

UNIVERSAL RIGHT TO VOTE BY MAIL ACT OF 2009

JULY 16, 2009.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House
Administration, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 1604]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 1604) to amend the Help America Vote Act of 2002 to allow all eligible voter to vote by mail in Federal elections, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Universal Right to Vote by Mail Act of 2009”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) An inequity of voting rights exists in the United States because voters in some States have the universal right to vote by mail while voters in other States do not.

(2) Many voters often have work, family, or other commitments that make getting to polls on the date of an election difficult or impossible. Under current State laws, many of these voters are not permitted to vote by mail.

(3) 28 States currently allow universal absentee voting (also known as ‘no-excuse’ absentee voting), which permits any voter to request a mail-in ballot without providing a reason for the request, and no State which has implemented no-excuse absentee voting has switched back.

(4) Voting by mail gives voters more time to consider their choices, which is especially important as many ballots contain greater numbers of questions

about complex issues than in the past due to the expanded use of the initiative and referendum process in many States.

(5) Allowing all voters the option to vote by mail can lead to increased voter participation.

(6) Allowing all voters the option to vote by mail can reduce waiting times for those voters who choose to vote at the polls.

(7) Voting by mail is preferable to many voters as an alternative to going to the polls. Voting by mail has become increasingly popular with voters who want to be certain that they are able to vote no matter what comes up on Election Day.

(8) No evidence exists suggesting the potential for fraud in absentee balloting is greater than the potential for fraud by any other method of voting.

(9) Many of the reasons which voters in many States are required to provide in order to vote by mail require the revelation of personal information about health, travel plans, or religious activities, which violate voters' privacy while doing nothing to prevent voter fraud.

(10) State laws which require voters to obtain a notary signature to vote by mail only add cost and inconvenience to voters without increasing security.

SEC. 3. PROMOTING ABILITY OF VOTERS TO VOTE BY MAIL IN FEDERAL ELECTIONS.

(a) **IN GENERAL.**—Subtitle A of title III of the Help America Vote Act of 2002 (42 U.S.C. 15481 et seq.) is amended by inserting after section 303 the following new section:

“SEC. 303A. PROMOTING ABILITY OF VOTERS TO VOTE BY MAIL.

“(a) **IN GENERAL.**—If an individual in a State is eligible to cast a vote in an election for Federal office, the State may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote in such election by mail, except as required under subsection (b) and except to the extent that the State imposes a deadline for requesting the ballot and related voting materials from the appropriate State or local election official and for returning the ballot to the appropriate State or local election official.

“(b) **REQUIRING SIGNATURE VERIFICATION.**—

“(1) **RECORD OF SIGNATURE REQUIRED FOR PROVISION OF BALLOT.**—A State may not provide an absentee ballot to an individual for an election for Federal office unless the individual's signature is included on the official list of registered voters in the State or some other official record of the State connected to such list.

“(2) **VERIFICATION REQUIRED FOR ACCEPTANCE AND PROCESSING OF SUBMITTED BALLOT.**—A State may not accept and process an absentee ballot submitted by any individual for an election for Federal office unless the State verifies the identification of the individual by comparing the individual's signature on the absentee ballot with the individual's signature on the official list or other official record referred to in paragraph (1), in accordance with such procedures as the State may adopt.

“(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to affect the authority of States to conduct elections for Federal office through the use of polling places at which individuals cast ballots on the date of the election.

“(d) **EFFECTIVE DATE.**—A State shall be required to comply with the requirements of this section with respect to elections for Federal office held in years beginning with 2012.”

(b) **CONFORMING AMENDMENT RELATING TO ENFORCEMENT.**—Section 401 of such Act (42 U.S.C. 15511) is amended by striking “and 303” and inserting “303, and 303A”.

(c) **CLERICAL AMENDMENT.**—The table of contents for such Act is amended by inserting after the item relating to section 303 the following new item:

“Sec. 303A. Promoting ability of voters to vote by mail.”

