Spannaus had testified at hearings held by the Elections Committee of the Missouri House of Representatives on House Bill 1744, to ban all use of computers, either in the casting or the counting of votes, in the November Presidential elections and thereafter. The bill, the first of its kind in the country, requires that only paper ballots be used; it is sponsored by Representatives Juanita Walton and Jim Whorton. That EIR testimony is posted at www.larouche-pub.com.

This is Spannaus' May 12 written testimony to the House Government Reform Committee.

The ill-advised passage of the Help America Vote Act of 2002 (HAVA), under the guise of reforming and "modernizing" our election machinery, has created a potentially much larger crisis than that which followed the last Presidential election in the year 2000. With computer voting increasingly being utilized in many states, our Nation could face a situation in which the voting results in many states, not just one, are called into question, and in which the public loses all confidence in the integrity and legitimacy of the elections.

The possibility that the 2004 Presidential election could be stolen by means of rigging computerized voting systems, requires that drastic measures be taken now, by both the Congress and the states.

While we sympathize with the concerns that have led many to advocate voter-verifiable paper trails, we do not believe that this solves the problem, and, on the contrary, it adds another element of technological complication and potential mechanical failure.

EIR's founding editor, Lyndon LaRouche, has called for a ban on all computerized voting devices, and a return to a 100% system of paper ballots.

We therefore call for emergency legislation on both the Federal level and state level, as appropriate, which would:

1. Prohibit the use of any computerized device for casting or counting votes in the November 2004 Presidential election;
2. Mandate that only paper ballots can be used, and that each voter must be given a receipt on which is recorded his

or her vote;

3. Require that all ballots must be manually counted, subject to the same requirements for observation of the tabulating of votes, as is required by the Voting Rights Act of 1965 pertaining to observers in covered jurisdictions; and

4. Repeal the Help America Vote Act of 2002 (HAVA) in its entirety.

The Constitutional Issue

A system totally of paper ballots is the best means for fulfilling the Constitutional requirement for fair elections, and it provides the soundest basis for voter confidence in the electoral process.

The right to vote grows out of Articles I and II of the United States Constitution, as pertains to the selection of members of Congress, and the election of the President and Vice President. The post-Civil War amendments enshrined the right of all to equal protection of the law (14th Amendment), and the right to vote (15th Amendment).

The U.S. Supreme Court has declared that the right to vote includes the right of qualified voters within a state not simply to cast a vote, but to have their votes counted properly.¹

The Voting Rights Act of 1965 implements these provisions, particularly the 15th Amendment. The Voting Rights Act, *inter alia*, provides for the appointment of Federal voting examiners, who are entitled to be present at any polling place, or any place where votes are being tabulated, "for the purpose of observing whether votes . . . are being properly tabulated."²

The use of electronic vote-counting devices clearly renders it impossible to observe the tabulation of votes. In many instances, elected officials don't even know how the computers count the votes, but they are dependent on private contractors. The internal instructions for the computer are contained in source code, which is regarded as the vendors' private property. While the use of Direct Recording Electronic (DRE) touch-screen machines creates the most egregious situation, the same problems apply to any other systems, such as optical-scanning and punch-cards, which utilize computers to count ballots.

The security vulnerabilities of DRE systems have been so thoroughly documented, that it is not necessary to belabor the point here. These are summarized in many locations, includ-

1. Reynolds v. Sims, 377 U.S. 533 (1964), and cases cited therein.

2. 42 U.S.C. 1973f.

ing the November 2003 report by the Congressional Research Service. However, it should be emphasized, that the CRS Report notes that *any* computerized ballot-counting, system, including optical scanning, is also vulnerable to tampering. The CRS report states:

“The potential threats and vulnerabilities associated with DREs are substantially greater than those associated with punchcard and optical scan readers, both because DREs are more complex and because they have no independent records of the votes cast. However, document-ballot readers are potentially subject to malware [malicious computer code] that could affect the count; to vulnerabilities associated with connections to other computers; and to some other kinds of tampering.”³

