MARKUP OF H. RES. 1068, H.R. 5493, H.R. 3032, H.R. 281, H.R. 5036; AND AN AMENDMENT TO REGULATIONS GOVERNING THE USE OF OFFICIAL FUNDS

MEETING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

HELD IN WASHINGTON, DC, APRIL 2, 2008

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MARKUP OF H. RES. 1068, H.R. 5493, H.R. 3032, H.R. 281, H.R. 5036; AND AN AMENDMENT TO REGULATIONS GOVERNING THE USE OF OFFICIAL FUNDS

WEDNESDAY, APRIL 2, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 12:22 p.m., in Room 1310, Longworth House Office Building, Hon. Robert A. Brady (chairman of the committee) presiding.

Present: Representatives Brady, Lofgren, Capuano, Davis of California, Davis of Alabama, Ehlers, Lungren, and McCarthy.

Staff Present: Liz Birnbaum, Staff Director; Thomas Hicks, Senior Election Counsel; Janelle Hu, Election Counsel; Jennifer Daehn, Election Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Kyle Anderson, Press Director; Kristin McCowan, Chief Legislative Clerk; Daniel Favarulo, Legislative Assistant, Elections; Jamie Fleet, Deputy Staff Director; Gineen Beach, Minority Election Counsel; Ashley Stow, Minority Election Counsel; Fred Hay, Minority General Counsel; and Bryan T. Dorsey, Minority Professional Staff.

The CHAIRMAN. The meeting of the House Administration Committee will now come to order.

We have several matters to mark up today.

The first order of business is a housekeeping resolution, Committee Resolution No. 6, which is before the members.

[The information follows:]

COMMITTEE ON HOUSE ADMINISTRATION

Committee Resolution 110 - 6

April 2, 2008

Modifying the Majority membership of the Subcommittee on Capitol Security

Resolved, that the Majority membership of the Subcommittee on Capitol Security shall be as follows:

Mr. Capuano, chairman
Mr. Brady

The CHAIRMAN. This will modify the majority membership of the Subcommittee on Capitol Security so that Mr. Capuano will now chair that subcommittee and I will serve as a member.

Without objection, the committee resolution is considered as read. The resolution is agreed to without objection. The motion to reconsider is placed upon the table without objection.

And one caveat to that is I was approached by Mr. Lungren to have a private meeting with the Capitol Hill Police and the Sergeant at Arms. I agreed to do that, and I hope that the new subcommittee chairman would agree to do that, too.

So, without objection, the motion is laid upon the table; and, Mike, you are now the new subcommittee chairman. Would you like to make a speech?

No, you don't want to? Fine.

The committee will now turn to H.R. 5493, a bill to provide that the day for paying staff salaries in the House of Representatives may be established by regulations of the Committee on House Administration.

[The information follows:]

I

110TH CONGRESS
2D SESSION

H. R. 5493

To provide that the usual day for paying salaries in or under the House of Representatives may be established by regulations of the Committee on House Administration.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 26, 2008

Mr. BRADY of Pennsylvania introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To provide that the usual day for paying salaries in or under the House of Representatives may be established by regulations of the Committee on House Administration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY OF COMMITTEE ON HOUSE ADMINISTRATION TO ESTABLISH DAY FOR PAYING SALARIES IN OR UNDER THE HOUSE OF REPRESENTATIVES.

Section 116(a) of the Legislative Branch Appropriations Act, 2002 (2 U.S.C. 60d–1) is amended by adding

at the end the following new sentence: "Notwithstanding the previous sentence, the Committee on House Administration may by regulation provide for the payment of salaries with respect to a month on a date other than the date provided under the previous sentence as may be necessary to conform to generally accepted accounting practices.".

○

The CHAIRMAN. I will make just a brief opening statement on this bill.

The House of Representatives currently pays the staff once a month. The executive branch, the Senate and most private companies pay their employees twice a month or every one or two weeks. I believe we should make the change because once a month pay can be very difficult for staffers budgeting on a tight paycheck.

Unfortunately, the committee can't change the pay schedule for House employees until we change the law. The bill will give the committee the authority to change the day the staffers are paid. It won't change their pay schedule right away once this bill is enacted. The committee will adopt regulations that change the paydays.

And I thank my friend and colleague, Mr. Ehlers, for co-sponsoring this bill; and I would like to recognize him for any opening statement.

Mr. EHLERS. Thank you, Mr. Chairman.

Yes, I do support it. But I also want to make it clear that this particular bill establishes the authority of this committee to make the determinations. I want it to be clearly understood that this does not mean that we will automatically and soon alter the current House pay schedule.

I also want to make it clear that this particular bill makes it clear that we have the authority and that the CAO could not take any action on this without the approval of the committee. That was not clear before this law was passed.

So because there are obvious administrative challenges that would impact the CAO and a number of cultural implications within the House population that have to be addressed prior to making such a change, we have to proceed thoroughly and carefully just to make sure it absolutely works and the employees agree to it, because it is going to affect their pay in some ways. Many employees pay their mortgages, utility bills and other financial obligations in concert with the monthly pay schedule. We have to investigate to what extent the employees, how they will change their monthly pay schedule into a bimonthly pay schedule. So there are a number of issues that have to be addressed.

And as I say, I am not opposed to it at this time, but I am opposed to just jumping into it without the committee fully looking through these efforts and working with CAO on it and make sure that this bill does require a final vote of the committee before that goes into effect.

Thank you, Mr. Chairman. I reserve the balance of my time.

[The statement of Mr. Ehlers follows:]

[After Chairman Brady's opening remarks on the markup of H.R. 5493 (Authorizing the Committee to establish the House pay date)]

Thank you. While I support the Committee establishing its authority to determine the pay date in the House, I want to be clear that this does not indicate that we are at all ready to alter the current House pay schedule.

Along with the obvious administrative challenges that would impact the CAO, there are a number of cultural implications within the House population that must be addressed prior to making such a change. Many employees pay their mortgages, utility bills and other financial obligations in concert with the monthly pay schedule. To change a system that has been in place for such an extended period of time will have a pervasive impact, and must be communicated thoroughly before it is instituted. This bill is the first step on a very long road.

However, I fully support the efforts of Chairman Brady to ensure that the Committee take a decisive role in determining whether or not changes to the House pay schedule are made.

Thank you, and I reserve the balance of my time.

The CHAIRMAN. Thank you.

Would anybody else like to speak on this?

Mr. EHLERS. I yield back the balance of my time.

The CHAIRMAN. I now call up H.R. 5493. Without objection, the first reading of the bill will be dispensed with; and without objection the bill is considered as having been read and open for amendment at this point.

Is there any debate?

If not, I move the committee report H.R. 5493 favorable to the House. All those in favor, signify by saying aye.

Any opposed?

The ayes have it, and the motion is agreed to. Without objection the motion to reconsider is laid upon the table and the bill is reported to the House.

The next item of business, House Resolution 1068.

[The information follows:]

IV

110TH CONGRESS
2D SESSION

H. RES. 1068

Permitting active duty members of the Armed Forces who are assigned to a Congressional liaison office of the Department of Defense at the House of Representatives to obtain membership in the exercise facility established for employees of the House of Representatives.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2008

Mr. BRADY of Pennsylvania (for himself and Mr. EHLERS) submitted the following resolution; which was referred to the Committee on House Administration

---

RESOLUTION

Permitting active duty members of the Armed Forces who are assigned to a Congressional liaison office of the Department of Defense at the House of Representatives to obtain membership in the exercise facility established for employees of the House of Representatives.

Resolved, That any active duty member of the Armed Forces who is assigned to a Congressional liaison office of the Department of Defense at the House of Representatives may obtain membership in the exercise facility established for employees of the House of Representatives (as described in section 103(a) of the Legislative Branch Appropriations Act, 2005) in the same manner as an em-

ployee of the House of Representatives, in accordance with such regulations as the Committee on House Administration may promulgate.

○

The CHAIRMAN. Again, I will make just a few brief statements.

We received a specific request from the liaisons who serve in each of the branches of the military and assist us daily in the House of Representatives. They have just a simple favor to ask, that they be allowed to use the House staff gym since they work here far away from their ordinary military physical fitness facility.

In order to ensure that these military liaisons can maintain their physical fitness and readiness while they serve here in the House, this House resolution will allow them to use the House staff gym. The committee will adopt a resolution for use of this facility.

Again, I thank my friend and colleague, Mr. Ehlers, for co-sponsoring this resolution. I recognize him for any opening statement.

Mr. EHLERS. Thank you, Mr. Chairman. Just very briefly.

I think this is a good idea. I heard many years ago, and I have always remembered the statement, that an Army travels on its stomach, indicating the importance of food to an Army. However, I want to make sure that the stomachs of the military liaisons don't get too big, and so this will very neatly help them retain their trim shape that they need if they are called back to active duty. So I support it.

The CHAIRMAN. Thank you, Mr. Ehlers.

Anybody else have any comments?

I call House Resolution 1068.

The CHAIRMAN. Without objection, this resolution will be considered as read and open for amendment at any point. I offer an amendment to make a minor change to ensure the Coast Guard liaison can be included, also.

[The information follows:]

AMENDMENT TO H. RES. 1068

OFFERED BY M__. _____

Page 1, line 3, strike "Department of Defense" and insert "Armed Forces".

Amend the title to read as follows: "A resolution permitting active duty members of the Armed Forces who are assigned to a Congressional liaison office of the Armed Forces at the House of Representatives to obtain membership in the exercise facility established for employees of the House of Representatives"

The amendment is considered as read. Is there any discussion on that amendment?

If not, the question is on the amendment. All those in favor, say aye. Any opposed, say no.

The ayes have it, and the amendment is agreed to.

I move that the committee report House Resolution 1068 as amended favorably to the House. All those in favor signify by saying aye. Any opposed?

The ayes have it. The motion is agreed to. Without objection, the motion to reconsider is laid upon the table.

The final item of business is approval of an amendment to the regulation governing use of official funds by Members, committees and officers of the U.S. House of Representatives, the Alternate Ride Home amendment, which is before the members.

[The information follows:]

AMENDMENT TO THE REGULATIONS GOVERNING THE USE OF OFFICIAL FUNDS BY MEMBERS, COMMITTEES, AND OFFICERS OF THE U.S. HOUSE OF REPRESENTATIVES

FOR CONSIDERATION: APRIL 2, 2008

EFFECTIVE: UPON APPROVAL

ALTERNATE RIDE HOME

The expenses of transportation via taxi or other commercial carrier incurred by an employee who regularly commutes between his/her duty station and residence by mass transit (i.e., via [Metro, bus, train, etc.]), by registered ridesharing program [carpools, vanpools, etc.], or by means other than a vehicle of the employee that has been issued a House parking permit are reimbursable when:

1. An employee is required by his/her employing authority to work unscheduled overtime or report to duty early or stay late outside of his/her regular working hours ("officially ordered work"); ***and***
2. Transportation via the usual means is not available or to commute via such means is determined by the employing authority to be an unreasonable burden.

An Alternate Ride Home expense is only eligible for reimbursement under the following conditions:

1. The employee seeking reimbursement does not maintain a single-user parking permit issued by the House of Representatives.
2. The employee is performing officially ordered work as certified by the employee's supervisor and/or employing authority.
3. The employee certifies that the expense is incurred for transportation originating from or traveling to the employee's official duties.
4. The individual is authorized in advance by his/her employing authority to incur said expense.
5. The employee certifies that his/her usual means of transportation are unavailable or the employing authority affirms that commute via such means or via alternative means of public transportation constitute an unreasonable burden.

Examples of non qualifying circumstance include, but are not limited to, the following:

- Reporting to or remaining at work outside of regular work hours on a voluntary basis;
- Performing personal errands;
- Transit service disruptions and/or delays;
- Weather emergencies; and
- Natural disasters.

To request reimbursement, submit a completed voucher, accompanied by an Alternate Ride Home Form and the original copy of the vendor receipt or, if a receipt is not available (e.g., bus or Metro), a memo documenting/describing the expense(s) incurred, to the Finance Office for processing.

This program must be administered by offices in a non-discriminatory manner consistent with the requirements of the Congressional Accountability Act.

The CHAIRMAN. This regulation will help staffers who travel to work by carpool, mass transit or anything other than a single passenger car. For example, when the House is in session late and travel home is not safe or sometimes not even possible after the Metro closes, this regulation would reimburse their taxi fare. The employees will fill out an Alternate Ride Home form, which we will make available on HouseNet, and that form will then be attached to the voucher submitted in support of the payment of the taxi fare. The employee authorizing will sign off on the validity of the expense and the cost of approval of the voucher.

Because this regulation authorizes a new category of reimbursement expense, I have agreed to ask the House Inspector General to review use of this for up to 6 months so we can see how often it is being used or whether additional controls are needed.

We had first planned to adopt this regulation at a business meeting on February 12, but our Republican colleagues expressed concern about whether the rule might be abused, and I agreed to hold off and to try to reach an agreement. Over the last 6 weeks or so, we have exchanged numerous drafts; and we have agreed on 9 out of 10 issues.

We still have one minority disagreement about whether a taxi fare should be repaid on days when the House is not in session. I have decided we should go forward with this resolution without that limitation, rely on the discretion of our colleagues to use this authority appropriately and keep the staff safe.

Too often, we ask our staff to stay late at night when a bill must be considered or to negotiate conference reports throughout the weekends; and the need for safety is not just a function of when the House is in session.

This is a new regulation that will seek to review advice from the IG on the issue. I know the Republican colleagues are concerned that it might be abused, but I hope that they will trust that we can add further controls if that turns out to be necessary.

And now I would like to recognize again Mr. Ehlers for any statement.

Mr. EHLERS. Thank you, Chairman Brady.

I commend you for making the safety and security of the House staff a priority. Those employees whose work requires them to be present when mass transit or their arranged method of transportation is unavailable should not be penalized financially.

That being said, however, I have strong concerns that the language of the Alternate Ride Home program is fairly broad and is vulnerable to the possibility of abuse. We have seen before that the ill intent of a few can ruin a benefit for the many. With that in mind, I join you in your request that the House Inspector General, Jim Cornell, review this program in 6 months to ensure that it is being used in the spirit in which it was intended.

Let me also add, Mr. Chairman, that you mentioned the factor that we had suggested it not apply when we are not in session. And I understand the reason for your objection; and, frankly, I think you are right.

I do have a suggestion for you to consider that perhaps we could add in mutual agreement when it goes to the floor, and that would be that this would not apply when Members are at home in the dis-

trict work period. Because very, very rarely I think do any staff members have to work late when we are not in town. So if you just consider that, and we can talk about adding that later when it hits the floor.

[The statement of Mr. Ehlers follows:]

[After Chairman Brady's opening remarks on the Alternative Ride Home]

Thank you Chairman Brady, I commend you for making the safety and security of House staff a priority. Those employees whose work requires them to be present when mass transit or their arranged method of transportation is unavailable should not be penalized financially.

That being said, however, I have strong concerns that the language of the Alternative Ride Home program is fairly broad and is vulnerable to the possibility of abuse. We have seen before that the ill intent of a few can ruin a benefit for many. With that in mind, I would ask that the House Inspector General, Jim Cornell, review this program in six months to ensure that it is being used in the spirit in which it was intended.

Thank you, and I reserve the balance of my time.

The CHAIRMAN. Okay. I call the amendment to the regulation. Is there any debate? Any debate on any of that?

Mr. MCCARTHY. Mr. Chairman.

The CHAIRMAN. Yes, Mr. McCarthy.

Mr. MCCARTHY. I appreciate the opportunity.

Not so much about this, but this would open up the Member's Handbook. And the only thing I want to do is take the opportunity, because we may be doing some more work on that, and praise Mr. Capuano on our Franking Commission what we are doing looking on other items when it comes to computers and the Web sites that we may be dealing with the handbook as well, so there maybe some other stuff to move. And I appreciate all the work you have done.

The CHAIRMAN. Okay. Thank you.

Is there any further debate?

Without objection, the previous question is ordered. The question is on approval of the amendment. All those in favor, say aye. Any opposed?

The ayes have it. The amendment to the Regulations is adopted, and without objection the motion to reconsider is laid upon the table. The staff is authorized to make the technical conforming changes.

Okay. The next item on the agenda H.R. 3032, a bill to amend the Federal Election Campaign Act of 1971 to permit candidates for election for Federal office to designate an individual who will be authorized to disburse funds of the authorizing campaign committees of the candidate in the event of a death of the candidate.

[The information follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 3032

To amend the Federal Election Campaign Act of 1971 to permit candidates for election for Federal office to designate an individual who will be authorized to disburse funds of the authorized campaign committees of the candidate in the event of the death of the candidate.

IN THE HOUSE OF REPRESENTATIVES

JULY 12, 2007

Mr. JONES of North Carolina introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To amend the Federal Election Campaign Act of 1971 to permit candidates for election for Federal office to designate an individual who will be authorized to disburse funds of the authorized campaign committees of the candidate in the event of the death of the candidate.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. DESIGNATION OF INDIVIDUAL AUTHORIZED TO MAKE CAMPAIGN COMMITTEE DISBURSEMENTS IN EVENT OF DEATH OF CANDIDATE.

(a) IN GENERAL.—Section 302 of the Federal Election Campaign Act of 1971 (2 U.S.C. 432) is amended by adding at the end the following new subsection:

"(j)(1) Each candidate may, with respect to each authorized committee of the candidate, designate an individual who shall be responsible for disbursing funds in the accounts of the committee in the event of the death of the candidate.

"(2) Upon the death of a candidate who has designated an individual for purposes of paragraph (1), funds in the accounts of each authorized committee of the candidate may be disbursed only under the direction and in accordance with the instructions of such individual, subject to the terms and conditions applicable to the disbursement of such funds under this Act or any other applicable Federal or State law.

"(3) Nothing in paragraph (2) may be construed to affect the responsibility of the treasurer of an authorized committee for which funds are disbursed in accordance with such paragraph to file reports of the disbursements of such funds under section 304(a).".

(b) INCLUSION OF DESIGNATION IN STATEMENT OF ORGANIZATION OF COMMITTEE.—Section 303(b) of the

Federal Election Campaign Act of 1971 (2 U.S.C. 433(b)) is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following new paragraph:

"(7) in the case of an authorized committee of a candidate who has designated an individual under section 302(j) to disburse funds from the accounts of the committee in the event of the death of the candidate, the name and address of the individual.".

