

Statement of Representative Rush Holt
to
The Senate Rules and Administration Committee
Hearing on The Hazards of Electronic Voting:
Focus on the Machinery of Democracy
February 7, 2007

Chairwoman Feinstein, Honored Members of the Committee, I am Rush Holt, Representative from the 12th District of New Jersey. I am pleased to be before you today, and gratified that the Senate Rules Committee is again, and so early in the new Congress, holding a Hearing to consider this most critical topic in election reform – security issues relating to computer-assisted voting and what to do about them. When I last addressed this Committee in 2005, I noted that the country was suffering under the cloud of two controversial Presidential elections in a row. And now to that cloud we must add a Congressional race decided by 369 votes but with respect to which the votes of 18,000 voters went unrecorded for as-of-yet unexplained reasons.

Not only are the reasons unexplained; arguably, they are unexplainable. The software that counted the votes remains concealed, despite a dispute about whether it recorded votes accurately, and there are no independent voter-verified records confirming what the intentions of the voters were. The ballot is not durable. It is only a figment that exists in cyberspace. Democracy only works if we believe it does, and confidence in the process seems only to be further shredded with each passing election. Therefore again, I commend the Chair for addressing this critical issue so early in the Congress and I look forward to working with her to pass legislation to address this matter in the coming weeks so that the 2008 election will at last be an election we can all be proud of and confident in.

Free and fair elections are the very cornerstone of Democracy, and our elections can only remain free and fair if we, the citizens, can publicly audit them. Somewhere along the way we took a wrong turn, and handed almost the entire process over to the private corporations which sell us our “machinery of democracy.” They sell us the machines, they sell us the software, they keep the software concealed, and they tell us who won. If we have a question about the result, they simply tell us that the software counted the votes accurately and we have nothing to worry about. I don’t know what that sort of privatized counting and verifying arrangement is, but democracy it is not. The voter does not believe the voter is in control.

If a voter casts a vote on an electronic voting machine, verifying nothing but what is for a transitory moment in time reflected on the screen, how can the record of that vote be meaningfully audited? Can any election official, computer scientist, or voting system vendor reconstruct what that voter intended? No. The voter votes in secret. Because of the secret ballot, only the voter can verify that his or her intention is recorded correctly. That is why an independent paper copy of each vote – verified by the voter him or herself – must be required of all voting systems.

Votes are in a sense the “currency” of Democracy, and they are inherently valuable. Anything valuable, such as bank records, or property records, must be auditable. We wouldn’t have it any other way. The same absolutely must be true of our votes.

I think it is worth considering how we took the wrong turn we did after the 2000 election – because we are the only ones who can safeguard our democracy and we must always ask ourselves whether we are doing that, and if not, why not.

Everyone remembers the 2000 election. In fact, at a September hearing on this issue in the Committee on House Administration, we were reminded of it graphically, as photos of election judges squinting at punch card ballots in Florida were displayed on large projection screens for all to see. Those, we were reminded, were paper ballots. Those, we were warned, would return us to the days of ambiguous evidence of voter intent and protracted disputes. Instead of removing the ambiguity from the record of each vote, many jurisdictions removed the record itself. In an effort to remove the problem of hanging chads many jurisdictions denied voters the possibility of verifying their votes and denied election officials the ability of ever knowing voters’ intentions, and removed voters’ confidence in elections.

In Florida 2000, at least we had evidence of voter intent. In Florida 2006, we have no evidence of it at all – or at least none that we are allowed to inspect. In Florida 2000, the election judges were able to make determinations about voter intent, even when the intent of the voter was not entirely clear. In Florida 2006, election judges cannot make any determination about voter intent because there is nothing tangible left that the voters themselves created or verified; whatever they saw on the touch screen, it was gone forever by the time the next voter entered the booth. All that remained was a software translation of voter intent, and a pile of unanswered and unanswerable questions surrounding 18,000 missing votes. Removing paper ballots from the computer-assisted voting process did not remove irregularity and fraud from the process, it removed the ability to discover and prove irregularity and fraud.

