

Rush Holt's HR 811 Does More Harm than Good

Seven Serious Failures in the Latest Holt Election Reform Bill

In September of 2003, when I was working with VerifiedVoting, Greg Dinger, Keone Kealoha, and I coordinated the first national activist effort in the current grassroots election integrity movement. We had a calling campaign to get more co-sponsors for Representative Rush Holt's (D-NJ) election reform bill, then called HR 2239. In two months, the number of co-sponsors more than doubled – from 29 to 61. After the disastrous November 2003 Fairfax, Virginia election, we rejoiced when Republican Representative Tom Davis (R-VA) signed on and the bill became bipartisan. By the end of 2003, there were 94 co-sponsors.

But Rep. Bob Ney (R-OH) was chairman of the House Administration Committee, and the bill never even got a hearing. Nor did Holt's subsequent bill version of the bill in the 109th Congress, HR 550. But this year's bill in the 110th, HR 811, has been marked up in committee and is expected to soon come to the House floor for a vote. This should be a time for celebration for me, but it's not.

After more than three years of supporting election reform bills introduced by Representative Rush Holt, I am saddened to see the many severe flaws in the version of HR 811 as it was passed out of committee last month. This year's bill had serious flaws when it was introduced in January. Primarily, it failed to accommodate a nearly unanimous agreement among citizen activists and computer scientists who have watched election disasters over the past three years – the agreement that electronic voting machines (DREs) should not be used in U.S. elections. I worked with many people to try to get an amendment requiring a paper ballot, one that was actually to be counted, for every vote cast. To my mind, that and several other significant improvements would have been worth tolerating the remaining flaws.

But the bill that was passed out of committee still allows for invisible, unverifiable, electronic ballots on DRE touch-screens as the official ballot for the all-important initial count where electronic voting systems are used. Adding a "paper trail" to those machines makes no real difference. Voters still can't verify the electrical charges that make up the ballots that are counted on Election Night by the DRE.

In addition to other flaws that remained in the bill as it came out of committee, some changes removed valuable safeguards from the bill, and other changes introduced new problems. (Both versions of the bill can be viewed by inputting "HR 811" at the government's legislation search engine, Thomas.gov. The complete text of the current version is [here](#).)

In my opinion, HR 811 will cause more problems than it will solve.

My primary objection is the extreme shift in the concept of "democracy" that the bill institutes legally. **Specifically, it gives a federal stamp of approval to "ballots" that will never be counted, and it endorses secret vote-counting.**

Let me explain...

1) **Under HR 811, some “ballots” don’t have to *ever* be counted.**

The foremost flaw in HR 811 (both the introduced version and the version passed out of committee) is that the bill amends the Help America Vote Act (HAVA) to allow for “paper ballots” that will never be used for anything at all, not for the initial count and not for any audit, since most HR811-mandated audits will count only 3% of those ballots, and in some cases, as many as 10% of the them.

The very first requirement listed in HAVA [Section 301(a)(1)(A)(i)] is that all voting systems “permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted.”

Since voters can’t see inside the inner workings of the computer, they **cannot** verify their electronic ballot before it’s cast and counted, so this legal requirement of HAVA is presently violated wherever electronic voting machines (DREs) are used.

But instead of enforcing the requirement, HR 811 legitimizes the violation.

Although a DRE system with a so-called “voter-verified paper ballot” would permit the voter to verify a paper record supposedly representing their vote, *the paper record is not the ballot that is cast and counted*. While that is now the case in many jurisdictions, no state or federal law, yet, defines those non-counted records of the vote as “ballots.” We’ve had some wiggle-room for democracy, and HR 811 takes it away by declaring uncounted paper records to be “ballots.”

2) **Secret vote-counting is endorsed.**

One of the committee changes that removed an important value in the bill is the “disclosure” section. That section has now become a reversal of the original Holt position. Holt’s 2003 bill said simply:

“No voting system shall at any time contain or use undisclosed software. Any voting system containing or using software shall disclose the source code of that software to the Commission, and the Commission shall make that source code available for inspection upon request to any citizen.”

As originally introduced in 2006, Holt’s HR 811 version was even stronger:

“source code, object code, executable representation, and ballot programming files [shall be made] available for inspection promptly upon request to any person.”

The position is very clear, a simple mandate for public disclosure, without any exceptions or conditions. But the current HR 811, as rewritten in committee, takes four and half pages to describe the “disclosure,” and if you unravel the terms and conditions, you discover that **public disclosure is prohibited**, rather than required (unless a state passes new disclosure laws of their own and amends their current trade secret laws specifically to get around this mandate.)

HR 811 now endorses secret software for secret vote-counting – the antithesis of democracy.

People say, “oh well, who would examine the software and find errors and malicious code anyway?” But that’s not the point. The point is that a government claiming to be democratic should not endorse secret vote-counting.

Once we have legitimized that “ballots” need not be counted and endorsed the practice of secret vote-counting, how is it that we are a democracy?

And there are still more serious problems with the bill as well...

3) Audits are inadequate and contain an invitation to tamper.