UNIVERSAL RIGHT TO VOTE BY MAIL ACT OF 2009

PURPOSE OF THE LEGISLATION

In 2008, more voters than ever participated in the democratic process by casting absentee ballots. This growing trend can be attributed to the fact that voters in 28 states and territories currently may exercise ‘no excuse’ absentee voting, which allows citizens to vote by mail without requiring a reason for the request.

Since Kansas started ‘no excuse’ absentee voting in 1967, 28 states have followed suit and no one has switched back.

However, 21 states, the District of Columbia, and all the territories still require voters to provide a qualifying excuse in order to vote absentee by mail. Requirements to justify a qualifying excuse differ among state laws, but some requirements may require the voter to go so far as to produce a notary’s seal, a doctor’s note, a list of work hours or job description, explanation of a religious obligation, description of the nature of a disability, or even signatures from multiple witnesses, in order to request an absentee ballot. H.R. 1604 removes the unnecessary requirements that have created such barriers for voters.

H.R. 1604 levels the playing field by removing the litany of restrictions imposed by these 21 states, the District of Columbia and the territories. The bill also removes invasive private information requirements from state forms; such as, questions about vacation destination, nature of illness, religious obligation, and pregnancy status. This legislation gives all voters the option to vote by absentee ballot in federal elections whether it be because of choice or need. H.R. 1604 does not require anyone to vote by mail but merely provides voters the option of voting absentee without having to respond to intrusive and unnecessary questions that make it more difficult for voters to participate in federal elections.

REMOVING BARRIERS AND EXPANDING THE FRANCHISE

H.R. 1604 will play a significant role in expanding the franchise for the many voters who must work and commute longer hours than polls are open, who are sick or physically challenged, who are displaced by natural disaster, who live abroad, or who are stationed away from home in the military. For example, the bill will help eliminate barriers like those that the voters who were displaced by Hurricanes Katrina and Rita faced. Election officials in Louisiana rejected absentee ballots from significant numbers of voters, displaced throughout the Gulf region, for failing to provide notary signatures as required by Louisiana law.¹ Some states do not even allow certain travel, work, family, school, illness and jury duty situations to count as valid excuses to request an absentee ballot.² Too many citizens, including parents with small children, caregivers, commuters, emergency personnel and even letter carriers—who often spend longer hours during the election season to deliver election materials—cannot sacrifice the time it takes to stand in line to vote, particularly in these harsh economic times.³ Moreover, many states do not require that employees be given time off to vote, resulting in several recent instances of lines at the polls lasting many hours and long delays when polling places open in the morning, which have led some voters to choose between going to work and leaving their polling place without voting.⁴

Additionally, notarization and witness requirements have created various obstacles for voters overseas and in the United States. It

¹ Payton, John, Letter to Chairman Robert Brady: June 9, 2009.

² Connecticut (Conn. Gen. Stat. §9-150a), Massachusetts (ALM GL ch. 54, §7), and Illinois (10 ILCS 5/19-1).

³ Young, William, Letter to Chairman Robert Brady: June 9, 2009.

⁴ Wagmen, Jake, “Report: Long Lines Led to Lost Jobs on Election Day,” St. Louis Post-Dispatch: November 20, 2008.

can be incredibly difficult to find an appropriate witness, and notarization abroad is possible only at U.S. embassies and consulates. Thus, overseas voters must incur a significant time and cost burden for individuals who do not live in close proximity to these U.S. government offices.⁵ Some states require notary signatures for voters in the U.S., including students, travelers, and those incarcerated but not convicted of a felony, to request absentee ballots.⁶ In addition to making the effort to locate a notary, voters in those states may be charged a fee for the notary's service. The inconvenience and cost creates a great disparity because voters in other states do not need to make the effort to obtain a notary signature if they would like to 'vote-by-mail.'