On the next panel, you will hear from experts who are intimately familiar with the evidence, to the extent that it exists, in that case. I will not describe it for you here. But it is important to note that Sarasota County voters of every persuasion felt equally disenfranchised by the circumstances of that election. Voters from both major parties and a number of third parties joined together in a suit filed on their behalf by non-partisan public interest groups, not to say “I want my candidate to be declared the winner,” but rather to say “I want to know which candidate was the winner.”

That is the fundamental purpose of the legislation I introduced yesterday in the House of Representatives, along with more than 160 original bipartisan cosponsors. When the legislation is passed and implemented, we will always have the ability to audit results and conclude with assurance which candidate won.

Although well-intentioned, the Help America Vote Act created at least one unintended risk to the electoral system – it encouraged jurisdictions to purchase electronic voting systems without at the same time mandating that those systems be independently auditable. My legislation would:

Require a voter verified durable paper ballot for every vote cast, to serve as the vote of record in all recounts and audits;

Require routine random audits in a percentage of precincts in every federal election, and an increased percentage of precincts when races are extremely close;

Require that voters be given paper emergency ballots immediately upon machine failure, to prevent disenfranchisement; such ballots are required to be counted as regular ballots;

Ban the use of wireless devices, undisclosed software and Internet connections to machines upon which votes are cast;

Preserve and enhance the accessibility requirements of the Help America Vote Act and fund the development of new accessible ballot marking and ballot reading technologies;

Authorize \$300 million to defray the cost of implementing the paper ballot and accessible verification requirements of the bill; and

Establish an escrow account through the Election Assistance Commission to create an arms-length relationship between vendors and test labs.

This legislation will strike the appropriate balance between the accessibility and the auditability of our electoral system, making a much-needed adjustment to the Help America Vote Act. Auditability and accessibility are not mutually exclusive, and should never be treated as if they are.

The fundamental requirements of this legislation – a voter verified paper ballot for every vote cast and routine random audits as a check on the system -- have been endorsed or recommended by the bipartisan Carter Baker Commission on Federal Election Reform, the non-partisan Brennan Center for Justice at New York University School of Law, the National League of Women Voters, Common Cause, People For the American Way, VoteTrustUSA, the Electronic Frontier Foundation, dozens of public interest and e-voting integrity groups, *The New York Times*, the *Washington Post*, *Roll Call*, the *Chicago Tribune*, the *Trenton Times* and many other newspapers. Our bill is very carefully drawn. Every detail of our legislation has gone through meticulous review not only by Members of Congress, but also by lawyers, Secretaries of State, public interest groups, advocates for voters with physical disabilities, election reform advocates, and civil rights organizations. In the 109th Congress, a bipartisan majority of Members cosponsored it.

In addition, the country has done a veritable about face on this issue. When I first introduced this legislation in May of 2003, only a handful of states had a requirement for

paper-ballot-based voting. Today, 27 states have such a requirement, and another eight used paper-ballot-based voting even though they do not mandate it. There are only 15 states that currently neither have such a requirement nor use paper ballot based voting, and it is time to bring those last few states into the fold so that all federal elections will be independently auditable. By the same token, only thirteen states currently conduct routine random audits, and the practice of routinely double-checking the accuracy of the results of computer-assisted elections too must become a national standard. This is not a partisan issue.

Time is of the essence. If we are to have confidence in our federal elections in 2008, we must act now, and work together to resolve any implementation concerns that may arise. Ensuring that our next general election will be independently auditable is by no means the only thing we must do to repair our electoral system, but it is the most time-sensitive.

Again, it is my honor to be here with you today, to discuss this critical issue. I look forward to working with the Committee Chair on companion legislation, and marshalling it through both Chambers as expeditiously as possible.