SEC. 2. EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to authorized campaign committees which are designated under section 302(e)(1) of the Federal Election Campaign Act of 1971 before, on, or after the date of the enactment of this Act.

○

The CHAIRMAN. H.R. 3032, sponsored by Mr. Jones of North Carolina, will assure candidates for Federal office that the funds raised by the campaign commission will be distributed only in accordance with the express wishes after they are deceased. It would permit a candidate for Federal office to designate a person to disburse the funds of the candidate's campaign committee in the event of the candidate's death. The bill will make no other changes in the terms and conditions that govern the disbursement of funds under the Federal Election Campaign Act.

I would now again like to recognize the ranking member, Mr. Ehlers, for any statements.

Mr. EHLERS. Thank you, Mr. Chairman, for taking this bill up.

I think one of your staff members commented that this really didn't need to be done and anyone could do it. The fact is that many Members don't do it, and there have been cases where there have been disputes after the fact.

I have taken care of it myself by just having, when we had wills prepared, just having the attorney draft a letter, and I indicated in the letter how I wanted the leftover campaign funds disbursed, and this would be notarized by my wife and myself. But I would much prefer this bill, which is Congressman Jones' bill.

The reason he developed it and came to me is because they had the similar situation when his father, who was in office, died; and the big question arose who controls where the money goes, who decides? And under current law the treasurer has total and complete freedom. The treasurer of the campaign has total and complete freedom to do whatever he wants with the money. That made the Jones family very nervous in terms of what could happen, not in their particular case, but in other cases.

So this is, I believe, a very good bill which will make it clear. Each one of us will be given the opportunity to designate someone to make the decision on the disposal of our leftover campaign funds and instructing the treasurer how to do it and how to disburse them.

It also provides that if you wish to designate two individuals in case one of them is deceased—if, for example, you name your wife and you and your wife are killed simultaneously, then someone else who understands your wishes could take over.

The registration would be with the FEC. And again not mandatory. But you would be given an opportunity when you file your campaign statement of organization to specify this. It would remain on record until you change it or remove it.

So I think it is a good bill because it removes an impending argument that might develop or dissatisfaction with the treasurer's discretion when you reach this point. And someone said, well, if you don't have faith in the treasurer, go get another treasurer. It is a little hard to do once you are dead. So I think this is a much better approach to take, and I urge adoption of the bill.

[The statement of Mr. Ehlers follows:]

[After Chairman Brady's opening remarks on the markup of H.R. 3032 (Walter Jones' Bill)]

I am pleased that we are taking up H.R. 3032, which will permit each federal candidate to designate an individual who, in the event of the death of the candidate, will be authorized to make arrangements for the disbursement of campaign funds.

For every private citizen that decides to become a candidate for public office, there are those issues that inspire and motivate them to run for election. Often, the issues that drive these candidates will outlive the individuals who fervently take up their cause. This bill will ensure that the ideals and passions that inspire federal candidates in life will continue to receive their support, in some cases, well after their passing.

Because a candidate's positions may change, and the need for financial support for a cause may shift, I have

proposed an amendment to this bill that will enable the candidate to assign or revoke the designation of an individual to disburse their campaign funds by submitting the request via a form that will be created by the Federal Election Commission. The amendment also provides for a limited preemption of any state provision that would be in conflict with the wishes of the candidate as expressed on the FEC form. The resulting, amended bill will ensure that the wishes of a federal candidate are carried out in a manner that accurately reflects their wishes at the time of their passing.

Thank you, and I reserve the balance of my time.

The CHAIRMAN. Mr. Capuano, I would like to recognize you, because I think that Mr. Ehlers probably incorporated your amendment along with one of his. But I know that you wanted to say a few words on it because you just can't help yourself.

Mr. CAPUANO. It is a good amendment.

The CHAIRMAN. Thank you.

I would like to backtrack again. I missed an amendment that Mr. Ehlers also has, and I would like to recognize Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chair; and I apologize I didn't mention it before.

I have a simple amendment that just clarifies the original Jones bill. When I made my comments earlier, I was referring to the content of both the Jones bill and my amendment. I would be happy to answer any questions anyone might have. But the amendment has been placed before everyone.

[The information follows:]

AMENDMENT TO H.R. 3032

OFFERED BY MR. EHLERS

Page 2, insert after line 11 the following (and redesignate the succeeding provisions accordingly):

"(2) In order to designate an individual under this subsection, the candidate shall file with the Commission a signed written statement (in a standardized form developed by the Commission) that contains the name and address of the individual and the name of the authorized committee for which the designation shall apply, and that may contain the candidate's instructions regarding the disbursement of the funds involved by the individual. At any time after filing the statement, the candidate may revoke the designation of an individual by filing with the Commission a signed written statement of revocation (in a standardized form developed by the Commission).".

Page 2, line 19, strike "State law" and insert the following: "State law (other than any provision of State law which authorizes any person other than such individual to direct the disbursement of such funds)".

Page 2, line 20, strike "Nothing in paragraph (2) may be construed" and insert the following: "Nothing in

paragraph (3) may be construed to grant any authority to an individual who is designated pursuant to this subsection other than the authority to direct the disbursement of funds as provided in such paragraph, or".

Page 3, line 13, strike "the name and address of the individual" and insert "a copy of the statement filed by the candidate with the Commission under such section (as well as a copy of any subsequent statement of revocation filed by the candidate with the Commission under such section)".

The CHAIRMAN. We have no other questions on that amendment.

All those in favor, signify by saying aye. None opposed. Then that amendment also passes.

Mr. Capuano is recognized. Your amendment was incorporated with Mr. Ehlers. We have already voted and passed on that.

Without objection, the staff are authorized to make the technical and conforming changes to H.R. 3032.

And now I would like to move the committee report favorably, the bill H.R. 3032.

All those in favor, signify by saying aye.

Any opposed? No.

The ayes have it; and, without objection, the staff will be authorized to make the technical and conforming changes to H.R. 3032.

The next order of business today will be consideration of H.R. 281, the Universal Right to Vote by Mail Act.

[The information follows:]

I

110TH CONGRESS
1ST SESSION

H. R. 281

To amend the Help America Vote Act of 2002 to allow all eligible voters to vote by mail in Federal elections.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2007

Mrs. DAVIS of California (for herself, Mrs. JONES of Ohio, Mr. LARSEN of Washington, Mr. SCHIFF, Mrs. CAPPS, Ms. HOOLEY, Ms. WOOLSEY, and Mr. MCDERMOTT) introduced the following bill; which was referred to the Committee on House Administration

---

A BILL

To amend the Help America Vote Act of 2002 to allow all eligible voters to vote by mail in Federal elections.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Universal Right to Vote by Mail Act of 2007".

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.

(3) Allowing voters to vote by mail can lead to increased voter participation.

(4) Voting by mail is more convenient for many voters.

(5) Voting by mail gives voters more time to consider their choices.

(6) Studies show that an overwhelming majority of voters prefer voting by mail as an alternative to going to the polls.

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

(8) 28 States currently allow universal absentee voting, which permits any voter to request a mail-in ballot without providing a reason for the request.

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 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) EFFECTIVE DATE.—A State shall be required to comply with the requirements of subsection (a) with respect to elections for Federal office held in years beginning with 2008.".

(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.".

○

The CHAIRMAN. Rather than making an opening statement, I would like to recognize the bill's sponsor, Mrs. Davis, to explain the bill.

Mrs. DAVIS of California. Thank you, Chairman Brady and Ranking Member Ehlers. I want to really appreciate your bringing this to the committee, H.R. 281, the Universal Right to Vote by Mail Act. I want to thank Election Subcommittee Chairman Lofgren for her outstanding leadership; and, also, I want to acknowledge Ranking Member McCarthy, who has helped me talk this through and work with me across party lines.

Since the Election Subcommittee has already held two extensive briefings on this topic, I am going to try and be very brief.

As we all know, this straightforward bill would simply give any eligible voter the option of voting by absentee ballot. No longer would an antiquated patchwork of State laws prevent voters from voting because they have work, family or other commitments. No longer would any voter in this country have to find the money or the time for a notary to sign an absentee request form. No longer would any American voter have to compromise personal privacy by having to list vacation destinations, medical information or employment details just to vote absentee. And no more doctor notes. This bill would level the playing field by allowing voters in the States that do not have no excuse absentee voting to catch up with the 29 States that do.

As a former school board member and State legislator, I certainly adhere and believe strongly in States' rights. But let me be clear about this bill. It does not alter State absentee processes and time lines. It does not place an undue burden on election officials. It does not make them do something new. All it does is expand the pool of people eligible for something they already do.

We are a Federal committee and we are not doing our jobs if we accept that some States are allowing some people to be more eligible to vote than others when we are all voting for the same President.

I wanted to just close by quoting from a letter to the editor from the New Orleans area Times-Picayune by a voter named Megan Boyle.

In it she says, I will be out of town during the runoff election. Since I will also be out of town during early voting the week before, I am required to go to the office of the Jefferson Parish Registrar of Voters between 8:30 and 4:30 for early voting at the Elmwood location because I live in East Bank. I work from 8 to 5, she says, on the West Bank and would have to miss work in order to vote. And she underlines, voting should not be so inconvenient that a citizen would choose not to vote.

We can wait for every State to adopt no excuse absentee voting or we can take what I think is a very simple step today.

I also want to move forward and just share with you that I would accept the amendments from some of my colleagues and have agreed to accept Mr. McCarthy's amendment requiring signature verification, which is something that most States already do. I think that is important, and I certainly would move forward with it. I visited our election of voters on numerous occasions and

watched them do this, and they are professional and experienced at it.

And I am also willing to take Mr. Ehler's amendment extending the date of implementation to 2010. I agree that States should have time to phase this in, but I hope that many would start by 2008, which may be the highest turnout election in our Nation's history. Moving to no excuse absentee voting will actually assist their processes.

I hope that my colleagues on the committee will join me in passing this important measure, and I want to thank you all for your attention on it and the time that you spent in taking a look. Thank you.

The CHAIRMAN. Thank you.

I would like to recognize Mr. Ehlers' for an opening statement.

Mr. EHLERS. Thank you, Chairman Brady, and also thank you to Representative Davis for her work on this bill.

While I personally think it is important that we make voting as accessible as possible, my primary concern regarding this and other legislation relating to absentee voting is that we must put in place at the same time the appropriate safeguards to ensure that legitimate votes are not cancelled by fraudulent ones. Opening up such a wide breadth of jurisdictions to no excuse absentee voting may provide more citizens with an opportunity to vote, but it may also present those with dishonest intentions a new opportunity to commit fraud.

And I might say I am not castigating absentee voters by my statement. It is just that it leads to the opportunity for others to manipulate absentee ballots and absentee voters to achieve nefarious ends.

To that effect, I am offering several amendments to the bill; and I believe my colleagues on this side of the aisle have others to offer. As with all of our elections legislation, we must monitor the implementation of these provisions carefully to ensure that, in the interest of making voting easier, we are not sacrificing the security of our election system.

Thank you, and I reserve the balance of my time.

Although, Mr. Chairman I have received a letter—I believe everyone on the committee has received a letter from the National Conference of State Legislators, which has written a letter expressing serious concerns about H.R. 281. I ask unanimous consent that that letter be placed in the record of today's markup.

The CHAIRMAN. Without objection.

[The statement of Mr. Ehlers follows:]

[In addition, pursuant to a unanimous consent request by Mrs. Davis of California, and Mr. Ehlers on page 143 of this transcript, six letters of support and one letter in opposition of H.R. 281 follow:]

[After Chairman Brady's opening remarks on the markup of H.R. 281 (Susan Davis' Absentee Voting Bill)]

Thank you Chairman Brady, and also to Rep. Davis for her work on this bill. While I think it is important that we make voting as accessible as possible, my primary concern regarding this and other legislation related to absentee voting is that we must put in place the appropriate safeguards to ensure that legitimate votes are not cancelled by fraudulent ones. Opening up such a wide breadth of jurisdictions to "no excuse" absentee voting may provide more citizens with an opportunity to vote, but it may also present those with dishonest intentions a new opportunity to commit fraud. Therefore, I am offering several amendments to the bill.

As with all of our elections legislation, we must monitor the implementation of these provisions carefully to ensure that, in the interest of making voting easier, we are not sacrificing the security of our elections system.

Thank you, and I reserve the balance of my time.

COMMON CAUSE
Holding Power Accountable

April 1, 2008

The Honorable Susan Davis
United States House of Representatives
Washington, D.C. 20515

Dear Representative Davis:

We are writing to ask you to support vital legislation in tomorrow's committee meeting – the Universal Right to Vote By Mail bill (HR 281). This legislation is simple. It requires that all voters in federal elections be given the opportunity to vote by mail (often called absentee voting) without undue burden or loss of privacy.

Currently, every state allows registered voters to vote by mail or absentee ballot. But many states put severe restrictions on that right – many of which intrude upon basic principles of privacy and dignity. All of the restrictions assume that election workers need to know, and voters need to disclose, personal information which will serve as a valid "excuse" for voters if they cannot be present at the polls on Election Day to cast a ballot in person. Below are just a few examples of state laws governing the right to vote by mail-in absentee ballot.

In Tennessee, if a voter is ill, the voter may only obtain an absentee ballot if a letter answering a list of seven questions is obtained by a physician.

In New York, voters must list their exact out of state location on Election Day if they are going to be out of state on a personal vacation.

In Virginia, a voter must indicate the exact hours of his or her work and the employer's name and address, list the nature of a the disability or illness, or explain the nature of the religious obligation which is keeping them from the polls.

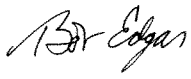
In Delaware, voters need a notary signature if they state that they are unable to vote due to religious obligation on Election Day.

Many state laws do not allow voters to receive an absentee ballot even if voters have jury duty or election day responsibilities.

These state laws which require voters to make an "excuse" about why they can't physically be present at the polls on election day and wish to vote by mail place unnecessary burdens on election workers and voters. Registered voters who need to vote by mail-in absentee ballot due to illness, family responsibilities work obligations, religious obligations, or civic obligation such as jury duty – should be able to do so simply by requesting a ballot. No "excuses" should have to be made. No privacy need be compromised.

Please vote in favor of the the basic, fair, common sense principles of HR 281 – the Universal Right to Vote By Mail Act.

Sincerely,



Bob Edgar
President
Common Cause

April 23, 2007

Re: H.R. 281, Universal Right to Vote by Mail Act of 2007
H.R. 1667, Vote by Mail Act of 2007

Dear House Member:

We write to urge your support for two important bills, H.R. 281 and H.R. 1667, which will strengthen electoral participation by expanding the opportunity for voters to cast mail-in ballots. Both measures have been introduced by Rep. Susan Davis (California, 53rd District), a former president of the League of Women Voters of San Diego.

H.R. 281, the Universal Right to Vote by Mail Act of 2007, establishes the right of duly registered citizens to request an absentee ballot for any election that includes a contest for federal office. An increasing number of states – twenty-eight at this point – have removed "excuse requirements" for absentee voting, such as physical incapacity or absence from the county of registration on Election Day, which in turn triggers the opportunity to cast a mail-in ballot. Despite this trend, twenty-two states still maintain rules that disfavor no-excuse absentee voting. In an age in which the multiple demands of work and family are greater than ever, making it tougher and tougher for citizens to get to the polls on Election Day, the opportunity to conveniently cast a ballot from home via the mail can mean the difference between a vibrant democracy or a nation suffering continued, declining voter participation.

H.R. 1667, the Vote by Mail Act of 2007, provides funding assistance to state election authorities to encourage the adoption of all-mail elections. The bill also directs the Election Assistance Commission to identify "Best Practices" for the administration of vote by mail elections, and requires the Government Accountability Office to study the impact of all-mail elections on turnout, security, fairness and costs.

Absentee or "mail-in" voting represents our nation's fastest growing means for casting ballots. Already, all or most voters in Oregon and Washington vote by mail. Since Oregon adopted vote by mail as its sole voting option in 1998, the state's turnout has increased, concerns about fraud have decreased, a complete paper trail exists for every election, recounts are non-controvertible and both major political parties have gained voters. In Colorado, counties are permitted to hold all-mail elections in off-year (non-partisan) elections. In Arizona, cities and towns can request permission from their counties to hold all-mail elections. A 2003 study (Southwell, University of Oregon)

found that 81% of Oregon voters preferred voting by mail over polling place elections. A 1997 Washington study by then-County Clerk (now Secretary of State) Sam Reed, found that all-mail elections significantly increased voter turnout and participation.

In November 2006, 41% of California voters cast absentee ballots, and in states including Arizona, New Mexico, Montana, Idaho, Colorado, Nevada, Hawaii and others, significant and growing percentages of the population are taking advantage of the opportunity to vote from home. In the past year, states such as Ohio and New Jersey have removed "excuse" requirements for absentee voting, and legislation to expand access to absentee voting is being considered in other state legislatures across the nation.

We the undersigned ask that you co-sponsor these two important pieces of legislation, and urge your support for their swift passage.

Sincerely,

William Burrus
President
American Postal Workers Union

Ted Keating
President
National Association of Postal Supervisors

Dale Goff
President
National Association of Postmasters of the United States

Charles F. Mapa
President
National League of Postmasters

John F. Hegarty
President
National Postal Mail Handlers Union

Donnie Pitts
President
National Rural Letter Carriers' Association

May 10, 2007

Unites States House of Representatives
Washington, DC 20515

Dear Member of Congress:

On behalf of the more than one million members and activists of People For the American Way (PFAW), we write in strong support of the Universal Right to Vote by Mail Act of 2007 (H.R. 281) introduced by Representative Susan Davis. This much needed legislation is about fairness, giving all voters the option to vote by mail, for any reason, in federal elections.