In some states, the requirement of a doctor's note to the elections office to qualify for an absentee ballot creates a significant hurdle for an ill voter who in many cases would have to pay for a doctor's visit and then follow up on paperwork. This requirement can also be onerous for doctors.⁷

Further, disclosure of personal, private information or the imposition of financial burdens should not be required for citizens to exercise their right to vote.⁸ Some states require that a voter list the location of his or her vacation, a job description, the name of a doctor and the nature of an illness, or even a relative's illness. In many states, this information remains on the public record. Doing so intrudes upon voters' basic principles of privacy and dignity.⁹ At the same time, without any question or cost, voters in 28 states can conveniently request a mail-in ballot. "A federal law is needed to guarantee that all citizens have the same opportunity to vote by mail in federal elections if they so choose."¹⁰

REDUCING BURDENS AND THE COST OF ELECTION ADMINISTRATION

'No excuse' absentee voting takes strain off the polls on Election Day as well as giving officials more time to process ballots. Conversely, absentee voting policies that require an excuse place significant administrative burdens on local election officials.¹¹ During the November 2008 general election season, the election office in Fairfax County, Virginia denied thousands of applications because of simple failures to supply burdensome information. The denial rate for absentee applications in Fairfax County, Virginia is high because a considerable number of voters check a reason on their absentee ballot applications, but fail to supply the supporting information required by Virginia law. The Fairfax County election office staff is required to review each application for completeness, and when a voter fails to properly complete the form, the office is required to send a notice to the voter informing them of the deficiency and supplying a new application. Some voters were sent multiple applications before submitting a properly completed application.¹² This entire process was conducted by hand, resulting in staff overtime in the weeks approaching election deadlines and in-

⁵ Stendsland, Lucy, Letter to Chairman Robert Brady: June 6, 2009.

⁶ Delaware (Delaware Code § 5503) and Rhode Island (Rhode Island Statute § 17-20-13).

⁷ Tennessee Code § 2-6-201-3(A).

⁸ Fredrickson, Caroline, Letter to Chairman Robert Brady: June 9, 2009.

⁹ Edgar, Bob, Letter to Chairman Robert Brady: June 9, 2009.

¹⁰ Fredrickson, Caroline, Letter to Chairman Robert Brady: June 9, 2009.

¹¹ Suleman, Rokey, Letter to Chairman Robert Brady: June 6, 2009.

¹² Suleman, Rokey, Letter to Chairman Robert Brady: June 6, 2009.

creased costs for the postage and supplies needed to process incomplete applications. ‘No excuse’ access to absentee mail-in ballots has the ability to save election offices thousands of dollars in processing and overtime costs.¹³

In fact, although implementing a ‘no excuse’ absentee mail-in ballot system may sometimes have some upfront costs, it will ultimately reduce costs for many election offices. Costs of implementing a ‘no excuse’ absentee vote by mail process may vary by jurisdiction, but most states that allow ‘no excuse’ absentee voting find that it saves them money in the long run because of central processing and reduced costs for polling place expenses. Election registrars would save money on staff costs for checking excuses and requesting supporting documentation (in some instances, multiple times from voters). Having a high percentage of vote-by-mail voters also allows election officials to order ballots more accurately for the polls, which helps reduce the overall cost of providing poll-based services.¹⁴ In many states that currently have ‘no excuse’ absentee voting, it is so popular with voters and elections officials that they have created permanent absentee lists of voters who want an absentee ballot sent to them automatically each election. Once a permanent absentee system is implemented, costs go down even further due to decreased data entry costs and increased predictability for absentee and polling place supplies.

Expanding the eligibility pool for ‘no excuse’ absentee voting by mail should not be tremendously difficult for election offices, because it is merely the expansion of a current mechanism that every jurisdiction already maintains for some type of absentee voting process. Moreover, claims that this bill creates an unfunded mandate are unfounded. This bill will have no impact on the federal budget, and it does not meet the definition of an unfunded mandate because it is a voter-eligibility civil rights bill.