It is also worthy of consideration, that a comprehensive study of lost votes for the past four Presidential elections (1988, 1992, 1996, and 2000) found that paper ballots had the lowest rate of error of any voting system. This study, known as the “Caltech/MIT Voting Technology Report,” studied five general types of voting technologies: hand-counted paper ballots, lever machines, punch cards, optically-scanned paper ballots, and touch-screen (DRE) machines. The study reported:

“The central finding of this investigation is that manually-counted paper ballots have the lowest average incidence of spoiled, uncounted, and unmarked ballots, followed closely by lever machines and optically-scanned ballots. Punchcard methods and systems using direct recording electronic devices (DREs) had significantly higher average rates of spoiled, uncounted, and unmarked ballots than of the other systems.”⁴

HAVA Must Be Repealed

HAVA was passed in 2002 under a false premise, that the use of “modern” computerized technology would avoid the type of chaos that occurred in the 2000 Florida elections. The passage of HAVA, with its financial incentives and other provisions, has resulted in a significant increase in the use of completely-computerized, paperless DRE voting equipment, in which the counting of ballots is invisible to the public—and even to elected officials and election workers.

Contrary to widespread belief, HAVA did not mandate the use of DRE voting equipment. However, three provisions of the HAVA legislation have encouraged states to purchase DRE machines. First, is the Federal subsidy for replacing punch-card and lever machines; second is the requirement

that voting system notify voters of overvotes and permit voters to correct their votes (although there is an exception for paper ballots); and third, is the requirement that each polling place used in a Federal election have a least one voting machine that is fully accessible for persons with disabilities.

Not surprisingly, electronic voting machine manufacturers were heavily involved in lobbying for HAVA, along with defense contractors. Advocacy groups for the disabled were also promoting the bill, but it turns out that Diebold, for example, has provided significant financial support to such organizations.⁵

The supposed advantage of DRE machines is that an audio attachment can be used to assist blind persons, but there are other methods that can be used that are consistent with paper ballots, such as the “tactile voting template,” which are favored by many of those needing special equipment.⁶

Furthermore, the development of security standards and guidelines for the use of electronic voting devices, and procedures for certification and decertification of voting systems, has been stalled and delayed, so that many jurisdictions have purchased new voting equipment, without security standards having been developed and promulgated. The Bush Administration delayed the establishment of the Election Assistance Commission (EAC), which is charged under HAVA with developing voting system guidelines, overseeing the testing and certification or decertification of voting systems and hardware, and conducting studies of “methods of identifying, deterring, and investigating voter fraud.”

Furthermore, under HAVA, the National Institute of Standards and Technology (NIST) was designated to play the leading role in developing standards for voting equipment, and assisting state and local officials in implementing new voting systems. In February, the NIST announced that it had ceased all its HAVA-related activities because of a \$22-million budget cut in Fiscal 2004.

This has put the states in an impossible bind, where they are rushing to meet HAVA deadlines and to qualify for Federal money, so that they can purchase new voting equipment which has not yet been evaluated or certified.

Why Use Only Paper Ballots?

Any use of computers opens the door to fraud. The speed and complexity of computers creates an inherently dangerous and fraud-prone situation, because, as we have noted, only a handful of people know how votes are being counted. Citizens can never have full confidence in any such system

3. Congressional Research Service, “Election Reform and Electronic Voting Systems (DREs): Analysis of Security Issues,” Nov. 4, 2003, p. 36; <http://www.epic.org/privacy/voting/crsreport.pdf>.

4. Executive Summary, “Residual Votes Attributable to Technology: An Assessment of the Reliability of Existing Voting Equipment,” The Caltech/MIT Voting Technology Project. Version 2: March 30, 2001. <http://www.vote.caltech.edu/Reports/>

5. Douglas W. Jones, Associate Professor, Department of Computer Science, University of Iowa, “The Case of the Diebold FTP Site.” See, www.cs.uiowa.edu/~jones/voting/dieboldftp.html.

6. See E-access Bulletin, April 2001, www.e-accessibility.com/issues/apr2001.html. The International Foundation for Election Systems (www.ifes.org) operates a Disabilities Project, which has sponsored the introduction of tactile ballots in a number of countries.