Electoral reform is a priority for PFAW and its sister Foundation (PFAWF), and we welcome efforts to remedy current flaws in the system in order to increase voters' faith and participation in our democratic process. As part of our Democracy Campaign and through our work in the Election Protection Coalition, PFAWF has been able to document the enormity of barriers to the ballot for thousands of voters across the country. Working with our numerous allied organizations, including Lawyers' Committee for Civil Rights Under Law (LCCRUL) and the NAACP, along with over 100 civil rights and voting rights organizations, PFAWF has been able to document the major problems that voters across the country have had leading up to and on Election Day, with over 9,000 incidents reported in 2006 alone. H.R. 281 would help address some of the problems voters have consistently encountered by making voting more convenient, leveling the playing field, and granting all voters the same opportunity to access the polls.

In twenty-six states and territories, voters are only eligible for mail-in (or absentee) ballots if they have certain excuses, such as being elderly, ill, out of town on Election Day, or engaged in military service, while voters in other states can vote by mail at will. H.R. 281 recognizes that many other circumstances frequently prevent voters from making it to the polls on Election Day, including work, family commitments, or other responsibilities. Accordingly, this bill allows every citizen to vote by mail when they are unable to make it to the polls and are otherwise ineligible for an absentee ballot.

By providing the option to vote by mail, H.R. 281 is particularly notable in its encouragement for, and honoring of, the time-honored ritual that brings American voters together in a common act of civic participation. H.R. 281 does not force voters to vote by mail – it simply gives voters the option to participate on their own timeline. Making this option available has overwhelming support among the American people. Studies show that support for voting by mail is consistent across nearly every demographic – including age, income level, race, education, employment status, geographic location, and party affiliation. Moreover, a recently conducted state poll shows that nearly 30% of voters said they would vote more often if given such an option. In fact, states that give voters the universal right to vote by mail experience up to 30% growth in the use of mail-in ballots.

2000 M Street, NW ♦ Suite 400 ♦ Washington, DC 20036
Telephone 202.467.4999 ♦ Fax 202.293.2672 ♦ E-mail pfaw@pfaw.org ♦ Web site http://www.pfaw.org

H.R. 281 is timely because it reflects the needs and preferences of those who prefer to vote by mail. Not only does this encourage participation, but it also eases the strain on poll workers and shortens the long lines at polling places. Again, we commend Representative Susan Davis for introducing such a well-conceived bill that stays above partisan politics and attempts to engage as many people as possible in the electoral process. We urge all Members to join Representative Davis's attempts to pass H.R. 281 and make civic engagement in our elections easier, fair, and accessible for all people.

Sincerely,

Ralph G. Neas
President

Tanya Clay House
Director, Public Policy

National Association of Letter Carriers

May 2, 2007

William H. Young
President

100 Indiana Ave., NW
Washington, DC
20001-2144
202.393.4695
www.nalc.org

Dear Representative:

On behalf of the 300,000 members of the National Association of Letter Carriers, I write to urge your support for two important bills, H.R. 281 and H.R. 1667, which will strengthen electoral participation by expanding the opportunity for voters to cast mail-in ballots. Both measures have been introduced by Rep. Susan Davis (California, 53rd District), a former president of the League of Women Voters of San Diego.

H.R. 281, the Universal Right to Vote by Mail Act of 2007, establishes the right of duly registered citizens to request an absentee ballot for any election that includes a contest for federal office. An increasing number of states - twenty-eight at this point – have removed "excuse requirements" for absentee voting, such as physical incapacity or absence from the county of registration on Election Day, which in turn triggers the opportunity to cast a mail-in ballot. Twenty-two states still maintain rules that disfavor no-excuse absentee voting. In an age in which the multiple demands of work and family are greater than ever, making it increasingly difficult for citizens to get to the polls on Election Day, the opportunity to conveniently cast a ballot from home via the mail can mean the difference between a vibrant democracy and a nation suffering anemic turnout and declining voter participation.

In November 2006, 41% of California voters cast absentee ballots, and in states such as Arizona, New Mexico, Montana, Idaho, Colorado, Nevada, Hawaii and others, significant and growing percentages of the population are taking advantage of the opportunity to vote from home. In the past year, states such as Ohio and New Jersey have removed "excuse" requirements for absentee voting, and legislation to expand access to absentee voting is being considered in other state legislatures across the nation.

H.R. 1667, the Vote by Mail Act of 2007, provides funding assistance to state election authorities to encourage the adoption of all-mail elections. The bill also directs the Election Assistance Commission to identify "Best Practices" for the administration of vote by mail elections, and requires the Government Accountability Office to study the impact of all-mail elections on turnout, security, fairness and costs.

Absentee or "mail-in" voting represents our nation's fastest growing means for casting ballots. Already, all or most voters in Oregon and Washington vote by mail. Since Oregon adopted vote by mail as its sole voting option in 1998, the state's turnout has increased and concerns about fraud have decreased. In addition, a complete paper trail exists for every election, recounts are non-controvertible and both major political parties have gained voters. In Colorado, counties are permitted to hold all-mail elections in off-year (non-partisan) elections. In Arizona, cities and towns can request permission from their counties to hold all-mail elections. A 2003 study (Southwell, University of Oregon) found that 81% of Oregon voters preferred voting by mail over polling place elections. A 1997 Washington study by then-County Clerk (now Secretary of State) Sam Reed, found that all-mail elections significantly increased voter turnout and participation.

The nations's letter carriers have been involved in the absentee ballot process from its inception and we have been honored to be entrusted with such a critical role in the democratic process. Our members have prided themselves on providing a safe and secure delivery service and we look forward to helping expand the opportunity for every citizen to cast a ballot through the conveyance of the mail.

I ask that you co-sponsor these two important pieces of legislation, and urge your support for their swift passage.

Sincerely,

William H. Young

William H. Young
President

WASHINGTON
LEGISLATIVE OFFICE

February 27, 2008

The Honorable Susan Davis
1526 Longworth House Office Building
U.S. House of Representatives
Washington, DC 20515

Re: ACLU Applauds H.R. 281, The Universal Right to Vote by Mail Act of 2007

AMERICAN CIVIL
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Caroline Fredrickson
DIRECTOR

NATIONAL OFFICE
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NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Dear Representative Davis:

On behalf of the American Civil Liberties Union (ACLU), over half a million members and activists, and fifty-three affiliates nationwide, we are writing to express our support for your bill, H.R. 281, the "Universal Right to Vote by Mail Act of 2007." H.R. 281 would ensure that all Americans have an equal opportunity to vote by mail in federal elections for any reason. This bill would give all voters the choice of voting by mail by eliminating the unnecessary, burdensome, and often intrusive requirements that some states impose on voters requesting absentee ballots.

H.R. 281 recognizes that many Americans have work, family, or other commitments that might prevent them from getting to the polling place on Election Day. Currently, 29 states allow universal absentee voting, which permits any voter to request a mail-in ballot without providing a reason for the request. However, voters in 21 states and the District of Columbia must provide a qualifying "excuse" in order to vote by mail. Requirements to justify the "excuse" vary by state, but can go so far as to require that the voter produce a notary's seal, a doctor's note, or signatures from multiple witnesses to request an absentee ballot. Other states require a voter to list work hours, explain a religious obligation, or detail the nature of a disability in order to prove that the voter fits into one of the state's "excuse" categories.

Financial burdens and disclosure of personal information should not be required for citizens to exercise their right to vote. Some voters should not be more heavily burdened than others simply because of their location, while voters in other states can conveniently, without question or cost, request a mail-in. A federal law is needed to guarantee that all citizens have the same opportunity to vote by mail.

H.R. 281 provides all voters with the option of voting by mail while fully preserving the existing alternative of voting at the polls on Election Day. It provides an important supplement to, not replacement for, in-person voting. Under this bill, voters who choose to vote by mail could take more time to consider the candidates and ballot initiatives without waiting in lines or rushing through the ballot. Moreover, the bill does not impose any additional requirements on states – it simply removes restrictions on voting by mail. All

states and the District of Columbia already have absentee voting procedures in place and could retain their present deadline requirements.

Giving voters this choice of voting in person or by mail would likely result in an increase in turnout that would benefit both political parties. In the 2004 election, states permitting universal access to mail-in ballots saw a 6.7% increase in voter turnout, which was consistent for both Democrats and Republicans. In a recently conducted state poll, nearly 30% of voters said they would vote more often if given the option to vote by mail.

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. H.R. 281 is an important step toward expanding voting opportunities in federal elections by giving all voters the same ability to vote by mail, regardless of state residency. We applaud your legislation and encourage Members of Congress to support it.

If you have any questions please contact Deborah J. Vagins at (202) 715-0816 or dvagins@dcaclu.org.

Sincerely,

Michael W. Macleod-Ball
Chief Legislative and Policy Counsel

Deborah J. Vagins
Policy Counsel for Civil Rights
and Civil Liberties

RUTH Y. GOLDWAY
COMMISSIONER

April 1, 2008

The Honorable Robert A. Brady
Chairman, Committee on House Administration
1310 Longworth Building
Washington, DC. 20515

Chairman Brady:

I am writing to support HR 281, the Universal Right to Vote by Mail Act of 2007.

In my testimony before the House Committee on Administration on October 16, 2007, I pointed out that the U.S. Postal Service provides a reliable and trusted means of voting for many Americans. Further, the Postal Service is actively working with State and local election officials to make the Vote by Mail process simpler and more accountable.

Absentee ballots account for an increasing percentage of votes cast nationally, but there is great disparity in rates of participation between states which provide for no-excuse or universal absentee voting and those which require particular justification for each election. As I said in my testimony:

"Offering citizens the option of voting by mail provides significant advantages, including the potential to increase voter turnout for national, state, and local elections. Voters would not need to take time off from work, find transportation, locate the right polling place, get baby-sitters or rush through critical yet sometimes complicated ballot initiatives. (…) Voters appreciate the opportunity to read a ballot slowly in the privacy of their homes, and to drop it in the mail, exercising their voting franchise thoughtfully and carefully."

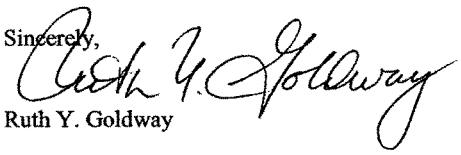
In my home state of California, which offers no-excuse or universal absentee voting, approximately half the votes in statewide elections are cast by mail, a percentage that has been steadily growing over time.

Legislation extending universal access to absentee voting in national elections beyond the 28 states where it is already in effect would increase participation, interest and greater confidence in the electoral process.

901 New York Avenue NW, Suite 200 | Washington, DC 20268-0001 | Phone: 202-789-6810 Fax: (202) 789-6883 | www.prc.gov

Having served for ten years on the Postal Regulatory Commission, I am familiar with the efficiency and reliability of the mail service provided by the Postal Service. I strongly support giving citizens the option to cast mail-in ballots as a secure and efficient alternative to in-person voting.

Sincerely,



Ruth Y. Goldway

Ms. Goldway is writing in her individual capacity as a Postal Regulatory Commissioner.

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Donna D. Stone
State Representative
Delaware
President, NCSL

Sharon A. Crouch Steidel
Director, Information Systems
Virginia House of Delegates
Staff Chair, NCSL

William T. Pound
Executive Director

April 1, 2008

The Honorable Robert Brady
Chairman
Committee on House Administration
1310 Longworth House Office Building
Washington, D.C. 20510

The Honorable Vernon Ehlers
Ranking Member
Committee on House Administration
1313 Longworth House Office Building
Washington, D.C. 20510

RE: H.R. 281, the "Universal Right to Vote by Mail Act of 2007."

Dear Chairman Brady and Ranking Member Ehlers:

We are writing to you to express the National Conference of State Legislatures' (NCSL) grave concerns about H.R. 281, the "Universal Right to Vote by Mail Act of 2007" introduced by Representative Susan Davis and scheduled for markup before the Committee this week. NCSL commends Representative Davis' intentions to rectify the inequities in election administration; however, H.R. 281 would preempt state laws in nearly half of the states and create an unfunded federal mandate of unknown proportions. In addition, there have been insufficient hearings on the merits of this legislation and no analysis presented to the Committee on the different processes currently in existence in the states and the rationale behind these processes. Finally, H.R. 281 calls for an effective date of November, 2008 which is completely unworkable for states because legislative sessions for this year are winding up.

State lawmakers from across the country recognize the importance of absentee voting which is why all states have laws permitting this. Currently, 28 states allow no-excuse absentee voting by mail. The remainder of states have different processes that have been passed through the appropriate state legislative process. H.R. 281 would preempt state absentee voting laws in at least 22 states and the District of Columbia and force states to unravel one component of their election process that is not necessarily broken, dysfunctional, or an impediment to absentee voting. These states will be forced to overhaul their standards, protocols and policies in a very short period of time and with no appropriated federal dollars in place.

NCSL respectfully suggests that a markup of H.R. 281 is premature, that the Committee should first take the time to hold proper hearings on this bill and gain insight and research from the stakeholders before voting on a bill with this type of state impact. NCSL looks forward to working with the Committee to address voting by absentee ballots or other vote by mail options for states in future legislation.

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Denver, Colorado 80230
Phone 303.364.7700 Fax 303.364.7800

Washington
444 North Capitol Street, N.W. Suite 515
Washington, D.C. 20001
Phone 202.624.5400 Fax 202.737.1069

Website www.ncsl.org

Thank you for considering our views. Should you or your staff have additional questions regarding NCSL's position, please contact Susan Parnas Frederick (202-624-3566, susan.frederick@ncsl.org) or Emily Taylor (202-624-3586, emily.taylor@ncsl.org) of the NCSL staff.

Sincerely,

Donna D. Stone
Delaware House of Representatives
President, NCSL

Speaker Joe Hackney
North Carolina House of Representatives
President-Elect, NCSL

Cc: Tom Hicks
Gineen Beach
Keith Abouchar

The CHAIRMAN. Any other members who would like to make a statement?

I now call up and lay before the committee H.R. 281. Without objection, the first reading of the bill will be dispensed with. Without objection, the bill will be considered as read and open to amendment at any point.

Any amendments?

Mr. EHLERS. All right. The first one I have, Mr. Chairman, is a very simple one, which the author of the bill has already agreed to. This amendment postpones—it is Ehlers Amendment No. 1. It postpones the effective date of the Act until the year 2010.

[The information follows:]

AMENDMENT TO H.R. 281

OFFERED BY M__. _____

Page 3, strike lines 14 through 17 and insert the following:

"(b) EFFECTIVE DATE.—A State shall be required to comply with the requirements of this section with respect to the regularly scheduled general elections for Federal office held in November 2010 and each succeeding election for Federal office.".

The CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. EHLERS. I think it is so simple it will be accepted. I won't spend any time discussing it.

The CHAIRMAN. The question is on Mr. Ehlers' amendment to the bill. All those in favor, signify by saying aye. Any opposed? No.

The ayes have it, and the amendment is agreed to.

Any other amendments?

Mr. Ehlers.

Mr. EHLERS. Ehlers Amendment No. 2. This amendment provides that a State shall, before providing an individual with an absentee ballot, pursuant to this Act, require such individual to sign under penalty of perjury a statement attesting that the ballot was requested voluntarily and without coercion and that, should such ballot be voted, it will be voted freely and without undue influence.

[The information follows:]

AMENDMENT TO H.R. 281

OFFERED BY M__. _____

Page 2, strike lines 15 through 17 (and redesignate accordingly).

Page 3, insert after line 13 the following:

"(b) ATTESTATION REQUIRED.—Notwithstanding subsection (a), a State shall not provide an individual with an absentee ballot or other ballot to be cast by mail unless the individual includes with the request for such a ballot an attestation signed by the individual (under penalty of perjury) that the individual requests the ballot voluntarily and free from pressure or coercion by anyone else and will cast votes on the ballot (if provided) as the individual desires and intends.".

Page 3, line 15, strike "subsection (a)" and insert "this section".

Mr. EHLERS. And I move the amendment. I think it is very clear and straightforward. It gets at one of the fraud aspects that we are concerned about, and it does not in any way impose a great burden on the voter. It simply asks them to sign an attestation that it has been voted freely and without undue influence. That is trying to get at the possibility, as I mentioned earlier, of fraud where someone is trying to induce a voter to do something wrong. And if they sign this they are saying simply no one has tried to unduly influence them.

The CHAIRMAN. Any other questions?

Mrs. Davis.

Mrs. DAVIS of California. I would be happy to speak to that.

I appreciate Mr. Ehlers' concern, but I think that, you know, we have—in many, many States that already do have no excuse absentee voting, this has not been a problem for them. They know that people sign under penalty of perjury and a fine and imprisonment for up to 5 years if there is anything in that absentee ballot that is not accurate. We don't ask people that question under other circumstances. So even though I appreciate the intent of it, I certainly don't think that people in States that are not included in no absentee, no excuse absentee voting today are any less forthright than in other States; and we would be putting a burden on them perhaps that is not in other States. And so I, in due consideration, don't think that would be applicable.

The CHAIRMAN. Mr. Davis

Mr. DAVIS of Alabama. Thank you, Mr. Chairman. I will be brief.

I want to echo what Mrs. Davis said and then raise one other practical concern to the ranking member. It would seem that under your amendment that someone could potentially challenge a ballot that didn't have the attestation on it. And ordinarily in the normal context obviously no one should be unduly influenced in any kind of election, whether it is an absentee ballot or not. So it would seem that Mrs. Davis is correct that you may be adding an extra layer of certification here that is not ordinarily applicable; and, because of that, I wonder if someone could potentially challenge a written or absentee ballot. Though there was no basis whatsoever to question the validity of that ballot, the failure to have the attestation could become a basis of challenge; and I am not sure if that would be the intent. I am not sure if that is your intent or not, and I will yield to you to answer that.

Mr. EHLERS. Thank you. I appreciate you yielding.

That is certainly not my intent, and I would assume that this would just be—well, just use the example we have in Michigan. We are required to sign the ballot that we send in. I think almost every State that has absentee voting requires the voter to sign the ballot. And, in fact, an amendment we will have later will require the local elected officials to compare the signature on the ballot with the signature on record with the registration just to make sure that they are the same.

I do not intend for this to be a separate statement which requires a separate signature. It is an assumption of mine that it would just be under the current statement that the voter has to make that they are signing this, that this is their ballot and so forth, that they have done it without help. Just add the statement under there

and they still have one signature, the same signature, just adding an additional statement to make it clear to the voter that if there is someone leaning over their shoulder or someone saying I will give you five bucks if you vote this way they recognize they are not supposed to do that and certainly wouldn't sign it if they had done it.