Many states promote in-person early voting, which certainly increases voter opportunity. However, in-person early voting should not be considered a substitute for early voting by mail because early in-person voting offers limited hours and locations, and long lines often set impediments to many voters and show the need for even more opportunities to vote. In-person early voting can also be difficult to administer in multiple locations in states that are required to use paper ballots, as election officials can be responsible for preparing hundreds of ballot types in various jurisdictions. Expanding ‘no excuse’ voting by mail to all voters offers the greatest opportunity to the greatest number of voters.

MAINTAINING THE INTEGRITY OF ELECTIONS

There is no evidence that existing procedures requiring an excuse to vote by mail make voting any more secure than ‘no excuse’ absentee voting or even voting at the polls. Although some have had natural concerns that any type of remote voting is inherently less secure than voting in person, millions of absentee ballots have been cast with very few security problems and additional security measures on absentee ballots make it especially difficult for those with criminal intent to influence the outcome of an election. Millions of

¹³Suleman, Rokey, Letter to Chairman Robert Brady: June 6, 2009.

¹⁴Holland, Joseph, Letter to Chairman Robert Brady: June 8, 2009.

ballots have been cast in ‘no excuse’ states with no greater problems than those in states that require excuses. Oregon, a state that has cast its votes entirely by mail since 1998, has prosecuted just nine cases of mail ballot fraud involving sixteen ballots out of 76,393,979 ballots cast or 0.00000012% of all ballots cast over the past 11 years.¹⁵

The 28 states that currently allow voters to vote by mail for any reason have not had serious security problems in federal elections because it is nearly impossible for anyone other than an election official to corrupt enough absentee ballots to change the outcome of an election. Current safeguards that election officials use to ensure the sanctity of vote by mail absentee ballots include, but are not limited to, the following: (1) Signature verification, where signatures can be checked against the voter’s original registration form or compared to a digitized version electronically;¹⁶ (2) address verification, where ballot envelopes must be properly addressed and cannot be forwarded. This provides an added level of address authentication not available at the polls; (3) coded ballot envelopes and other state systems ensure no one can vote more than once in the same election; and (4) cameras installed at a registrar’s office to ensure that no one tampers with ballots during storage and counting. In addition, mail ballots are counted at a secure central site rather than disseminated at multiple polling locations with varying levels of security. Further, because they are paper ballots, there is always a paper trail to examine and count should there be questions about absentee ballots.

Proven cases of voter fraud are rare and the concern over vote-by-mail voter fraud overblown. According to a witness who testified before the Elections Subcommittee in May, the transition from excuse-based absentee voting to ‘no excuse’ absentee voting in Ohio caused no problems or increased fraud.¹⁷ Burdensome requirements such as mandating a voter to provide job descriptions and verify pregnancy status do little to prevent absentee ballot fraud. Making voters jump through hoops to vote absentee does not increase ballot security. Rather, it is unnecessarily invasive, burdensome and discriminatory.

POPULARITY OF VOTING BY MAIL

Voters want to have the option to ‘vote-by-mail.’ In states with ‘no excuse’ absentee voting, between 20 and 45% of voters choose to ‘vote-by-mail.’ In recent hearings before the Elections Subcommittee, numerous election officials and advocate witnesses provided accounts of how absentee voting has increased across the nation.¹⁸ According to a recent Election Assistance Commission study released in February of 2007, 65% of Americans think all voters

¹⁵ Cody, Amy, Assistant to the Secretary of State, Oregon Secretary of State’s Office, Personal Interview: November 20–24, 1999.

¹⁶ Holland, Joseph, Letter to Chairman Robert Brady: June 8, 2009. (“Voting by mail is more secure than voting at the polls. In California the signature on each vote by mail envelope is matched against the signature on the original voter registration affidavit. Only if the signature matches the original registration signature is the envelope opened and the ballot counted. This is in contrast to poll based voting where there is no checking of original registration signatures.”)

¹⁷ Suleman, Rokey, Letter to Chairman Robert Brady: June 6, 2009.