The bill requires what it calls “audits.” But many experts who have researched election audit methods agree that the model in HR 811 will not be effective or provide confidence. Furthermore, the precincts to be selected “randomly” and audited “without advance notice” can be announced long before the audits actually start – thus enabling tamperers to fix up the ballots in the chosen precincts.

America has a long and sordid history of ballot tampering. With electronic voting, wholesale theft may be just a matter of a few well-placed keystrokes. The prize of controlling government spending is bigger than ever. Attempts to steal elections will continue, and the audit provisions in HR 811 won’t even present a serious obstacle.

4) The “ban” on electronic communications and networking is incomplete and convoluted.

The ban on wireless communications is confusing and unenforceable. In contrast, Holt’s first bill, HR 2239, said simply:

“No voting system shall contain any wireless communication device at all.”

That was a good start, and the latest bill should have banned ALL communications and networking capability. (What difference does it make to tamperers if they use a cell phone or land line or Internet connection, or even telegraph as they did in the old days? If you aren’t convinced, read Pokey Anderson’s “Even a Remote Chance?”.)

Instead, the new HR 811 gives a convoluted mandate:

“No voting system shall contain, use, or be accessible by any wireless, powerline, or concealed communication device, except that enclosed infrared communications devices which are certified for use in the voting system by the State and which cannot be used for any remote or wide area communications or used without the knowledge of poll workers shall be permitted.”

What does the exception for “infrared communications devices” mean, and how would poll workers know about any hidden communications devices? They wouldn’t. This new provision is incomprehensible to the ordinary person ... and it’s unenforceable.

HR 811 is even ambiguous about Internet connections. The title of the section sounds promising, “Prohibiting Connection of System or Transmission of System Information Over the Internet.” But the text of the section does not refer to a SYSTEM at all, but just a DEVICE. So it appears that while a voting *device* such a DRE touch-screen voting machine may not be connected to the Internet, the all-important central tabulator computers (which hold the final tallies) **can** be connected to the Internet – an invitation to dial in and change the results.

5) **The impossible is required.**

HR 811 requires all configuration files used in any voting system to be certified by the State and escrowed with the U.S. Election Assistance Commission (EAC).

The problem is that ballot configuration files are **different for every precinct in every election**; some counties have thousands of precincts; some states have hundreds of counties. And there might be a window of a few weeks, just before the election, for the State to certify the tens of thousands of configuration files to be used in an election.

Is it possible? No. It's no more possible than it is to conduct adequate pre-election testing on the thousands of DREs in use in some counties, which is why they simply aren't tested before an election.

6) **Massive voter disenfranchisement caused by broken machines will remain in 2008 and beyond.**

An excellent provision in HR 811 when it was introduced was a requirement for emergency paper ballots to be available in case machines break down — as they always do, and as we saw week after week during the 2006 election cycle. Recent elections have seen untold numbers of registered voters turned away from the polling place because the DREs broke down or malfunctioned. So, having emergency paper ballots on hand is absolutely essential.

But that provision is no longer present in the current official version. (Oddly, it was still in the version approved by the committee, and the question remains why it is no longer in the official version destined to go to the floor.)

Instead, the bill now requires that paper ballots be offered to any voter who wants one. This provision would allow voters to choose paper ballots when the machines are broken — or for any other reason. That's good. However unlike the original provision, this option won't take effect until 2010, and it won't ever apply to early voting, even after 2010.

Further, there is no explicit requirement for those paper ballots to be counted on Election Night with all other reported results from DRE systems, etc. The state of California has a similar provisional for voters to request a paper ballot if they prefer. And in violation of the intent of that provision, some elections officials in the state announced they would not even begin to count such ballots until the Thursday following the election. Results reported on Election Night --- the all important ones reported in the news and establishing the "winner" in everyone's minds --- would be skewed to represent the results of those who trust the use of DRE voting machines.

So, with new equipment required in a huge number of precincts across the country, 2008 is certain to see more of the same disenfranchisement that the original HR 811 was intended to halt. And this current version of the bill does nothing to address the disenfranchisement that broken voting machines will cause in early voting — ever.

7) The dysfunctional Election Assistance Commission is made permanent.

Reports from the Government Accountability Office reveal that the Election Assistance Commission is incompetent, behind schedule by years, and derelict in their duties. Recent news articles regarding their Voter Fraud report and their disapproval of CIBER labs have shown that the EAC is partisan and secretive. The process by which the 2005 voting systems standards were developed show that the agency is unduly influenced by the interests of voting system manufacturers. Yet, HR 811 puts these four Presidential appointees in charge of more duties than those they've inadequately handled so far, makes the EAC a permanent agency, and provides it with permanent funding.

I have not addressed every problem with the bill. But these seven problems are sufficient to convince me that this bill is not just "imperfect." In my opinion, the flaws in this bill are more damaging to democracy and our future election process than the good that might come of the minimal safeguards it could provide for our elections in 2008 and beyond. So, far from celebrating that a Holt election reform bill will finally come to the floor for a vote as I might have been back in 2003, or even 2005, I am now filled with sadness. This bill should never be passed as it is currently written.

Now read about [Feinstein's "election reform bill" S. 1487](#), a bill so dangerous, HR 811 pales by comparison.