So I don't think it is any greater burden on the voter at all. They are still signing it. It just increases the length of the statement slightly.

Mr. DAVIS of Alabama. I will just reclaim my time.

I take the gentleman's point in good faith. The only concern that I would raise, as you are well aware, a lot of these challenges to ballots play out at the local level, county level, as opposed to the State level; and it would not strike me as being beyond possibility that in future elections that if your provision were added that someone who wanted to challenge a ballot for whatever reason could at least cite as an evidentiary point that the attestation was not signed. So I take your point that that is not your intent, but I am concerned it could become yet another thing that could be a subject of dispute in some elections.

Mr. EHLERS. If the gentleman would yield again. The signature is currently there. They could challenge it at this point, too. I don't recall in my years of being involved with polling that anyone has challenged on the basis of a lack of signature. But it is possible that the clerk of the unit of government may just automatically rule them out if they send in a document without the signature.

Mr. DAVIS of Alabama. Well, reclaiming my time just to finish on this point, I agree with you about the need to have a signature so someone could attest the person is whom she claims to be. I am simply making the additional point that if you have another requirement that someone attest that they weren't subject to undue influence, the failure to make that attestation could potentially be cited as proof if that ballot were challenged. And I would just—I don't want to prolong this, but just by making that point that that could become an extra layer of contest, and I think that would not be our intent as supporters of the bill.

Mr. EHLERS. If I may, if you will yield to me one last time, I just would reiterate this is just an additional statement, not an additional signature. I don't think it provides any additional grounds for rejecting it. If the signature is there, what can you say? They are not going to stop it for that reason.

I yield back.

The CHAIRMAN. Anybody else?

Mr. Capuano.

Mr. CAPUANO. Mr. Chairman, I respect what the ranking member is trying to do, and I am not worried about an extra signature. Have them sign 10 times. My concern is that the basic—if someone is under coercion, you are forcing them, for all intents and purposes. If somebody has a gun to my head and says "sign this", I am signing it; and now I have broken the law because I have committed perjury.

I would argue that if the goal was to stop coercion, inappropriate activity, then we should go after the people who are causing the inappropriate activity and make it a crime to coerce someone. And

that I think is fine. But to make, under the scenario, the victim also now a criminal strikes me as targeting the wrong person.

And as far as—I think there should be some discussion, what do you mean by coercion? I know what it means in the vernacular, but when you get into a law I don't think that taking a bribe is coercion. It is a bribe, but it is not coercion. Is it coercion when you are getting an absentee ballot because somebody gave your cousin a job? What is coercion?

And I am not arguing that we shouldn't have that discussion. I think it is a fair discussion. I agree with you. I am not looking to allow or encourage or enable anybody to coerce anyone. I totally agree with that. But I don't think this does it.

What this simply does is, if someone is truly under coercion, gun to the head, they are going to sign this thing. And now they have broken the law. They have committed perjury. And I don't think that is the right goal. I think we should have an amendment at some point along the process that says, if you coerce someone, you are the one breaking the law, not the victim.

Mr. EHLERS. Will the gentleman yield?

Mr. CAPUANO. I certainly do.

Mr. EHLERS. So far as I know, that is already contrary to the law.

Mr. CAPUANO. I think it is, too.

Mr. EHLERS. I would hope that anyone who is coerced would immediately report the crime to the appropriate authorities or somehow refuse to sign it. I know people feel strongly about the secret ballot and not being coerced. My wife doesn't let me see who she votes for, and I have been unable to coerce her.

Mr. CAPUANO. My wife requires me to show who I am voting for. I have to get approval.

Mr. EHLERS. Well, so far as I know, my wife may vote against me every time, and I don't expect that she has, unless she wants me to stay home more.

But my point is simply coercion is going to be rare. But this will just call the voter's attention to it and say, hey, if you are coerced, don't sign it; or if you are forced to sign it, report it.

Mr. CAPUANO. In that case, I have no problem. But I don't like the concept of committing perjury, under the pains and penalties of perjury, and now subjecting them to criminal penalties. I have no problem with putting a statement there saying, yeah, I signed this on my free will. That doesn't bother me. That is just another statement. I have no problem with it.

If the idea is to draw the attention to the voter, that is fine, but that can be done by a statement, as opposed to signing something under the pains and penalties of perjury, which is a different matter.

Mr. EHLERS. Mr. Chairman, I recognize the arguments. I guess we can put it to a vote. But I would be happy to pursue this with the other committee members later.

The CHAIRMAN. Certainly.

Mr. DAVIS of Alabama. Will the gentleman yield for just one point? Mr. Capuano, I think actually in some way is underscoring a point that I made. I take your point that you are not requiring

a separate line of attestation and a separate signature. You have made that clear. But I think Mr. Capuano's point is still important.

This may seem like a farfetched scenario to the ranking member, but I could imagine that in a contested election some individual could say I was part of a meeting or part of a hearing and these folks said they were going to go out and get these absentee ballots out at a nursing home and it sounded to me if they were going to coerce these older people to sign these ballots.

And, right now, under the current law, under this bill as it currently stands, no one could really challenge a ballot on the theory that they had proof of coercion unless there was some direct problem with the ballot itself. Because you are adding a requirement that some one state under penalty of perjury that they were not coerced, arguably someone making a false statement would subject themselves to a challenged ballot. That controversy could be triggered if someone made an allegation that a group of people were engaging in coercive activity.

And, again, it may seem farfetched to us today, but in this day and age of hyperlitigation and partisanship back and forth I could imagine someone saying, "I know that the citizens for good government in Johnson County, Texas, are trying to coerce people to vote, so therefore I am going to challenge all of these ballots because this is where I know they were working that day." And it becomes one more thing that could be challenged in the context of an election. You couldn't do that kind of a challenge today.

And, with that, I would yield back.

The CHAIRMAN. The question one is on Mr. Ehlers' Amendment No. 2 to the bill. All those in favor, signify by saying aye. All those opposed, say no. No.

Mr. EHLERS. Ask for a roll call vote.

The CHAIRMAN. I would like to have a roll call. Will the clerk please call the roll.

The CLERK. Ms. Lofgren.

[No response.]

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Capuano votes no.

Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mrs. Davis of California votes no.

Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Davis of Alabama votes no.

Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Ehlers votes aye.

Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren votes aye.

Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. McCarthy votes aye.

Mr. Brady.

The CHAIRMAN. No.

The CLERK. Mr. Brady votes no.

The CHAIRMAN. The ayes are three. The nays are four. The amendment fails.

Mr. Ehlers, do you have another amendment.

Mr. EHLERS. Yes.

The CHAIRMAN. The Chair recognizes Mr. Ehlers for an amendment.

Mr. EHLERS. Sorry for the delay, Mr. Chairman. Somehow my things got out of order in the notebook.

I offer Ehlers Amendment No. 3. This amendment provides that no provision of this Act shall restrict the right of any State to continue to enforce any condition or requirement concerning the eligibility of an individual to obtain an absentee ballot by mail provided that such condition or requirement is in effect as of the enactment date of this Act.

[The information follows:]

AMENDMENT TO H.R. 281

OFFERED BY MR. EHLERS

Page 3, line 9, strike "by mail," and insert "by mail which were not in effect as of the date of the enactment of this section,".

Mr. EHLERS. Mr. Chairman, that is basically a response to the letter I previously entered into the record from the National Conference of State Legislatures who are objecting to us imposing more Federal requirements on local and State elections.

As you know, for many, many years all the elections in this country were controlled by State or local officials; and it wasn't until we passed HAVA that we had direct Federal involvement in running elections. And theoretically our only basis for doing that is for Federal candidates.

The folks from the National Conference of State Legislatures are basically saying, look, we have been running elections for over 200 years. We know how to do it. We don't like the fact that you are going to tell us how to do it. And so this amendment would honor that protest by saying we will grandfather in all those who are currently doing it in their own way and not following the principles of this bill; and that constitutes, I believe, some 22 States.

And I would hope that eventually they would agree with all the provisions of the bill, but I think we really are going to have to work with them for a while and point out to them the advantages of Congresswoman Davis's bill. And eventually I think they would be on board.

But as a former elected official at the local level and the State level, I know how much resentment there is against the Federal Government coming in and saying, we are from the Federal Government. We know better. You are going to do it our way. So this is an attempt to honor that and just say, okay, you can keep doing it your way, and then continue to work with them to try to persuade them that our way is better. So I offer that amendment.

The CHAIRMAN. The Chair recognizes Mrs. Davis.

Mrs. DAVIS of California. Thank you, Mr. Chairman; and, once again, I appreciate Mr. Ehlers's concern here.

I was, obviously, a member of NCSL for a period of time. But I think that what we are saying is that we want people to be able—it is the "who". We are not telling them how. We are just telling them who. People should be able to do this. And what I think your amendment does is essentially gut the bill. Because it says if you have to list excuses, if people have to engage in that process, that we are not going to ask them to proceed at least until initially 2010, I think, to bring them on line with other States.

And in Michigan, of course, people would still have to respond in terms of whether or not they can attend because of tenets of their religion, whether they are going to be out of the community for the entire time on election day. There are just a number of things that they have to do, and it is in the best interest of moving this forward to not allow States to continue to do what they have always been doing without pushing them forward. And I think that is what we are doing. We are doing it within a reasonable time frame as we accepted your amendment.

And I think that NCSL will come on board. I think they weren't paying attention earlier. They are very happy to work with us. We have spoken with them, and I think that we can move them along as well. I think they are very happy to do that.

Mr. EHLERS. Will the gentlewoman yield? Will you yield?

Mrs. DAVIS of California. Yes, sir.

Mr. EHLERS. Thank you for yielding.

I recognize that argument, and I have some sympathy for it. But I would much prefer that we work out the problem earlier, rather than simply impose this on them.

I have great respect for NCSL, and I don't think they wrote the letter in haste or anger or by accident without knowing the facts. I think that it accurately reflects their feelings, and I would much prefer that we adopt the amendment and over the course of a few years work with them to change the systems they are using. In other words, I am saying let us use a soft leather glove instead of a boxing mitt to try to change their laws.

I yield back.

The CHAIRMAN. Any other discussion?

The question on Mr. Ehlers' Amendment No. 3 to the bill. All those in favor, say aye. All those opposed, no. No.

In the opinion of the Chair the noes have it.

Mr. EHLERS. I would ask for a roll call.

The CHAIRMAN. A roll call vote is requested. The clerk will call the roll.

The CLERK. Ms. Lofgren.

[no response.]

The CLERK. Mr. Capuano.

Mr. CAPUANO. I am a no.

The CLERK. Mr. Capuano votes no.

Mr. Gonzalez.

[no response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mrs. Davis of California votes no.

Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Davis of Alabama votes no.

Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Ehlers votes aye.

Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. Lungren votes aye.

Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. McCarthy votes aye.

Mr. Brady.

The CHAIRMAN. No.

The CLERK. Mr. Brady votes no.

The CHAIRMAN. The ayes are three. The nays are four. The amendment is not agreed to.

Mr. EHLERS. Mr. Chairman, that is the first time I have ever lost a vote because a ghost pops out of the closet.

The CHAIRMAN. The Chair would like to recognize for an amendment Mr. McCarthy.

Mr. MCCARTHY. Thank you, Mr. Chairman.

I want to first thank Congresswoman Davis for working on this legislation.

I have an amendment. It would be McCarthy Amendment No. 2. This amendment provides that the State shall implement a voter signature verification system, that the voter signature on each absentee ballot shall be verified by such system prior to the acceptance and processing of any voted absentee ballot cast pursuant to this Act.

[The information follows:]

AMENDMENT TO H.R. 281

OFFERED BY MR. MCCARTHY OF CALIFORNIA

Page 3, line 9, strike "except" and insert "except as required under subsection (b) and except".

Page 3, insert after line 13 the following (and redesignate the succeeding provision accordingly):

"(b) REQUIRING SIGNATURE VERIFICATION.—A State may not accept and process an absentee ballot submitted by any individual with respect to 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 of registered voters in the State, in accordance with such procedures as the State may adopt.".

Page 3, line 15, strike "subsection (a)" and insert "this section".

Mr. MCCARTHY. It is mainly saying, and one thing that happens within California, in our hearing that we found the biggest form of fraud that you ever get is with absentee ballots. Because a person can go and apply, never seeing an individual, put in an address, and apply for an absentee, never, ever making a verification.

So what happens here in this process would be, much like within California—and in Michigan they are going to a digital—that an absentee ballot comes in. You have to sign the back of the ballot. The individual at the elections office that is working year round, not a one-day individual, pulls it up, if they have training, and digitally would see the signature of the registration and verify that against the absentee ballot outside signature before you open up and cast the ballot.

So it is a step of protecting the fraud which I know individuals have the fear of within here. I think this goes a long way to help in that procedure, and we allow the States to adapt signature verification which they select.

I would ask for a vote.

The CHAIRMAN. The Chair recognizes Mrs. Davis.

Mrs. DAVIS of California. I appreciate Mr. McCarthy's amendment, and I agree with it. Thank you.

The CHAIRMAN. You agree with the amendment? You agree with the amendment being accepted?

Mrs. DAVIS of California. Is that actually No. 1?

Mr. MCCARTHY. That was No. 2. I just went out of order because I wanted to start on a positive note.

Mrs. DAVIS of California. Okay. But it is 1 on mine.

Mr. MCCARTHY. Is that 1 on yours? It is 2 on mine.

The CHAIRMAN. They do that from time to time, and it works from time to time, but we are accepting it. I think this is the one that we are accepting.

Mr. MCCARTHY. If we accept both, that is all right with me.

The CHAIRMAN. All those in favor accepting—wait. This is No. 2. He is taking the signature verification, which is No. 2. All those in favor of the amendment, signify by saying aye. Any opposed, no.

The ayes have it. The amendment is agreed to.

Now we have before us McCarthy amendment No. 1.

Mr. MCCARTHY. Thank you, Mr. Chairman.

[The information follows:]

AMENDMENT TO H.R. 281

OFFERED BY MR. MCCARTHY OF CALIFORNIA

Page 3, strike lines 5 through 13 and insert the following:

"(a) IN GENERAL.—If an individual in a State is eligible to obtain a ballot 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 obtain the ballot in advance of the election for purposes of casting the ballot by mail, 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 to the extent that the State considers necessary to prevent the occurrence of voter fraud.".

Mr. MCCARTHY. Now this amendment takes from kind of what Mr. Davis was saying earlier. When you deal with legislation like this, there could be some unintended consequences based upon the language within the bill. And the intent with the hearing and what I have heard from Mrs. Davis has been you have these roadblocks for individuals to get an absentee ballot based upon the process that they are going to be out of town. New York makes a doctor do seven different ones. In Virginia, you have to sign your business hours and your business address. Those are little roadblocks, so we are trying to knock that down.

But I would never want an individual to take—and if you read the language in page 3 of the bill, line 5 through about line 9, it says, the State may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote in such election.

What could happen here is kind of what Mr. Davis was saying. Someone could say that with this bill we are now waiving any rights of the States to have eligibility on a person to cast the ballot.

Because I am viewing it as twofold, I want to knock down any roadblock a person has to apply. I still want to empower the State to be able to check before the ballot is cast, is this person eligible to do that vote. I don't want to take away any rules or laws that current States have.

As we have these other hearings, we know Indiana has a different law on the eligibility because States have the power to do that on who is eligible to vote in that process. So I believe this clarifies the intent of what Mrs. Davis was trying to do, and it clarifies what I believe we were trying to do through the hearings and still empowers the State to have that ability for eligibility in what they have and someone take the language here and applies it different than what we are trying to. That is what the intent of this amendment does.

The CHAIRMAN. I thank the gentleman.

Mrs. Davis.

Mrs. DAVIS of California. I appreciate that, Mr. McCarthy. The bill is really silent on that, and so I don't think that there is anything that is added here.

I am not sure the clarification is needed to suggest that the States couldn't do that if they have already chosen to do that. What we are just trying to do is define the fact that there is no excuses for absentee voting and that we want to verify, of course, the fact that that is the person and that is what most States are doing. So it is really silent on that. I don't think it puts any more pressure on States to either increase that or to take that away.

Mr. MCCARTHY. If the gentlelady would yield for just maybe a colloquy here. In lines 7 and 8, if you read on page 3 of your bill, a State may not impose any additional conditions or requirements on the eligibility of the individual to cast the vote. By using the word "cast" the vote—and this may be a place where Mr. Davis, I believe he is an individual who has a great brain when it comes to legal issues and looking down the road—by using the word "cast" the vote, couldn't we say—couldn't someone take this from a legal manner and wipe away any requirements that a State may have by basing on casting that vote, such as a person would say, because

you applied by absentee mail, that you mailed in your voter reg, some States say the first time you do that and you are a first-time voter they just want to check an ID ahead of time. That is to apply for—to apply to even register to vote within there.

Could you not take that by using the word "cast" the vote and take this a step further beyond the intent of what this bill was really trying to accomplish? That is my only fear, the language that we use.

Mr. DAVIS of Alabama. Will the gentleman yield?

Mr. MCCARTHY. Yes.

Mr. DAVIS of Alabama. I am trying to understand the gentleman from California's point. Certainly the intent of the bill that I have co-sponsored and that Mrs. Davis has introduced is that, obviously, we are not trying to prevent States from putting any normal requirements on who is eligible to vote. The bill is simply saying that there are no excuses any longer required for absentee voting.

So a State can't say you have to prove that you are not going to be in the jurisdiction. A State can't require you to put forward any proof as to why you should be able to vote absentee. You are just allowed to do it by mail.

So I am not following the gentleman's argument. Is it your contention that the language in lines 7 and 8, 9 and 10? I will yield to the gentleman, because I am not clear what it is you are saying that it does, frankly.

Mr. MCCARTHY. I am saying we have a couple of cases before the Supreme Court. We have States that require different—just like we had a hearing the other day. One State would put on their voter reg requirements asking if somebody is a citizen or something else or if you are a first-time voter registration and you are doing it by absentee mail, you have to show an ID.