¹⁸ “The 2008 Election—A Look Back at What Went Right and Wrong: Hearing Before the Subcommittee on Elections of the Committee on House Administration,” 111th Congress, 1st Session: 2009.

should have the option to ‘vote-by-mail.’ Support is strong across all demographic groups, especially among people with disabilities and low incomes.¹⁹

Allowing those who choose to vote from home to do so without unwieldy administrative burdens also increases the quality of the vote for many voters who need extra time to review their choices and do not want to feel pressured by their schedules and the line of people behind them at the polling place. Examples of these include first-time voters, those with disabilities and voters in states with exceptionally long ballots with complicated initiative questions.²⁰

Some opponents of absentee voting argue that absentee voters often turn in their ballots before the dialogue between the campaigns is concluded and that absentee voters could potentially miss something which would cause them to regret a vote. This is not a compelling argument, since absentee voters determine when to turn in their ballot, just as they determine which candidates and campaigns they will support. Ballots are sent out in advance to make sure they arrive in time, not to force voters to turn in their ballots before they wish. Voters can even drop ballots off on Election Day if they want to wait until the end of a campaign. It is also worth noting that ‘no excuse’ absentee voting has been shown not to benefit one political party over another.²¹

THE JUSTIFICATION FOR FEDERAL ACTION

The federal government has a significant interest in making sure every eligible voter who wants to cast a ballot in a federal election has that opportunity. “Historically, the federal government has opened the doors to those shut out of the voting process and our country has been much the better for it. We should be proud of our nation’s history of removing obstacles for voters who have been left out of the voting process intentionally or unintentionally, whether they be women, racial minorities, members of the military, Americans living overseas, 18 to 21 year-olds or voters with disabilities. But, our work is not done. The next step is to give hard-working Americans with busy lives who want to participate the best chance to vote no matter what comes up on Election Day.”²²

In 1974, a Fulbright professor and his wife who were travelling to Iran during an election were denied an absentee ballot in their state. They were not trying to commit fraud; they just wanted to vote. In *Prigmore v. Renfro* the court held that this couple had no right to an absentee ballot under their state law and that in order for them to vote, Congress would have to pass a law. The need for a universal right-to-vote-absentee law is even stronger today, now that ‘no excuse’ absentee voting has been proven successful in half the country while the other half has fewer opportunities.

Under Article I, Section 4, Clause 1 of the Constitution, Congress has the authority to regulate elections. As it has historically, Con-

¹⁹“Free or Reduced Postage for the Return of Voted Absentee Ballots,” U.S. Election Assistance Commission: February 2008. Priscilla, Southwell, “Five Years Later: A Re-assessment of Oregon’s Vote By Mail Electoral Process,” University of Oregon: 2003.

²⁰Tokaji, Daniel, “Absentee Voting by People with Disabilities: Promoting Access and Integrity,” pg. 1017, *McGeorge Law Review*: August 2007.

²¹Paul Gronke “Early Voting Reforms and American Elections,” pg. 10, Reed College: 2004.

²²“Meeting before the Committee on House Administration,” 111th Congress, 1st Session: June 9, 2009.

gress should step in to strengthen our democracy when significant disparities in voting opportunities for voters among different states exist. Congress should focus on expanding voting opportunities in federal elections. By giving all voters the same ability to ‘vote-by-mail,’ regardless of state residency, H.R. 1604 provides a critical step toward encouraging the full participation of our citizenry.

SECTION-BY-SECTION SUMMARY OF LEGISLATION

Section 1.—Short title

(a) Entitles the bill “Universal Right to Vote by Mail Act of 2009”

Section 2.—Findings

(1) Finds that an inequality of voting rights exists because voters in some States have the universal right to vote by mail while voters in other States do not.

(2) Finds that many voters often have work, family or other commitments that make getting to polls on the date of an election difficult or impossible.