If I used the word "cast" the vote—because I believe there is two processes in this. First, you put in an application for voter registration by mail. That is one action. Then when you send it in and you cast a vote, that is the second action. I believe this bill is dealing with the voter registration knocking down the roadblocks to getting that application to voting by mail. By using the word "cast" the vote, I believe this bill is going further, that someone could take that language, go beyond the intent of what we meant this bill to do and now apply that to other abilities for a State to use anything they believe on the eligibility to be able to be registered to cast the vote to go further. That is my fear.

Mrs. DAVIS of California. I think it is still really—I think it confuses it more than anything else, and I think that the intent here is to make it clear that the State can't impose additional conditions. I am still unclear exactly what you are trying to do.

Mr. MCCARTHY. I have the fear——

Mrs. DAVIS of California. It adds an extra burden that is not available for people who vote in person, and I think the idea is to make sure that it is——

Mr. MCCARTHY. This would take away all the burdens, but it would also say from the intent that you keep the integrity of it. So can I take this bill and now say a State goes out, such as Indiana and others, and has to have proof of citizenship and others and take this bill to say they no longer can do that.

Mr. DAVIS of Alabama. Well, if the gentleman would yield, the intent of the bill is to, in a Federal context, create something close to a nationalized standard. So if the goal of a State is to put some extra layer in place, then I think the bill does seek to undercut that. That is a policy judgment the bill seeks to make.

I think Mrs. Davis is exactly right. The very specific example you give, your argument is that the kind of restriction you identify doesn't go to eligibility, that it goes to verification. Frankly, that is the kind of argument U.S. District Courts resolve all the time.

The fact that the bill is silent on that point I suppose could be litigated or debated. But the clear intent of the bill is to say that if you want to vote by mail you can do it.

Now, I think I understand your point. Your point is that a State may want to go beyond that and put some extra verification means in place. But, frankly, one response to that is, I doubt very many States have those kinds of provisions, so it is hardly a prevailing national standard and it doesn't appear to trouble us too much that most States don't have that now.

And the second and last point that I would make is, once again, I am certain there could be some basis if a State wanted to put some extra verification requirement in place. But, once again, I think the bill, frankly, would err on the side of having a nationalized standard for voting by mail.

Mr. MCCARTHY. I think maybe if we stated publicly the intent of the bill that in no way if someone votes by mail that they would get to waive any requirements that a State would put on all voters, such as if I register to vote and they had some requirement on the registration, I am thinking more in the tenth amendment here, that somehow you had to prove something to be a registered voter whenever you meet their criteria. I met it. Somehow if I voted by mail I was able to waive that.

And that was my only fear, by using the word "cast". And if that is not your intent, which I don't believe it to be, I believe the intent to be—and I support any of these roadblocks.

People are busy. They want to apply for an absentee application. Why do we make it so difficult that I have to say not only am I sick but my doctor is going to sign it and someone is going to notarize it? I can't vote that day. I am going to vote by mail. I am going to have a verification, so I take away from the fraud. That is the intent of the bill, not to change the eligibility that the State can put on anybody else.

Mrs. DAVIS of California. And, Mr. McCarthy, I appreciate that. Because, basically, that is what we are trying to do, to keep it a clean bill in that regard. And I think when we add additional language that opens things up in a different way, goes a different direction, then we begin to confuse the bill. And that is why I think if we can stick to the excuses issue that is what the intent of the bill is.

Mr. MCCARTHY. Okay.

Mrs. DAVIS of California. It really doesn't speak to the other issues. That is really—States, actually, as we know with Indiana, can do something. They may end up hearing that in the courts, but at the same time they can do that. That is their option.

What we are trying to do is deal with a pretty narrow issue here, which is don't impose the excuses on the individual who chooses to vote if they are going to vote absentee.

Mr. DAVIS of Alabama. If the gentleman would yield, just to reinforce Mrs. Davis' point. Your amendment goes much further than you would need to go. Perhaps if you were trying to add some report language about the intent of the committee, but you are trying to remove altogether one of the most important sections in the bill.

If you take this section out, as you purport to do—you are not trying to slice it. You are trying to move it altogether. If you remove the subsection A altogether, then any State could go in and interfere with eligibility or—I am sorry—in effect put an excuse requirement in place.

This provision of the bill is the only thing that preserves the no excuses character of the bill. So if you remove this particular section there is almost no point in having this bill. That's why I say your amendment goes much further than it needs to.

Mr. MCCARTHY. That is not my intent.

The CHAIRMAN. We are going to wind this down now. It has gone much past 5 minutes. But go ahead. I will let you have your answer.

Mr. MCCARTHY. Well, I appreciate the chairman indulging us.

What I would do is I would not ask for a vote on my amendment. Having Mrs. Davis state what the intent is, and I think that is really for the public to know putting it out there, I would just like to work with you. Because I think, in the end, maybe it is changing a language of a word so it is clarified further, but I will work with you as the bill moves forward. And I appreciate the dialogue and the colloquy it allowed.

The CHAIRMAN. Does the gentleman withdraw his amendment?

Mr. MCCARTHY. Yes.

The CHAIRMAN. Thank you. I now would like to recognize Mrs. Davis for the purpose of offering a motion.

Mrs. DAVIS of California. Mr. Chairman, I move the committee report the bill favorably to the House as amended.

Mr. LUNGREN. Mr. Chairman, I wanted to strike the requisite number of words to be able to speak. I haven't spoken on this yet.

The CHAIRMAN. I apologize. How could I overlook you? You can certainly speak.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

When Mrs. Davis came to me on this bill, I decided to take a serious look at it, not the least of which reason is that, in 1990, when I ran for Attorney General in California, I actually lost on election day but won with the absentee ballots. Subsequent to that, my opponent supporters had six different lawsuits to try and invalidate 600,000 absentee ballots because the election officials in those counties had followed the advice given to them by the Secretary of State which turned out to be somewhat erroneous.

I declared a victory 13 days later. My opponent conceded two and a half months later, just before I was sworn in. So I have a strong place in my heart for absentee ballots.

However, I am concerned about the concerns raised by Norm Ornstein, a congressional scholar, about absentee ballots. He has indicated that once a ballot leaves the security that is provided by

the traditional polling place it is much more difficult to guarantee that the intended person is voting his or her selection, is made without outside or undue influence and that the voted ballot makes it safely back to the elections official for tabulation.

Additionally, I am old enough to remember a TV show when I was a kid called Father Knows Best. It sounds to me like this is the father or the mother of all governments, the Federal Government knows best.

I was raised on the idea that our States are supposed to be laboratories of democracy, meaning that they could have different approaches to the same end. And in the very first finding in this bill we make a blanket statement, the inequity of voting rights exist in the—an inequity in 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. That is a flat statement that because some States make it far easier for absentee ballots than others, therefore there is inequity which exists. I don't accept that.

There is something we are losing in this country called the communal nature of this country, the idea that we are all in a country together. That while we have other things to do maybe it is important enough for us to take the time to vote. That is to actually go and vote as a communal activity, where you go down to the polling place and you actually exercise your right to vote and you see other Americans voting.

And what we are saying is that is a quaint idea that has no justification. Not only are we saying there is no justification, we are saying that is a quaint idea that is now going to be illegal because we know best.

And it is tough enough in this country made up of people that come from all sorts of backgrounds, all sorts of ethnicities, all sorts of religions, all sorts of cultures. We are, by and large—with the exception of our Native American friends, we are, by and large, sons and daughters and descendants of people from other countries. We are basically a country of immigrants; and we need certain things, certain anchors to hold us together. And I think the grand exercise of the right to vote exemplified by people coming together at the polling places is one of those symbols that assists in that.

Now some people just can't be able to do that. But what we are saying here is don't even make an effort to do that. We on the Federal level have decided that no excuse absentee ballots is the preferable way of doing things.

And I appreciate the fact that it is more convenient. I appreciate the fact it means that you don't have to make the same sort of effort to try to get there. But, my golly, if we don't think in this country it is worth making an effort to vote that may be inconvenient, are we depreciating that exercise in our constitutional democracy?

So, with all due respect, I looked at your bill, I understood what you were trying to do, and I understand what we have done in California. I have benefited from absentee ballots. But I just find it hard for us to make the decision that this is, as a matter of law, the preferred way of doing things.

The Supreme Court has made it very, very clear that there is a right to vote, as there should be. But as far as I know the Supreme Court has never said or ever suggested that we have a right to absentee ballot. And I know that is what we are saying here, and I just think it is another example of overreach and that we may not know best. I know that is a terrible thing for us to consider as Federal elected officials. But I found that to be the case at times when I was a California Attorney General.

So with all due respect to the gentlelady's efforts and her acceptance of amendments on our side of the aisle, and I appreciate that, I just can't support a bill that makes that absolute declaration that there is an inequity because some States have made the determination we ought to encourage people to actually go to the polls unless they cannot make it.

So, with that, I am happy to yield back the balance of my time.

The CHAIRMAN. I thank the gentleman and now recognize the gentlelady from California.

Mrs. DAVIS of California. Thank you, Mr. Chairman.

And I just want to respond really briefly, because I think that there is no attempt in this bill to say to people that this is not an important communal activity. I go to the polls. You go to the polls. But do you know what? Under existing conditions in some States, a Member of Congress would have to put in a special letter saying that they need an excuse in order to vote by mail. So it is inequitable.

I think in Mr. Ehlers' State if you are 60 years old that is an excuse. If you are 59 or under, it is not. I mean, what is equitable about that?

So I think that we need to be careful that we narrow this bill as we have done. We are allowing people who have circumstances that they can't necessarily control and get to the polls. We want to make that equitable for everybody. This in no way undermines the communal responsibility. In fact, we know that in those States that have gone to vote by mail it has actually created more interest in voting. It hasn't depressed voting there.

So I would just hope that you would perhaps over a period of time take another look at this, and maybe it will help you out in the next election as well.

We wouldn't want to go backwards in California. We are not asking people to do that. But, essentially, by saying we are not going to move forward, we are saying to some States that maybe they don't need to do this, and I think they have made the determination that they do. We just want to make it equitable for all States to be able to do this. And we are giving them plenty of time. I think we are putting the security provisions in there, and I hope that we can move forward with this.

The CHAIRMAN. Will the lady make a motion?

Mrs. DAVIS of California. Mr. Chairman, I move the committee report the bill favorably to the House, as amended.

The CHAIRMAN. All those in favor of the motion, signify by saying aye. All those opposed, no.

In the opinion of the Chair, the ayes have it. The motion is agreed to. Without objection, the motion to reconsider is laid upon the table and the bill reported to the House. Without objection, the

staff are authorized to make technical and conforming changes to H.R. 281.

Mr. EHLERS. Mr. Chairman, I reserve the right and I would like to move that I reserve the right to include minority views in the final report to the House. And also simply want to comment that I am still very concerned about the concerns raised by local governments to the National Council of State Legislatures. I hope that we can resolve that as we go through the process, because, otherwise, I presumably would vote no on the floor.

Thank you.

The CHAIRMAN. Members will have 2 additional days provided by the House rules to file views.

Next, the committee will turn to H.R. 5036, the Emergency Assistance for Secure Elections Act of 2008.

[The information follows:]

[Additionally, pursuant to a request by Mr. Ehlers under unanimous consent on page 143, a letter pertaining to H.R. 5036 follows:]

I

110TH CONGRESS
2D SESSION

H. R. 5036

To direct the Administrator of General Services to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 2008

Mr. HOLT (for himself, Mr. TOM DAVIS of Virginia, Mr. WEXLER, Mr. EMANUEL, Mr. CONYERS, Mr. LEWIS of Georgia, Mrs. MALONEY of New York, Ms. SCHAKOWSKY, Mr. WAXMAN, Mr. GEORGE MILLER of California, Mr. ABERCROMBIE, Mr. INSLEE, Ms. BALDWIN, Mr. FARR, Mr. RYAN of Ohio, Mr. HONDA, Mr. DOGGETT, Mr. BLUMENAUER, Mr. HARE, Mr. LOEBSACK, Mr. SIRES, Mr. FRANK of Massachusetts, Mr. WEINER, Mr. BERMAN, Mr. DEFAZIO, Ms. HIRONO, Mr. GRIJALVA, Mr. DAVIS of Illinois, Mr. ROTHMAN, Mr. OLVER, Mr. FATTAH, Mr. DOYLE, Ms. KAPTUR, Ms. WATSON, Mr. HINCHEY, Mr. KLEIN of Florida, and Mr. CROWLEY) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on Science and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To direct the Administrator of General Services to reimburse certain jurisdictions for the costs of obtaining paper ballot voting systems for the general elections for Federal office to be held in November 2008, to reimburse jurisdictions for the costs incurred in conducting audits or

hand counting of the results of the general elections for Federal office to be held in November 2008, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Assistance for Secure Elections Act of 2008".

SEC. 2. PAYMENTS TO CERTAIN JURISDICTIONS CONDUCTING 2008 GENERAL ELECTIONS.

(a) REIMBURSEMENT FOR CONVERSION TO PAPER BALLOT VOTING SYSTEM.—

(1) IN GENERAL.—The Administrator of General Services shall pay to each eligible jurisdiction an amount equal to the sum of the following:

(A) The documented reasonable costs paid or incurred by such jurisdiction to replace any voting systems used to conduct the general elections for Federal office held in November 2006 that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast with paper ballot voting systems.

(B) The documented reasonable costs paid or incurred by such jurisdiction to obtain non-tabulating ballot marking devices that are ac-

cessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002.

(C) The documented reasonable costs paid or incurred by such jurisdiction to obtain ballot marking stations or voting booths for the protection of voter privacy.

(D) The documented reasonable costs paid or incurred by such jurisdiction to obtain paper ballots.

(E) The documented reasonable costs paid or incurred by such jurisdiction to obtain precinct-based equipment that tabulates paper ballots or scans paper ballots.

(F) The documented reasonable administrative costs paid or incurred by such jurisdiction that are associated with meeting the requirements for an eligible jurisdiction.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Administrator (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such

form as the Administrator may require, an application containing—

(A) assurances that the jurisdiction conducted regularly scheduled general elections for Federal office in November 2006 using (in whole or in part) a voting system that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast;

(B) assurances that the jurisdiction will conduct the regularly scheduled general elections for Federal office to be held in November 2008 using only paper ballot voting systems;

(C) assurances that the jurisdiction has obtained or will obtain a sufficient number of non-tabulating ballot marking devices that are accessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002;

(D) assurances that the jurisdiction has obtained or will obtain a sufficient number of ballot marking stations or voting booths for the protection of voter privacy;

(E) assurances that the jurisdiction has obtained or will obtain a sufficient number of paper ballots;

(F) such information and assurances as the Administrator may require to make the determinations under paragraph (1); and

(G) such other information and assurances as the Administrator may require.

(3) DETERMINATIONS OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(4) PAPER BALLOT VOTING SYSTEM DEFINED.—In this subsection, a "paper ballot voting system" means a voting system that uses a paper ballot marked by the voter by hand or a paper ballot marked by the voter with the assistance of a nontabulating ballot marking device described in paragraph (1)(B).

(b) REIMBURSEMENT FOR PROVISION OF EMERGENCY PAPER BALLOTS BY JURISDICTIONS USING DIRECT RECORDING ELECTRONIC VOTING SYSTEMS.—

(1) IN GENERAL.—The Administrator shall pay to each eligible jurisdiction an amount equal to the documented reasonable costs paid or incurred by such jurisdiction to obtain, deploy, and tabulate emergency paper ballots (and related supplies and equipment) that may be used in the event of the failure of a direct recording electronic voting system in the regularly scheduled general elections for Federal office to be held in November 2008.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Administrator (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Administrator may require, an application containing—

(A) assurances that the jurisdiction will post, in a conspicuous manner at all polling places at which a direct recording electronic voting system will be used in such elections, a notice stating that emergency paper ballots are available at the polling place and that a voter is entitled to use such a ballot upon the failure of a voting system;

(B) assurances that the jurisdiction counts each such emergency paper ballot cast by a voter as a regular ballot cast in the election, and does not treat it (for eligibility purposes) as a provisional ballot under section 302(a) of the Help America Vote Act of 2002, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot;

(C) such information and assurances as the Administrator may require to make the determinations under paragraph (1); and

(D) such other information and assurances as the Administrator may require.

(3) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(c) AMOUNTS.—There are authorized to be appropriated to the Administrator $500,000,000 for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

SEC. 3. PAYMENTS FOR CONDUCTING MANUAL AUDITS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) PAYMENTS.—

(1) ELIGIBILITY FOR PAYMENTS.—If a State, county, or equivalent location conducts manual audits of the results of any of the regularly scheduled general elections for Federal office in November 2008 (and, at the option of the State or jurisdiction involved, conducts audits of elections for State and local office and State and local ballot initiatives and referenda held at the same time as such election) in accordance with the requirements of this section, the Administrator shall make a payment to the State, county, or equivalent location in an amount equal to the documented reasonable costs incurred by the State, county, or equivalent location in conducting the audits.

(2) CERTIFICATION OF COMPLIANCE AND COSTS.—

(A) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State, county, or equivalent location shall submit to the Administrator (and, in the case of a county or equivalent jurisdiction, shall provide a copy to the State), in such form as the Administrator may require, a statement containing—

(i) a certification that the State, county, or equivalent location conducted the audits in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred by the State, county, or equivalent location in conducting the audits; and

(iii) such other information and assurances as the Administrator may require.

(B) AMOUNT OF PAYMENT.—The amount of a payment made to a State, county, or equivalent location under this section shall be equal to the reasonable costs incurred by the State, county, or equivalent location in conducting the audits.

(C) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under this paragraph of whether costs incurred by a State, county, or equivalent location are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(3) TIMING OF PAYMENTS.—The Administrator shall make the payment required under this section to a State, county, or equivalent location not later

than 30 days after receiving the statement submitted by the State, county, or equivalent location under paragraph (2).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator $100,000,000 for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

(b) AUDITS DESCRIBED.—

(1) IN GENERAL.—An audit conducted in accordance with this section is an audit administered by a State, county, or equivalent location, without advance selection of the precincts or notice of the precincts selected, consisting of the random selection of precincts or alternative audit units to be audited and hand counting of the votes cast on the paper ballots used in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast) attributable to those precincts or alternative audit units, and the comparison of the results of those hand counts with the corresponding final unofficial vote count (as defined by the State, county, or equivalent location) of the votes cast in the election.

(2) COMPLETENESS.—With respect to each precinct or alternative audit unit audited in accordance with the method selected under subsection (c)(2), the State, county, or equivalent location shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the precinct or alternative audit unit, and that the tally produced by counting all of those paper ballots by hand is compared with the corresponding final unofficial vote count (as defined by the State, county, or equivalent location) announced with respect to that precinct or audit unit in the election.

(3) DETERMINATION OF ENTITY CONDUCTING AUDITS; INDEPENDENCE STANDARDS.—An audit administered by a State, county, or equivalent location in accordance with this section shall be overseen by an entity selected for such purpose by the State, county, or equivalent location in accordance with such criteria as the State, county, or equivalent location considers appropriate consistent with the requirements of this section, except that the entity must meet a general standard of independence as defined by the State, county, or equivalent location.

(4) REFERENCES TO ELECTION AUDITOR.—In this section, the term "Election Auditor" means, with respect to a State, county, or equivalent location, the entity selected by the State, county, or equivalent location under paragraph (3).

(c) NUMBER OF BALLOTS COUNTED UNDER AUDIT.—

(1) IN GENERAL.—The hand counts of the paper ballots administered by the Election Auditor of a State, county, or equivalent location under this section with respect to an election shall occur in at least 3 percent of all precincts or equivalent locations (or alternative audit units used in accordance with the method provided for under paragraph (2)) in which ballots were cast in the election.

(2) USE OF ALTERNATIVE SAMPLING MECHANISM.—Notwithstanding paragraph (1) (and subject to the completeness requirement set forth in subsection (b)(2)), a State, county, or equivalent location may adopt and apply an alternative sampling mechanism to determine the number of paper ballots which will be subject to hand counts in accordance with this section with respect to an election, so long as the alternative sampling mechanism uses the paper ballots verified by voters or paper ballot print-

outs verifiable by voters at the time the vote is cast to conduct the audit and the Director of the National Institute of Standards and Technology or a panel of 3 independent statisticians appointed by the Election Auditor of the State, county, or equivalent jurisdiction determines that the alternative sampling mechanism will be at least as statistically effective in ensuring the accuracy of the election results as the sample size specified under paragraph (1).

(d) PROCESS FOR ADMINISTERING AUDITS.—

(1) IN GENERAL.—The Election Auditor of a State, county, or equivalent location shall oversee the administration of an audit conducted under this section in accordance with the following procedures:

(A) The Election Auditor shall commence the audit within 48 hours after the State, county, or equivalent location announces the final unofficial vote count (as defined by the State, county, or equivalent location) in each precinct in which votes are cast in the election which is the subject of the audit.

(B) The Election Auditor shall complete the audit, resolve discrepancies discovered in the audit, and submit the audit report required under subsection (f)(1), prior to the certifi-

cation by the State, county, or equivalent location of the results of the election.

(C) Within each precinct or alternative audit unit, and subject to the completeness requirement set forth in subsection (b)(2), the audit shall include all ballots (including absentee ballots in accordance with the procedure set forth in subsection (e)(3) or otherwise, early ballots, and provisional ballots) cast by all individuals who voted in or are under the jurisdiction of the precinct or alternative audit unit with respect to which the audit takes place, without regard to the time, place, or manner in which the votes were cast.

(2) USE OF ELECTION PERSONNEL.—In administering the audits, the Election Auditor may utilize the services of jurisdiction personnel, including election administration personnel and poll workers, without regard to whether or not the personnel have professional auditing experience.

(3) LOCATION.—The Election Auditor shall administer an audit conducted under this section at the location where the ballots cast in the election are stored and counted after the date of the election, or such other appropriate and secure location agreed

upon by the Election Auditor and the individual who is responsible under State law for the custody of the ballots, and in the presence of the personnel who under State law are responsible for the custody of the ballots.

(4) ADDITIONAL AUDITS IF CAUSE SHOWN.—

(A) IN GENERAL.—If the Election Auditor finds that any of the hand counts administered under this section do not match the final unofficial vote count of the results of an election, the Election Auditor shall oversee the administration of hand counts under this section of such additional precincts (or equivalent jurisdictions) as the Election Auditor considers appropriate (in accordance with the procedures described in subparagraph (B)) to resolve any concerns resulting from the audit and ensure the accuracy of the results.

(B) ESTABLISHMENT AND PUBLICATION OF PROCEDURES GOVERNING ADDITIONAL AUDITS.—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall establish and publish procedures for carrying out the additional audits under this

subsection, including the means by which the State, county, or equivalent location shall resolve any concerns resulting from the audit with finality and ensure the accuracy of the results.

(5) PUBLIC OBSERVATION OF AUDITS.—Each audit conducted under this section shall be conducted in a manner that allows public observation of the entire process, including reasonable advance notice, sufficient to confirm but not interfere with the proceedings.

(e) SELECTION OF PRECINCTS.—

(1) IN GENERAL.—Except as provided in paragraph (3), the selection of the precincts in the State, county, or equivalent location in which the Election Auditor of the State, county, or equivalent location shall oversee the administration of hand counts in an audit conducted under this section shall be made by the Election Auditor after the final unofficial vote count (as defined by the State, county or equivalent location) has been announced and on an entirely random basis using a uniform distribution in which all precincts in the State, county, or equivalent location have an equal chance of being selected, in accordance with procedures adopted by the State, county, or equivalent location, except that, consistent

with the other requirements of this paragraph, in the case of an audit conducted by the State, at least one precinct or alternative audit unit shall be selected at random in each county or equivalent jurisdiction.

(2) PUBLIC SELECTION.—The random selection of precincts under paragraph (1) shall be conducted in public, at a time and place announced in advance.

(3) MANDATORY SELECTION OF PRECINCTS ESTABLISHED SPECIFICALLY FOR ABSENTEE BALLOTS.—If a State, county, or equivalent location establishes a separate precinct for purposes of counting the absentee ballots cast in an election and treats all absentee ballots as having been cast in that precinct, and if the State, county, or equivalent location does not make absentee ballots sortable by precinct and include those ballots in the hand count administered with respect to that precinct, subject to the completeness requirement set forth in subsection (b)(2), the State, county, or equivalent location may divide absentee ballots into audit units approximately equal in size to the average precinct in the State, county, or equivalent location in terms of the number of ballots cast, and shall randomly select and include at least 3 percent of those audit units

in the audit carried out in accordance with this section.

(4) DEADLINE FOR ADOPTION OF PROCEDURES.—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall adopt and publish the procedures described in paragraph (1).

(f) PUBLICATION OF RESULTS.—As soon as practicable after the completion of an audit conducted under this section, the Election Auditor of a State, county, or equivalent location shall submit to the Administrator the results of the audit, and shall include in the submission a comparison of the results of the election attributable to the precinct or alternative audit unit as determined by the Election Auditor under the audit and the final unofficial vote count attributable to the precinct or alternative audit unit as announced by the State, county, or equivalent location and all undervotes, overvotes, blank ballots, and spoiled, voided or cancelled ballots, as well as a list of any discrepancies discovered between the initial, subsequent, and final hand counts overseen by the Election Auditor and such final unofficial vote count and any explanation for such discrepancies, broken down by the types of ballots which were subject to the audit.

(g) REPORTS BY ADMINISTRATOR.—The Administrator shall publish promptly all reports on the results of audits conducted under this section that are submitted pursuant to this section.

(h) DEADLINE FOR APPROVAL OF ALTERNATIVE BALLOT SAMPLING METHODS BY NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.—The Director of the National Institute of Standards and Technology shall, not later than 30 days after receiving a request by a State, county, or equivalent location for approval of an alternative ballot sampling method under subsection (e)(2), respond to the State, county, or equivalent location with confirmation as to whether or not the method is at least as statistically effective in ensuring the accuracy of the election results as the procedure described in subsection (e)(1).

SEC. 4. PAYMENTS FOR CONDUCTING HAND COUNTS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) PAYMENTS.—

(1) ELIGIBILITY FOR PAYMENTS.—If a State, county, or equivalent location tallies the results of any regularly scheduled general election for Federal office in November 2008 by conducting a hand count of the votes cast on the paper ballots used in the election (including paper ballot printouts verifiable

by the voter at the time the vote is cast) in accordance with the requirements of this section, the Administrator shall make a payment to the State, county, or equivalent location in an amount equal to the documented reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(2) CERTIFICATION OF COMPLIANCE AND COSTS.—

(A) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State, county, or equivalent location shall submit to the Administrator (and, in the case of a county or equivalent jurisdiction, shall provide a copy to the State), in such form as the Administrator may require, a statement containing—

(i) a certification that the State, county, or equivalent location conducted the hand counts in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts; and

(iii) such other information and assurances as the Administrator may require.

(B) AMOUNT OF PAYMENT.—The amount of a payment made to a State, county, or equivalent location under this section shall be equal to the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(C) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under this paragraph of whether costs incurred by a State, county, or equivalent location are reasonable shall be made by the Administrator in consultation with the Election Assistance Commission.

(3) TIMING OF PAYMENTS.—The Administrator shall make the payment required under this section to a State, county, or equivalent location not later than 30 days after receiving the statement submitted by the State, county, or equivalent location under paragraph (2).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator $30,000,000 for payments under this section. Any amounts appropriated pursuant to the

authorization under this subsection shall remain available until expended.

(b) HAND COUNTS DESCRIBED.—

(1) IN GENERAL.—A hand count conducted in accordance with this section is a count of all of the paper ballots on which votes were cast in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast), including votes cast on an early, absentee, emergency, and provisional basis, which is conducted by hand to determine the winner of the election and is conducted without using electronic equipment or software.

(2) COMPLETENESS.—With respect to each jurisdiction in which a hand count is conducted, the State, county, or equivalent location shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the jurisdiction.

(c) PROCESS FOR CONDUCTING HAND COUNTS.—

(1) IN GENERAL.—In order to meet the requirements of this section, a hand count of the ballots cast in an election shall be conducted in accordance with the following procedures:

(A) On the date of the election, the jurisdiction shall conduct an initial hand count of the ballots cast in the election, using the ballots which are eligible to be counted in the election as of the time the polls are closed.

(B) Any ballot which is eligible to be counted in the election but which is not included in the initial count conducted under subparagraph (A), including a provisional ballot cast by an individual who is determined to be eligible to vote in the election or an absentee ballot received after the date of the election but prior to the applicable deadline under State law for the receipt of absentee ballots, shall be subject to a hand count in accordance with this section and added to the tally conducted under subparagraph (A) not later than 48 hours after the ballot is determined to be eligible to be counted.

(C) The hand count shall be conducted by a team of not fewer than 2 individuals who shall be witnessed by at least one observer sitting at the same table with such individuals. Except as provided in paragraph (2), all such

individuals shall be election officials of the jurisdiction in which the hand count is conducted.

(2) USE OF OTHER PERSONNEL.—An individual who is not an election official of the jurisdiction in which a hand count is conducted under this section may serve on a team conducting the hand count or may serve as an observer of a team conducting the hand count if the jurisdiction certifies that the individual has completed such training as the jurisdiction deems appropriate to conduct or observe the hand count (as the case may be).

(3) LOCATION.—The hand counts conducted under this section of the ballots cast in an election shall be conducted—

(A) in the case of ballots cast at a polling place on the date of the election, at the polling place at which the ballots were cast; or

(B) in the case of any other ballots, at the office of the chief election official of the jurisdiction conducting the hand count.

(4) INFORMATION INCLUDED IN RESULTS.—Each hand count conducted under this section shall produce the following information with respect to the election:

(A) The vote tally for each candidate.

(B) The number of overvotes, undervotes, spoiled ballots, and blank ballots cast (or their equivalents, as defined by the State, county or equivalent location).

(C) The number of write-in ballots and the names written in on such ballots pursuant to State law.

(D) The total number of ballots cast.

(E) A record of judgement calls made regarding voter intent.

(5) PUBLIC OBSERVATION OF HAND COUNTS.—Each hand count conducted under this section shall be conducted in a manner that allows public observation of the entire process (including the opening of the ballot boxes or removal of machine-printed ballots from their containers, the sorting, counting, and notation of results, and the announcement of final determinations) sufficient to confirm but not interfere with the proceedings.

(6) ESTABLISHMENT AND PUBLICATION OF PROCEDURES.—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall establish and publish procedures for carrying out hand counts under this subsection.

(d) ANNOUNCEMENT AND POSTING OF RESULTS.—Upon the completion of a hand count conducted under this section, the State, county, or equivalent location shall announce the results to the public and post them on a public Internet site.

(e) USE OF HAND COUNT IN CERTIFICATION OF RESULTS.—The State shall use the results of the hand count conducted under this section for purposes of certifying the results of the election involved. Nothing in this section may be construed to affect the application or operation of any State law governing the recount of the results of an election.

SEC. 5. STUDY, TESTING, AND DEVELOPMENT OF PRODUCTS AND PRACTICES TO ENSURE ACCESSIBILITY OF PAPER BALLOT VERIFICATION AND CASTING FOR CERTAIN INDIVIDUALS.

(a) STUDY, TESTING, AND DEVELOPMENT.—The Director of the National Institute of Standards and Technology (hereafter in this section referred to as the "Director") shall study, test, and develop products and practices that ensure the accessibility of paper ballot verification and casting for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including the mechanisms themselves and the processes through which the mecha-

nisms are used. In carrying out this subsection, the Director shall specifically investigate existing and potential methods or devices, including non-electronic devices, that will assist such individuals and voters in creating voter-verified paper ballots, presenting or transmitting the information printed or marked on such ballots back to such individuals and voters in an accessible form, and enabling the voters to cast the ballots.

(b) REPORT.—Not later than June 30, 2009, the Director shall submit a report to Congress on the results of the studying, testing, and development of products and practices under subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director to carry out this section $3,000,000, to remain available until expended.

SEC. 6. DEFINITIONS.

In this Act—

(1) the term "Administrator" means the Administrator of General Services; and

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

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NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

March 31, 2008

The Honorable Robert A. Brady
Chairman
Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515

The Honorable Vernon J. Ehlers
Ranking Member
Committee on House Administration
1313 Longworth House Office Building
Washington, DC 20515

Re: H.R. 5036, the "Emergency Assistance for Secure Elections Act of 2008"

Dear Chairman Brady and Ranking Member Ehlers:

On behalf of the National Conference of State Legislatures (NCSL) we wish to formally apprise the Committee of our concerns with H.R. 5036, the "Emergency Assistance for Secure Elections Act of 2008" which is before the Committee today for markup. First and foremost, we wish to thank you and other members of the Committee for returning to an inclusive committee process that provided NCSL with the opportunity to comment and discuss the provisions of H.R. 5036 prior to its introduction and markup. NCSL greatly values the relationship it has with this Committee on election reform issues and all other matters within its jurisdiction that impact states. We look forward to continuing this partnership as we head into the next round of elections and beyond.

H.R. 5036 is a voluntary grant program for states and localities to provide for verified voter paper trail processes and to establish auditing procedures for participating states and localities. We appreciate that, unlike prior legislation considered by this Committee this year, this bill is voluntary for states. However, NCSL believes that H.R. 5036 as drafted provides little incentive for states or localities to participate because its provisions do not incorporate enough state flexibility. States prefer using known and tested procedures that might differ, but be as or more effective than standards set out in this bill. NCSL would urge the Committee to rethink its approach to encourage, rather than discourage states from innovating in this area.

Once again, we thank the Committee for including us in discussions about H.R. 5036 and thank you for hearing our concerns about this legislation. If you have any questions, please don't hesitate to contact NCSL staff Susan Parnas Frederick at (202)624-3566 or susan.frederick@ncsl.org. Thank you.

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Sincerely,

Donna D. Stone
Delaware House of Representatives
President, NCSL

Speaker Joe Hackney
North Carolina House of Representatives
President-Elect, NCSL

Cc: Tom Hicks
Gineen Beach
Keith Abouchar

The CHAIRMAN. I now recognize myself for an opening statement. This legislation will help States ensure that the 2008 general elections will have a paper record and elections across the country can be audited. This legislation is voluntary for States and provides funds to reimburse States for the cost if they choose to opt in.

A substitute amendment will be offered by Chairwoman Lofgren of the Subcommittee on Elections as several improvements to the original legislation.

And I would now like to recognize Ranking Member Ehlers for his opening remarks.

Mr. EHLERS. Thank you, Mr. Chairman.

I thank you for your efforts to continue our discussion on how to best secure our Nation's elections systems; and I also commend Congressman Holt for his passionate work on this issue, as I know he has been very frequently and constantly involved with the Administration of Federal Elections.

While this bill, H.R. 5036, authorizes reimbursement for the use of paper-based voting systems, an important distinction that separates this bill from previous legislation is that States are not required to use paper ballots or auditing but only request financial support should they choose to do so. In other words, it is an opt-in proposal.

With only 8 months remaining before the general election, had paper balloting been mandatory, chaos would have likely been the result at polling places across the Nation. Instead, we will provide States an opportunity to select the method that best fits their needs; and that again is in accord with my attempt to respect the abilities and the rights of local and State government.

It is important, however, that we evaluate the effectiveness of this in all Federal elections legislation to ensure that we are supporting States in the execution of their responsibilities with respect to Federal elections.

I look forward to continuing the work with Chairman Brady, the members of the committee and Congressman Holt to ensure that all citizens will continue to cast a vote with confidence, that their voice will be heard and that their voice will not be muted by illegally cast ballots. In that spirit, I will be offering several amendments that I believe will improve the bill.

And, Mr. Chairman, I would just comment, I understand that your side is willing to accept most of the amendments; and so we may be able to save a lot of time by just not going into a detailed discussion on those, even though I can do it if you wish.

[The statement of Mr. Ehlers follows:]

[After Chairman Brady's opening remarks on the markup of H.R. 5036 (Rush Holt's Bill)]

I thank Chairman Brady for his efforts to continue our discussion on how to best secure our nation's elections systems, as well as Congressman Holt for his work on this issue, as I know he has long been passionate about the administration of federal elections.