(3) Finds that there are currently 28 states that allow for universal absentee voting and it has proven to be effective as no state has ever switched back.

(4) Finds that voting by mail gives voters more time to consider their choices.

(5) Finds that allowing voters to vote by mail can lead to increased voter participation.

(6) Finds that allowing voters the option to vote by mail can reduce waiting times at the polls.

(7) Finds that voting by mail has become increasingly popular and many voters prefer voting by mail over going to polls.

(8) Finds that no evidence exists suggesting that the potential for fraud in absentee balloting is greater than the potential for fraud by any other method of voting.

(9) Finds that many of the current absentee ballot requirements are an invasion of privacy and do little to prevent fraud.

(10) Finds that state laws requiring notarizations only add cost and inconvenience to the process, not security.

Section 3.—Promoting ability of voters to vote by mail in federal elections

(a) Amends the Section 303A of the Help America Vote Act to prohibit States from imposing any additional conditions or requirements on the eligibility of an individual to cast his or her vote by absentee ballot, except to the extent that the State imposes a deadline for requesting and collecting absentee ballots as well as implementing signature verification.

(b) Prohibits States from providing absentee ballots to an individual unless the individual’s signature is on file as well as requiring States to verify a voter’s signature before they accept and process an absentee ballot.

(c) Declares that nothing should be construed in this bill to affect the authority of States to administer elections at polling places.

(d) Makes this section effective with respect to federal elections held in 2012 and thereafter.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On March 19, 2009, Mrs. Davis of California, along with fifty Members of the House, introduced H.R. 1604, which was referred to the Committee on House Administration.

HEARINGS

On March 26, 2009, the Committee on House Administration Subcommittee on Elections held a hearing entitled “The 2008 Election: A Look Back on What Went Right and Wrong.” The following Members were present at the hearing: Subcommittee Chair Zoe Lofgren, Representative Charles A. Gonzalez, Representative Artur Davis, Representative Kevin McCarthy, and Representative Gregg Harper.

Panel One Witnesses

1. The Honorable Gineen Beach—Chairwoman, U.S. Election Assistance Commission
2. The Honorable Gracia Hillman—Vice-Chairwoman, U.S. Election Assistance Commission
3. Mr. George Gilbert—Director, Guilford County Board of Elections, North Carolina
4. Mr. Keith Cunningham—Director, Allen County Board of Elections, Ohio

Panel Two Witnesses

1. Ms. Melanie Campbell—Executive Director, National Coalition on Black Civic Participation
2. Ms. Patty Ferguson Bohnee—Native Vote Election Protection Coordinator, National Congress of American Indians
3. Mr. Arturo Vargas—Executive Director, National Association of Latino Elected and Appointed Officials
4. Mr. Eric Eversole—Former Attorney, Civil Rights Division, U.S. Department of Justice
5. Mr. Doug Chapin—Director, Election Initiatives, Pew Center on the States

MARKUP

On June 10, 2009, the Committee met to mark up H.R. 1604. The Committee favorably reported H.R. 1604, as amended, by a roll call vote of 4 ayes to 2 noes. A quorum was present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires that the results of each record vote on an amendment or motion to report, together with the name of those voting for and against, be printed in the committee report.

Amendment One—Offered by Mr. Harper

The first amendment considered was offered by Mr. Harper, which would remove the finding that no evidence exists that the

potential for fraud in absentee balloting is greater than other voting methods as well as the finding that some absentee ballot requirements do nothing to prevent voter fraud or increase security. Following debate the amendment was not agreed to by a voice vote.

Amendment Two—Offered by Mr. McCarthy

An amendment was offered by Mr. McCarthy, which would add the requirement that states have the voter’s signature on file before sending out an absentee ballot as well as require states to verify signature matches when receiving absentee ballots. Following debate the amendment was agreed to by a voice vote.

Amendment Three—Offered by Mr. Harper

The final amendment considered was offered by Mr. Harper. This amendment would allow states to opt out of the bill requirements if implementing this legislation would increase costs and federal grant monies are insufficient to cover the cost of compliance with the bill requirements. Following debate the amendment was not agreed to by a voice vote.