While H.R. 5036 authorizes reimbursement for the use of paper-based voting systems, an important distinction that separates this bill from previous legislation is that states are not ***required*** to use paper ballots or auditing, but can request financial support should they choose to do so. With only eight months remaining before the general election, had paper balloting been mandatory, chaos would have likely been the result at polling places across the nation. Instead, we will provide states an opportunity to select the method that best fits their needs.

It is important, however, that we evaluate the effectiveness of this, and all, federal elections legislation, to ensure that we are supporting states in the execution of their responsibilities with respect to federal elections.

I look forward to continuing to work with Chairman Brady, the Members of this Committee, and Congressman Holt to ensure that all citizens may continue to cast a vote with confidence that their voice will be heard. In that spirit, I will be offering several amendments that I believe will improve the bill.

Thank you, and I reserve the balance of my time.

The CHAIRMAN. I agree to that, sir.

Mr. EHLERS. I will yield back.

The CHAIRMAN. Does anybody else have any opening statements? I now call up H.R. 5036, the Emergency Assistance for Secure Elections Act of 2008.

I would now like to recognize the gentlelady from California, Ms. Lofgren, the Chair on the Subcommittee on Elections, to offer an amendment.

Ms. LOFGREN. Thank you, Mr. Chairman.

I have an amendment in the nature of a substitute. I don't know if the clerk is prepared to read that.

The CHAIRMAN. The amendment has been distributed.

[The information follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5036

OFFERED BY M__. _____

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Emergency Assistance for Secure Elections Act of 2008".

SEC. 2. PAYMENTS TO CERTAIN JURISDICTIONS CONDUCTING 2008 GENERAL ELECTIONS.

(a) REIMBURSEMENT FOR CONVERSION TO PAPER BALLOT VOTING SYSTEM.—

(1) IN GENERAL.—The Election Assistance Commission shall pay to each eligible jurisdiction an amount equal to the sum of the following:

(A) The documented reasonable costs paid or incurred by such jurisdiction to replace any voting systems used to conduct the general elections for Federal office held in November 2006 that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast with paper ballot voting systems.

(B) The documented reasonable costs paid or incurred by such jurisdiction to obtain non-tabulating ballot marking devices that are accessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002.

(C) The documented reasonable costs paid or incurred by such jurisdiction to obtain ballot marking stations or voting booths for the protection of voter privacy.

(D) The documented reasonable costs paid or incurred by such jurisdiction to obtain paper ballots.

(E) The documented reasonable costs paid or incurred by such jurisdiction to obtain precinct-based equipment that tabulates paper ballots or scans paper ballots.

(F) The documented reasonable administrative costs paid or incurred by such jurisdiction that are associated with meeting the requirements for an eligible jurisdiction.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Commission (and, in the

case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Commission may require, an application containing—

(A) assurances that the jurisdiction conducted regularly scheduled general elections for Federal office in November 2006 using (in whole or in part) a voting system that did not use or produce a paper ballot verified by the voter or a paper ballot printout verifiable by the voter at the time the vote is cast;

(B) assurances that the jurisdiction will conduct the regularly scheduled general elections for Federal office to be held in November 2008 using only paper ballot voting systems;

(C) assurances that the jurisdiction has obtained or will obtain a sufficient number of non-tabulating ballot marking devices that are accessible for individuals with disabilities in accordance with the requirements of section 301(a)(3) of the Help America Vote Act of 2002;

(D) assurances that the jurisdiction has obtained or will obtain a sufficient number of

ballot marking stations or voting booths for the protection of voter privacy;

(E) assurances that the jurisdiction has obtained or will obtain a sufficient number of paper ballots;

(F) such information and assurances as the Commission may require to make the determinations under paragraph (1); and

(G) such other information and assurances as the Commission may require.

(3) DETERMINATIONS OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Commission.

(4) PAPER BALLOT VOTING SYSTEM DEFINED.—In this subsection, a ''paper ballot voting system'' means a voting system that uses a paper ballot marked by the voter by hand or a paper ballot marked by the voter with the assistance of a nontabulating ballot marking device described in paragraph (1)(B).

(b) REIMBURSEMENT FOR RETROFITTING OF DIRECT RECORDING ELECTRONIC VOTING SYSTEMS TO PRODUCE VOTER VERIFIABLE PAPER RECORDS.—

(1) IN GENERAL.—The Commission shall pay to each eligible jurisdiction an amount equal to the documented reasonable costs paid or incurred by such jurisdiction to retrofit direct recording electronic voting systems so that the systems will produce a voter verifiable paper record of the marked ballot for verification by the voter at the time the vote is cast, including the costs of obtaining printers to produce the records.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Commission (and, in the case of a county or equivalent jurisdiction, provides a copy to the State), at such time and in such form as the Commission may require, an application containing—

(A) assurances that the jurisdiction has obtained or will obtain a printer for and retrofit each direct recording electronic voting system used to conduct the general elections for Federal office held in November 2008 so that the system will produce a voter verifiable paper record of the marked ballot for verification by the voter;

(B) such information and assurances as the Commission may require to make the determinations under paragraph (1); and

(C) such other information and assurances as the Commission may require.

(3) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Commission.

(c) REIMBURSEMENT FOR PROVISION OF BACKUP PAPER BALLOTS BY JURISDICTIONS USING DIRECT RECORDING ELECTRONIC VOTING SYSTEMS.—

(1) IN GENERAL.—The Commission shall pay to each eligible jurisdiction an amount equal to the documented reasonable costs paid or incurred by such jurisdiction to obtain, deploy, and tabulate backup paper ballots (and related supplies and equipment) that may be used in the event of the failure of a direct recording electronic voting system in the regularly scheduled general elections for Federal office to be held in November 2008.

(2) ELIGIBLE JURISDICTION DEFINED.—In this subsection, an "eligible jurisdiction" means a jurisdiction that submits to the Commission (and, in the case of a county or equivalent jurisdiction, provides

a copy to the State), at such time and in such form as the Commission may require, an application containing—

(A) assurances that the jurisdiction will post, in a conspicuous manner at all polling places at which a direct recording electronic voting system will be used in such elections, a notice stating that backup paper ballots are available at the polling place and that a voter is entitled to use such a ballot upon the failure of a voting system;

(B) assurances that the jurisdiction counts each such backup paper ballot cast by a voter as a regular ballot cast in the election, and does not treat it (for eligibility purposes) as a provisional ballot under section 302(a) of the Help America Vote Act of 2002, unless the individual casting the ballot would have otherwise been required to cast a provisional ballot;

(C) such information and assurances as the Commission may require to make the determinations under paragraph (1); and

(D) such other information and assurances as the Commission may require.

(3) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under paragraph (1) of whether costs paid or incurred by a jurisdiction are reasonable shall be made by the Commission.

(d) AMOUNTS.—There are authorized to be appropriated to the Commission such sums as may be necessary for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

SEC. 3. PAYMENTS FOR CONDUCTING MANUAL AUDITS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) PAYMENTS.—

(1) ELIGIBILITY FOR PAYMENTS.—If a State conducts manual audits of the results of any of the regularly scheduled general elections for Federal office in November 2008 (and, at the option of the State, conducts audits of elections for State and local office held at the same time as such election) in accordance with the requirements of this section, the Commission shall make a payment to the State in an amount equal to the documented reasonable costs incurred by the State in conducting the audits.

(2) CERTIFICATION OF COMPLIANCE AND COSTS.—

(A) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State shall submit to the Commission, in such form as the Commission may require, a statement containing—

(i) a certification that the State conducted the audits in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred in conducting the audits; and

(iii) such other information and assurances as the Commission may require.

(B) AMOUNT OF PAYMENT.—The amount of a payment made to a State under this section shall be equal to the reasonable costs incurred in conducting the audits.

(C) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under this paragraph of whether costs incurred by a State are reasonable shall be made by the Commission.

(3) TIMING OF PAYMENTS.—The Commission shall make the payment required under this section to a State not later than 30 days after receiving the

statement submitted by the State under paragraph (2).

(4) MANDATORY IMMEDIATE REIMBURSEMENT OF COUNTIES AND OTHER JURISDICTIONS.—If a county or other jurisdiction responsible for the administration of an election in a State incurs costs as the result of the State conducting an audit of the election in accordance with this section, the State shall reimburse the county or jurisdiction for such costs immediately upon receiving the payment from the Commission under paragraph (3).

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

(b) AUDIT REQUIREMENTS.—In order to receive a payment under this section for conducting an audit, the State shall meet the following minimum requirements:

(1) Not later than 30 days before the date of the regularly scheduled general election for Federal office in November 2008, the State shall establish and publish guidelines, standards, and procedures to

be used in conducting audits in accordance with this section.

(2) The State shall select an appropriate entity to oversee the administration of the audit, in accordance with such criteria as the State considers appropriate consistent with the requirements of this section, except that the entity must meet a general standard of independence as defined by the State.

(3) The State shall determine whether the units in which the audit will be conducted will be precincts or some alternative auditing unit, and shall apply that determination in a uniform manner for all audits conducted in accordance with this section.

(4) The State shall select the precincts or alternative auditing units in which audits are conducted in accordance with this section in a random manner following the election after the final unofficial vote count (as defined by the State) has been announced, such that each precinct or alternative auditing unit in which the election was held has an equal chance of being selected, subject to paragraph (9), except that the State shall ensure that at least one precinct or alternative auditing unit is selected in each county in which the election is held.

(5) The audit shall be conducted in not less than 2 percent of the precincts or alternative auditing units in the State (in the case of a general election for the office of Senator) or the Congressional district involved (in the case of an election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress).

(6) The State shall determine the stage of the tabulation process at which the audit will be conducted, and shall apply that determination in a uniform manner for all audits conducted in accordance with this section, except that the audit shall commence within 48 hours after the State announces the final unofficial vote count (as defined by the State) in each precinct in which votes are cast in the election which is the subject of the audit.

(7) With respect to each precinct or alternative audit unit audited, the State shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote is cast is available for every vote cast in the precinct or alternative audit unit, and that the tally produced by counting all of those paper ballots or paper ballot printouts by hand is compared with the corresponding final unofficial vote count (as defined by

the State) announced with respect to that precinct or audit unit in the election.

(8) Within each precinct or alternative audit unit, the audit shall include all ballots cast by all individuals who voted in or who are under the jurisdiction of the precinct or alternative audit unit with respect to the election, including absentee ballots (subject to paragraph (9)), early ballots, emergency ballots, and provisional ballots, without regard to the time, place, or manner in which the ballots were cast.

(9) If a State establishes a separate precinct for purposes of counting the absentee ballots cast in the election and treats all absentee ballots as having been cast in that precinct, and if the state does not make absentee ballots sortable by precinct and include those ballots in the hand count described in paragraph (7) which is administered with respect to that precinct, the State may divide absentee ballots into audit units approximately equal in size to the average precinct in the State in terms of the number of ballots cast, and shall randomly select and include at least 2 percent of those audit units in the audit. Any audit carried out with respect to such an audit unit shall meet the same standards applicable under

paragraph (7) to audits carried out with respect to other precincts and alternative audit units, including the requirement that all paper ballots be counted by hand.

(10) The audit shall be conducted in a public and transparent manner, such that members of the public are able to observe the entire process.

(c) COLLECTION AND SUBMISSION OF AUDIT RESULTS; PUBLICATION.—

(1) STATE SUBMISSION OF REPORT.—In order to receive a payment under this section, a State shall submit to the Commission a report, in such form as the Commission may require, on the results of each audit conducted under this section.

(2) COMMISSION ACTION.—The Commission may request additional information from a State based on the report submitted under paragraph (1).

(3) PUBLICATION.—The Commission shall publish each report submitted under paragraph (1) upon receipt.

(d) DELAY IN CERTIFICATION OF RESULTS BY STATE.—No State may certify the results of any election which is subject to an audit under this section prior to completing the audit, resolving discrepancies discovered in

the audit, and submitting the report required under subsection (c).

SEC. 4. PAYMENTS FOR CONDUCTING HAND COUNTS OF RESULTS OF 2008 GENERAL ELECTIONS.

(a) PAYMENTS.—

(1) ELIGIBILITY FOR PAYMENTS.—If a State, county, or equivalent location tallies the results of any regularly scheduled general election for Federal office in November 2008 by conducting a hand count of the votes cast on the paper ballots used in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast) in accordance with the requirements of this section, the Commission shall make a payment to the State, county, or equivalent location in an amount equal to the documented reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(2) CERTIFICATION OF COMPLIANCE AND COSTS.—

(A) CERTIFICATION REQUIRED.—In order to receive a payment under this section, a State, county, or equivalent location shall submit to the Commission (and, in the case of a county or equivalent jurisdiction, shall provide a

copy to the State), in such form as the Commission may require, a statement containing—

(i) a certification that the State, county, or equivalent location conducted the hand counts in accordance with all of the requirements of this section;

(ii) a statement of the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts; and

(iii) such other information and assurances as the Commission may require.

(B) AMOUNT OF PAYMENT.—The amount of a payment made to a State, county, or equivalent location under this section shall be equal to the reasonable costs incurred by the State, county, or equivalent location in conducting the hand counts.

(C) DETERMINATION OF REASONABLENESS OF COSTS.—The determinations under this paragraph of whether costs incurred by a State, county, or equivalent location are reasonable shall be made by the Commission.

(3) TIMING OF PAYMENTS.—The Commission shall make the payment required under this section

to a State, county, or equivalent location not later than 30 days after receiving the statement submitted by the State, county, or equivalent location under paragraph (2).

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Commission such sums as may be necessary for payments under this section. Any amounts appropriated pursuant to the authorization under this subsection shall remain available until expended.

(b) HAND COUNTS DESCRIBED.—

(1) IN GENERAL.—A hand count conducted in accordance with this section is a count of all of the paper ballots on which votes were cast in the election (including paper ballot printouts verifiable by the voter at the time the vote is cast), including votes cast on an early, absentee, emergency, and provisional basis, which is conducted by hand to determine the winner of the election and is conducted without using electronic equipment or software.

(2) COMPLETENESS.—With respect to each jurisdiction in which a hand count is conducted, the State, county, or equivalent location shall ensure that a voter verified paper ballot or paper ballot printout verifiable by the voter at the time the vote

is cast is available for every vote cast in the jurisdiction.

(c) PROCESS FOR CONDUCTING HAND COUNTS.—

(1) IN GENERAL.—In order to meet the requirements of this section, a hand count of the ballots cast in an election shall be conducted in accordance with the following procedures:

(A) On the date of the election, the jurisdiction shall conduct an initial hand count of the ballots cast in the election, using the ballots which are eligible to be counted in the election as of the time the polls are closed.

(B) Any ballot which is eligible to be counted in the election but which is not included in the initial count conducted under subparagraph (A), including a provisional ballot cast by an individual who is determined to be eligible to vote in the election or an absentee ballot received after the date of the election but prior to the applicable deadline under State law for the receipt of absentee ballots, shall be subject to a hand count in accordance with this section and added to the tally conducted under subparagraph (A) not later than 48 hours after

the ballot is determined to be eligible to be counted.

(C) The hand count shall be conducted by a team of not fewer than 2 individuals who shall be witnessed by at least one observer sitting at the same table with such individuals. Except as provided in paragraph (2), all such individuals shall be election officials of the jurisdiction in which the hand count is conducted.

(2) USE OF OTHER PERSONNEL.—An individual who is not an election official of the jurisdiction in which a hand count is conducted under this section may serve on a team conducting the hand count or may serve as an observer of a team conducting the hand count if the jurisdiction certifies that the individual has completed such training as the jurisdiction deems appropriate to conduct or observe the hand count (as the case may be).

(3) LOCATION.—The hand counts conducted under this section of the ballots cast in an election shall be conducted—

(A) in the case of ballots cast at a polling place on the date of the election, at the polling place at which the ballots were cast; or

(B) in the case of any other ballots, at the office of the chief election official of the jurisdiction conducting the hand count.

(4) INFORMATION INCLUDED IN RESULTS.—Each hand count conducted under this section shall produce the following information with respect to the election:

(A) The vote tally for each candidate.

(B) The number of overvotes, undervotes, spoiled ballots, and blank ballots cast (or their equivalents, as defined by the State, county or equivalent location).

(C) The number of write-in ballots and the names written in on such ballots pursuant to State law.

(D) The total number of ballots cast.

(E) A record of judgement calls made regarding voter intent.

(5) PUBLIC OBSERVATION OF HAND COUNTS.—Each hand count conducted under this section shall be conducted in a manner that allows public observation of the entire process (including the opening of the ballot boxes or removal of machine-printed ballots from their containers, the sorting, counting, and notation of results, and the announcement of final

determinations) sufficient to confirm but not interfere with the proceedings.

(6) ESTABLISHMENT AND PUBLICATION OF PROCEDURES.—Prior to the date of the regularly scheduled general election for Federal office held in November 2008, a State, county, or equivalent location shall establish and publish procedures for carrying out hand counts under this subsection.

(d) APPLICATION TO JURISDICTIONS CONDUCTING ELECTIONS WITH DIRECT RECORDING ELECTRONIC VOTING SYSTEMS.—

(1) REQUIRING SYSTEMS TO PRODUCE VOTER VERIFIABLE PAPER RECORD.—If a State, county, or equivalent location uses a direct recording electronic voting system to conduct an election, the State, county, or equivalent location may not receive a payment under this section for conducting a hand count of the votes cast in the election unless (in addition to meeting the other requirements applicable under this section) the State, county, or equivalent location certifies to the Commission that each such system produces a paper record printout of the marked ballot which is verifiable by the voter at the time the vote is cast.

(2) TREATMENT OF PAPER RECORD PRINTOUTS.—In applying this section to a hand count conducted by a State, county, or equivalent location which provides a certification to the Commission under paragraph (1), the paper record printout referred to in such paragraph shall be treated as the paper ballot used in the election.

(e) ANNOUNCEMENT AND POSTING OF RESULTS.—Upon the completion of a hand count conducted under this section, the State, county, or equivalent location shall announce the results to the public and post them on a public Internet site.

(f) USE OF HAND COUNT IN CERTIFICATION OF RESULTS.—The State shall use the results of the hand count conducted under this section for purposes of certifying the results of the election involved. Nothing in this section may be construed to affect the application or operation of any State law governing the recount of the results of an election.