Following the consideration of all amendments the Committee voted to favorably report H.R. 1604, as amended. The vote to report favorably was approved by a recorded vote of 4 ayes to 2 noes.

Member	Ayes	Noes	Present
Ms. Lofgren	X		
Mr. Capuano	X		
Mr. Gonzalez			
Ms. Davis (CA)	X		
Mr. Davis (AL)			
Mr. Lungren			
Mr. McCarthy		X	
Mr. Harper		X	
Mr. Brady	X		
Total	4	2	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 1604 is to increase voter participation by removing unnecessary barriers to absentee voting.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

EARMARK IDENTIFICATION

In response to the requirements of clause 9 of rule XXI, the Committee reports that H.R. 1604 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. H.R. 1604 is intended to apply in all States and preempt laws to the contrary in their application to Federal elections.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

JUNE 12, 2009.

Hon. ROBERT A. BRADY,
Chairman, Committee on House Administration,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1604, the Universal Right to Vote by Mail Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1604—Universal Right to Vote by Mail Act of 2009

H.R. 1604 would amend the Help America Vote Act of 2002 to prohibit states, beginning in 2012, from imposing any additional conditions on eligible voters who request a mail-in ballot for federal elections other than deadlines for requesting and returning such a ballot. States also would be required to verify the signature on the absentee ballot by cross-checking it with the voter's signature on the official list of registered voters. CBO estimates that implementing H.R. 1604 would have no impact on the federal budget.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that enforce the Constitutional right of individuals. CBO has determined that H.R. 1604 would fall within that exclusion because it would protect individuals' voting rights. Therefore, we have not reviewed the bill for mandates.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

HELP AMERICA VOTE ACT OF 2002

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

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(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

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TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

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Sec. 303A. Promoting ability of voters to vote by mail.

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TITLE III—UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

Subtitle A—Requirements

* * * * *

SEC. 303A. PROMOTING ABILITY OF VOTERS TO VOTE BY MAIL.

(a) *IN GENERAL.*—If an individual in a State is eligible to cast a vote in an election for Federal office, the State may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote in such election by mail, except as required under subsection (b) and except to the extent that the State imposes a deadline for requesting the ballot and related voting materials from the appropriate State or local election official and for returning the ballot to the appropriate State or local election official.

(b) *REQUIRING SIGNATURE VERIFICATION.*—

(1) *RECORD OF SIGNATURE REQUIRED FOR PROVISION OF BALLOT.*—A State may not provide an absentee ballot to an individual for an election for Federal office unless the individual's signature is included on the official list of registered voters in the State or some other official record of the State connected to such list.

(2) *VERIFICATION REQUIRED FOR ACCEPTANCE AND PROCESSING OF SUBMITTED BALLOT.*—A State may not accept and process an absentee ballot submitted by any individual for an election for Federal office unless the State verifies the identifica-

tion of the individual by comparing the individual's signature on the absentee ballot with the individual's signature on the official list or other official record referred to in paragraph (1), in accordance with such procedures as the State may adopt.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect the authority of States to conduct elections for Federal office through the use of polling places at which individuals cast ballots on the date of the election.

(d) EFFECTIVE DATE.—A State shall be required to comply with the requirements of this section with respect to elections for Federal office held in years beginning with 2012.

* * * * *

TITLE IV—ENFORCEMENT

SEC. 401. ACTIONS BY THE ATTORNEY GENERAL FOR DECLARATORY AND INJUNCTIVE RELIEF.

The Attorney General may bring a civil action against any State or jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief (including a temporary restraining order, a permanent or temporary injunction, or other order) as may be necessary to carry out the uniform and non-discriminatory election technology and administration requirements under sections 301, 302, [and 303] 303, and 303A.

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ADDITIONAL VIEWS OF THE HONORABLE DANIEL E. LUN-
GREN, THE HONORABLE KEVIN McCARTHY, AND THE
HONORABLE GREGG HARPER

For reasons of security, fraud prevention, and community engagement, 22 states have determined that in their particular circumstances those individuals seeking to vote by absentee ballot must have an approved justification. H.R. 1604 would replace the judgment of those 22 states with a one-size-fits-all congressional mandate and make significant changes to their voting procedures. The bill would undermine the procedures the legislatures of these states have put in place to protect election integrity.

We understand that 28 states have adopted no-excuse absentee voting, and that the system has widespread support. Some of us would support it for our own states. However, we do not believe that Congress should step in and dictate this policy to all states.

By passing this legislation, this committee made a determination that any possible reasoning for justified absentee voting is inadequate and baseless. Yet the committee made this decision without consulting local election officials and the organizations that represent them.

The committee has approved sweeping findings that demean the judgment of states that limiting access to absentee ballots is warranted to protect election integrity. By contrast, we believe states have, at the least, adequate basis to reach that judgment. For example, “None of the protections of the privacy of the voting booth are guaranteed to individuals casting mail ballots. Moreover, individual mail voters can be more easily subjected to improper influences such as intimidation or bribery.” John Hardin Young, Ed., *International Election Principles: Democracy and the Rule of Law* (American Bar Association, 2009) at 222. We supported Mr. Harper’s amendment to remove the most extreme findings from the bill, and are disappointed the committee rejected this amendment.

The committee also has approved findings that variations from state to state in rules governing access to absentee ballots create an inequity of voting rights. An inequity of circumstances does not in and of itself constitute an inequity of rights. The United States Supreme Court has held that, “The right to vote is unquestionably basic to a democracy, but the right to an absentee ballot is not. Historically, the absentee ballot has always been viewed as a privilege, not an absolute right.” *Prigmore v. Renfro*, 356 F.Supp. 427, 432 (D.C.Ala., 1972), *aff’d* 410 U.S. 919, 93 S.Ct. 1369, 35 L.Ed.2d 582 (U.S.Ala. Feb 20, 1973).

The committee’s approval of the amendment by Mr. McCarthy regarding signature verification is an improvement to the bill (though not sufficient to move us to support the legislation as reported). The amendment requires that election officials have a voter’s signature on file before transmitting an absentee ballot to the

voter, and the election officials match a signature on the absentee ballot to the one on file before accepting the ballot for processing. We believe that if Congress is to embark on mandating the availability of absentee ballots, it should also ensure the presence of these safeguard measures.

The National Conference of State Legislatures expressed “grave concerns” in a letter commenting on this legislation’s predecessor, H.R. 281 in the 110th Congress. In addition to asking this Committee to consider the many financial costs this unfunded mandate would bring to already overburdened election officials, the NCSL stressed that there has been no showing that state systems’ utilizing procedures other than no-excuse absentee voting are dysfunctional or broken. In their letter they asked this committee to reconsider its decision to move this bill without consulting those who would bear the burden of implementing this legislation. Again this year, the committee has failed to consult those who will be affected most by this bill.

At a time when so many state budgets are strained, we all know that election offices, most already operating on shoestring budgets, are one of the first agencies under the knife. It is highly doubtful that adequate resources would be allocated on the state level to accommodate the new federal mandates created by this legislation. That is why we supported Mr. Harper’s amendment to allow states to avoid the bill’s mandate if they certified that it would impose additional costs for which no HAVA requirements funds were available. The committee’s rejection of this amendment shows a disturbing indifference to the financial strains being put on state and local election jurisdictions by expanding federal mandates and controls.

Before we tell local governments how to run their elections, we should let them tell us what they think about our ideas. Currently, H.R. 1604 looks like a solution in search of a problem. We hope the majority will reconsider their support of this legislation before taking further action.

DANIEL E. LUNGREN.
KEVIN MCCARTHY.
GREGG HARPER.