SEC. 5. STUDY, TESTING, AND DEVELOPMENT OF PRODUCTS AND PRACTICES TO ENSURE ACCESSIBILITY OF PAPER BALLOT VERIFICATION AND CASTING FOR CERTAIN INDIVIDUALS.

(a) STUDY, TESTING, AND DEVELOPMENT.—The Director of the National Institute of Standards and Tech-

nology (hereafter in this section referred to as the "Director") shall study, test, and develop products and practices that ensure the accessibility of paper ballot verification and casting for individuals with disabilities, for voters whose primary language is not English, and for voters with difficulties in literacy, including the mechanisms themselves and the processes through which the mechanisms are used. In carrying out this subsection, the Director shall specifically investigate existing and potential methods or devices, including non-electronic devices, that will assist such individuals and voters in creating voter-verified paper ballots, presenting or transmitting the information printed or marked on such ballots back to such individuals and voters in an accessible form, and enabling the voters to cast the ballots.

(b) REPORT.—Not later than June 30, 2009, the Director shall submit a report to Congress on the results of the studying, testing, and development of products and practices under subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director such sums as may be necessary to carry out this section, to remain available until expended.

SEC. 6. DEFINITIONS.

In this Act—

(1) the term "Commission" means the Election Assistance Commission; and

(2) the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the United States Virgin Islands.

The CHAIRMAN. Without objection, the reading of the amendment will be dispensed with, and the gentlelady from California is recognized for 5 minutes.

Ms. LOFGREN. Thank you.

I offer this amendment in the nature of a substitute to meet some of the concerns expressed by various parties, disability groups, as well as State and local governments over the measure that was reported out by the committee last year.

I want to commend Congressman Holt and his bipartisan cosponsors for their continued dedication to the issue of election reform.

In 2008, the election in November is quickly approaching; and options must be provided to ensure the integrity of the vote. This substitute makes several changes to the legislation, while keeping the core purpose of the bill, providing a voter verifiable paper and auditable paper trail.

It reimburses jurisdictions for retrofitting paperless touch-screen voting machines, or DREs, with systems that produce a voter-verifiable paper record.

It allows for reimbursement for jurisdictions to obtain backup paper ballots in the event of failure of electronic voting systems.

It authorizes reimbursement for jurisdictions which conduct a manual audit of the Federal and any State and local election in November of 2008 in no less than 2 percent of the precincts. This is, however, 100 percent optional. Jurisdictions can pick and choose. It is not all or nothing.

I would note also that the funding has been changed to such sums as necessary, recognizing that this is going to be an appropriations issue more than an authorization issue.

I will say that while the NCSL, NACo, et cetera, have not come out yet in support of the bill, they have been part of the discussions on the compromise from day one. It is my understanding they do not oppose the bill. The changes we have made reflect some of their concerns, particularly the changes to the audit section of the DRE retrofitting and the use of funding for backup paper ballots.

This is not a mandate. It is optional. And while we recognize concerns, significant compromises were made to the bill through the substitute.

And I understand that Mr. Ehlers is prepared to offer four amendments; and, to expedite, I would note that his amendment about jurisdiction involved, his amendment requiring the election officials to secure the ballots, and his amendment requiring election officials conducting the hand count to be split equally down party lines of the two most parties receiving the greatest number of votes is acceptable to us.

You may want to introduce them, but we would assume that you would accept our agreement to those amendments and we could just discuss the one amendment that we do have some concerns about, not the intent but the technicality. So, with that, I hope we can move forward on a bipartisan basis.

Mr. Ehlers, in particular, reached out to me before the recess to see how we could work together in a collaborative way; and it is a lovely way to work in this committee. And with that, Mr. Chairman, I would yield back.

The CHAIRMAN. I understand that we have three amendments that we may agree to vote on en bloc.

Mr. EHLERS. Yes. Mr. Chairman, I would suggest that we vote on the Ehlers Amendments 1, 2 and 4 en bloc.

[The information follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. EHLERS

Page 12, line 13, strike "the State" and insert "the State or jurisdiction involved".

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. EHLERS

Page 18, strike lines 8 through 12 and insert the following (and redesignate the succeeding provisions accordingly):

(A) After the closing of the polls on the date of the election, the appropriate election official shall secure the ballots at the polling place (or, in the case of ballots cast at any other location, at the office of the chief election official of the jurisdiction conducting the hand count).

(B) Beginning at any time after the expiration of the 8-hour period that begins at the time the polls close on the date of the election, the jurisdiction shall conduct an initial hand count of the ballots cast in the election, using the ballots which are eligible to be counted in the election as of the time the polls are closed.

Page 18, line 15, strike "subparagraph (A)" and insert "subparagraph (B)".

Page 18, line 24, strike "subparagraph (A)" and insert "subparagraph (B)".

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. EHLERS

Page 19, add at the end of line 9 the following: "The number of such individuals who are members of the political party whose candidates received the greatest number of the aggregate votes cast in the regularly scheduled general elections for Federal office held in the State in November 2006 shall be equal to the number of such individuals who are members of the political party whose candidates received the second greatest number of the aggregate votes cast in the regularly scheduled general elections for Federal office held in the State in November 2006.".

The CHAIRMAN. 1, 2 and 4 en bloc. All those in favor, signify by saying aye to vote only 1, 2 and 4 amendments en bloc. Signify by saying aye.

Any opposed? No.

1, 2 and 4 are agreed to.

And we now have Amendment No. 3.

[The information follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. EHLERS

Page 19, insert after line 9 the following:

(D) After the completion of the hand count, the ballots shall be run through a tabulating machine or scanner for verification of the tally, if such a machine or scanner is available.

The CHAIRMAN. And, Mr. Ehlers, I will now recognize you.

Mr. EHLERS. Thank you, Mr. Chairman; and I think I can change this one so that it is acceptable, too. I didn't realize——

The CHAIRMAN. We will certainly entertain that motion, sir.

Mr. EHLERS. Amendment No. 3 provides that—because this bill provides that elections officials can decide to use paper and do a hand count, this amendment states all ballots shall also be run through a tabulating machine. Our intent was not to have "shall" but to put—to have "may", just to indicate that they could. And let me give the reason for this.

It is not to double-check the hand count. It is not to double-check the hand count. The intent was, as a scientist, I am sitting here and saying, this is a great experiment. If we have a bunch of people hand counting and if there are also tabulators handy there, why don't they run them through the tabulators, too, and we will get a comparison of the two.

So I would suggest that if we change the "shall" to a "may" we accomplish what I was trying to do, which is simply to make this into an experiment. The hand count, as I understand, would still be the official one, but the main count would be to check on the accuracy of the count.

Ms. LOFGREN. We are, each of us, blessed to have a dedicated staff on the committee that is sorting through some suggestions on this right now. I am wondering if we——

The CHAIRMAN. Can you wonder out loud?

Ms. LOFGREN. It was suggested that we accept the word "may" and add at the end of the amendment "the use of the tabulating machine or scanner shall be solely to verify the tally determined by the hand count and not to substitute another tally of the ballots". I don't know. I think that is consistent with what you are trying to do. And your staff is now nodding yes. This is a sausage-making factory in action, folks.

Mr. EHLERS. But we make fine sausage here.

Ms. LOFGREN. Is that by unanimous consent?

Mr. EHLERS. What I prefer really is to have the location jurisdiction compare the two and decide which one is more accurate. But I am not going to—I don't want to require them to. The basic idea is, as I said, to really get a comparison of the accuracy of hand counting versus a tabulating count. And so I guess I will accept your version.

Ms. LOFGREN. So we are asking unanimous consent then to substitute the word "may" for "shall" and this sentence at the end of the amendment.

Mr. EHLERS. I am willing to accept that and—with one caveat, that you and I will have further discussions on that last thing as it goes through the process.

Ms. LOFGREN. I think that is a fine way to proceed, Mr. Chairman; and on that basis we are prepared to accept this amendment.

The CHAIRMAN. I would like to recognize Mr. Capuano first.

Mr. CAPUANO. Mr. Chairman, I don't know about anybody else, but I have actually run elections on all kinds of levels. And I will tell you that there are several parts of this bill that I don't like, but it is better than the last bill we did, so I will vote for it. But I vote for it with all kinds of reluctance and all kinds of hope that

we can change it further, including Ehlers 2. I didn't like that, requiring 8 hours delay in a hand count. Fine, I am with it for now, but I am not really with it.

And it is the same thing here. The only elections I have seen stolen is when there is nothing but a hand count. That is the only elections I have ever seen stolen. A machine count with a paper ballot trail to verify it, I am not aware of any that can get stolen. A hand count can get stolen, and I will tell you how to do it.

I have no problem trying to work this out later on. But the concept here does not bother me. I don't know why it should bother anybody who has actually ever been in a place where they actually count ballots. I have been there all my adult life, and there are ways to verify these things that are very easy. The location jurisdictions are more than capable of doing this.

As long as you provide a question, that is what courts will do. Like it or not, we can't do this. These things will end up in courts with well-paid attorneys arguing the intent of the voter both on the hand count and the machine count.

So I think that this bill still needs a lot of work. I am going to vote for it today because I know that Ms. Lofgren and her staff have done great work on I think a very difficult bill. And I also like the symbolism of us trying to get to a paper trail. This bill only gets us a few steps down the road and I think creates other potential problems, but it is much better than the bill that we did previously. And I hope that before any of these things actually get enacted we have plenty of opportunity—I am sure we will—to actually make something work.

Because in the final analysis I think because—I don't know why we do this. But this is actually a very simple thing. I don't know why we are encouraging people or allowing people, more importantly, using taxpayers' money to allow people to go out and continue to do things that are stupid. And, on top of that, we take communities that have done the right thing on their own dime and not give them a nickel, not give them a nickel. It is just amazing to me that we keep throwing good money after bad without having certain requirements of what kind of machines they can use and what we say we want.

And the only thing I want, the only thing I want is a paper trail. All the rest is window dressing. And I want a paper trail because there will be arguments, there will be debates, there will be discussions, there will be court cases, there will be recounts on hand, there will be recounts on machine, and it will be a mess on individual cases. But at least there will be a paper trail and the voters' decisions will at least have a better opportunity to be found at some point.

So I think that—and this amendment is a classic example. I don't know what the concern is, but this is not the place to really get into the meat of it.

At the same time, I think we need to get to the point where we understand the local officials are perfectly capable of making these decisions. People have been running these elections for a long time. They know how to do it. We don't have to hold their hand at every step along the way.

Again, either amendment here is fine by me, as long as—and I just want to be clear. I just want it at on the record that I have real serious concerns about what we are about to do. I am for it, but hesitatingly.

Mr. EHLERS. Will the gentleman yield?

Mr. CAPUANO. Certainly.

The CHAIRMAN. I would first like to thank the gentleman. I understand your remarks and I take them quite validly, except for the part where you may have incriminated yourself.

Mr. CAPUANO. I didn't say I did it. I said I knew how to do it.

Ms. LOFGREN. How did you learn?

The CHAIRMAN. I recognize Mr. Ehlers.

Mr. EHLERS. Thank you.

I wanted to take exception to the comment why do we do such stupid things, but my first thought was maybe because we do them so well. In any event, I agree with much of what you say. I have the same feelings, and I think much in the bill is overkill. But I have agreed to work with Mr. Holt and try to produce a bill that would be acceptable.

I am as skeptical as you are of hand counting, because I have been in the room, too. And you know it is not only the easiest to commit fraud but also the most difficult to do accurately. And that is why I wanted to add the—at least allow the local officials, if they wish to run it through the tabulator, too, it gives them some idea by comparing the two. So that was the intent of the amendment. Unfortunately, it came out as a command, rather than an option.

But, at any rate, I think we should just go with the compromise we have agreed to and continue that and will work with the bill as it goes through.

The CHAIRMAN. Can we have unanimous consent to change the wording on Amendment No. 3? Without objection.

[The information follows:]

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. EHLERS

Page 19, insert after line 9 the following:

(D) After the completion of the hand count, the ballots may be run through a tabulating machine or scanner for verification of the tally, if such a machine or scanner is available.

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And with the wording being changed, we now will vote on accepting No. 3. All those in favor, signify by saying aye.Unopposed, Amendment No. 3 is now also accepted.

The question now is agreeing to the Lofgren amendment in the nature of a substitute as amended. Those in favor signify, by saying aye. Those opposed? No.

The ayes have it.

Ms. LOFGREN. Mr. Chairman, I move that the committee report the bill, H.R. 5036, as amended, favorably to the House.

The CHAIRMAN. All those in favor of the motion, signify by saying aye. Any opposed? No.

The ayes have it. The motion is agreed to. Without objection, the motion to reconsider is laid upon the table. The bill will be amended and reported to the House.

Mrs. DAVIS of California. Mr. Chairman, I am not sure if this is the right place—go ahead. I just wanted to—I had meant to ask for unanimous consent to insert letters into the previous bill.

The CHAIRMAN. Without objection, that is agreed to.

Mr. Ehlers.

The CHAIRMAN. Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman.

I have one similar request, that the National Conference of State legislatures and Secretary of State Carnahan of Missouri have written me a letter expressing concerns about it; and I ask unanimous consent that it be placed in the record of today's meeting.

The CHAIRMAN. Without objection.

[The information follows:]

[The letter from Secretary Carnahan follows. The letter from the National Conference of State Legislatures appears earlier in the transcript on page 49:]

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STATE OF MISSOURI

ADMINISTRATIVE SERVICES
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April 2, 2008

The Honorable Rush Holt
United States House of Representatives
1019 Longworth Building
Washington, DC 20515

VIA FACSIMILE
202-225-6025

Dear Congressman Holt:

Thank you for spending the time to speak with me and the other secretaries at the NASS conference this past February. Dialog between state election officials and Congress is important in the formulation of fair and effective election reforms. With that said, I am writing you today to provide you with further background information and concerns in regard to the committee substitute to H.R. 5036, "The Emergency Assistance for Secure Elections Act of 2008."

Although I share your belief that every voter should have the choice to vote on a paper ballot or an accessible voting machine and that transparency should exist throughout the process, I do not believe this bill solves Election Day issues facing states this year. First of all, in Missouri, nearly 80% of voters who go to the polls vote on paper ballots, and those who use DRE (Direct Recording Electronic) touch screens are able to check their selections using a voter-verified paper audit trail (VVPAT). Second, I am anticipating record voter participation across the state and my office is most concerned about preventing long lines at the polls, avoiding paper ballots shortages and securing quality poll workers who can properly guide voters through the voting process. Unfortunately, the provisions in this bill do not go far enough to address these issues.

Backup Paper Ballots

Funding paper ballots would be helpful to all states. However, the requirement included in this bill that paper ballots to be used as a "backup plan" does not meet our needs in Missouri. The current bill language would only allow for the use of backup paper ballots in the event of a DRE equipment failure. First, funding backup paper ballots that cannot be used upon voter request or in the event of long lines on Election Day does not make sense for my state. Second, the bill is not clear as to what circumstances the state would be justified to use backup paper ballots.

I urge you and your colleagues to help states fund paper ballots for all federal elections. This year, I am supporting the "Voter Confidence Act," a piece of legislation in the Missouri

General Assembly which will guarantee that every voter is given the option of voting in state and federal elections on a paper ballot. This particular bill will make it the state's job to pay for printing paper ballots so that every voter can feel confident in how they cast their vote. I recommend that Congress consider similar legislation which will help states offset the cost of providing paper-based voting systems, no strings attached.

Consistency in Election Administration

Individual elections jurisdictions should not opt-in or opt-out of a one-time, federal program during a big election year. Adding new post-election audit procedures and manual hand counts for interested counties or cities invites confusion and chaos on Election Day. My office is concerned about inconsistent treatment and oversight on Election Day and during the election certification process. The election code is complicated enough. Adding temporary layers of regulation for one day on a county by county basis will not solve any of the ongoing election administration issues I mentioned previously.

Ongoing Election Initiatives

In closing, I hope you and the Congress will continue to explore other commonsense ways to relieve Election Day problems by:

- Helping pay for paper ballots
- Creating poll worker incentives
- Funding quality poll worker training
- Allowing early voting nationwide

As always, thank you for your consideration and your efforts to improve elections. Ensuring fairness in our elections and the confidence of the American people is a vital charge. I hope my comments help as you work to achieve these common goals.

Should you have any questions, please do not hesitate to contact me or a member of my staff at 573-751-1880.

Very truly yours,

Robin Carnahan
Secretary of State

cc: The Honorable Robert Brady
The Honorable Zoe Lofgren
The Honorable Vernon Ehlers
The Honorable Dianne Feinstein
Missouri Congressional Delegation
National Association of Secretaries of State

Mr. EHLERS. I also move that minority views—that we have the usual 5 days or whatever period is correct to express minority views in the final report.

The CHAIRMAN. I am being told we can have 2 additional days to file views.

Mr. EHLERS. Yeah, 5 days. And then I also wanted to add a comment.

The CHAIRMAN.Mr. Ehlers, I think it is 2 days.

Mr. EHLERS. Two days. I am sorry.

Then I wanted to also add a comment into the record. I had originally planned to offer a motion to sunset this bill at the end of the 2008 elections because it is intended to be a trial type of bill. However, the legislative branch—I am sorry—the legislative service informed us it is not necessary because the bill basically sunsets itself because it designates this only applies to the 2008 election. I wanted to get that on the record so that all election officials across the country realize this is just a one-shot thing.

The final thing, I also raise a question—we had discussed this, but for employees whose primary duty station is Washington, D.C., expenses are not reimbursable during the district work period. We had discussed that on the taxi issue. And do you need unanimous consent to add that?

The CHAIRMAN. I think we have disposed of that, but I think that is already in.

Mr. EHLERS. If you disposed of it, that's fine.

The CHAIRMAN. But that is agreed to anyway, and we will make sure that that happens.

Mr. EHLERS. Okay. That takes care of all my final business here. Thank you.

The CHAIRMAN. Without objection, the staff will be authorized to make the technical and conforming changes to prepare H.R. 5036 for filing.

Now I imagine this hearing is now adjourned.

[Whereupon, at 1:55 p.m., the committee was adjourned.]

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