

U.S. Senate Bill S. 1487: Escalating the Federal Control and Privatization of Elections

The name "Diebold," when associated with elections, has come to mean "untrustworthy." But terms that indicate "election dysfunction" aren't wholly owned by Diebold. The name of another voting machine company, "Sequoia," has come to mean foreign ownership of vote-counting software. "ES&S" has come to mean broken contracts, lies to election officials, and questionable federal election results in Sarasota. For those paying close attention, the little-known U. S. Election Assistance Commission (EAC) has come to mean incompetent, secretive, derelict in duties, partisan, and unduly influenced by Diebold, Sequoia, and ES&S.

Instead of safeguarding our elections from these entities, a bill introduced in the Senate would give the EAC and these corporations unprecedented control over federal elections.

S. 1487, "The Ballot Integrity Act of 2007," introduced by Senator Dianne Feinstein, would take federal elections out of the hands of the people, out of the hands of local and state officials, and give nearly complete control to the EAC and voting machine corporations.

Corporate rights at the expense of citizen rights. Over the last several years, citizens who researched and analyzed election data have exposed the unreliability of electronic voting equipment. Citizens' work led to the conviction of two election workers who rigged the 2004 Presidential recount in Ohio's most populous county. Information provided by citizen researchers has convinced some state legislatures and election officials to institute strong audits, safeguards for high-tech equipment, and, in Indiana, penalties for corporations that violate election laws.

S. 1487 would constrict the flow of election-related information that we citizens need in order to oversee our own elections, to discover these serious problems, and to demand solutions.

The bill would protect the trade secret rights, intellectual property rights, and confidential commercial information rights of the voting machine corporations, allowing them to hide virtually all election-related information from public view. And, shockingly, it would give those corporations the authority to work in combination with the EAC to establish how to "ensure compliance" with that protection.

If this law had been in effect in 2003, would Diebold have had the power to silence Harri Hursti after he demonstrated how easy it was to hack an election in Leon County Florida? Would ES&S have had the power to gag eight eminent computer scientists who discovered dangerous virus vulnerabilities in their touch screen machines? Would Diebold and Sequoia have had the power to protect the source code for their election system software, even after it had been found – by citizens – on unprotected web sites?

The corporations tried to obstruct these revelations at the time they occurred. If S. 1487 had been in effect, they would have had the authority to "ensure compliance" with their proprietary rights, so the answer to all these questions is probably "yes."

Countless examples of elections that failed simple arithmetic have spurred citizens to action, as authorities have refused to investigate. Even though citizens lack subpoena power, their crucial investigations have included information from open records requests for correspondence, audit logs, and detailed vote data. Diebold has already claimed the right to block a vote data request in Alaska. Would this bill allow voting machine corporations to block virtually all information about OUR elections by calling it "confidential commercial information"?

Federal authority at the expense of state and local authority. The “Help America Vote Act of 2002” (HAVA) established the Election Assistance Commission (EAC) as an agency to assist the states and disburse funds to them for upgrading voting equipment. S. 1487 would transform this agency – composed of four Presidential appointees – into a governing and rule-making agency with authority OVER the states rather than providing a service to them.

For example, as of 2010, no state would be allowed to use voting equipment in a federal election unless that equipment had been certified by EAC. Since it is financially and logistically prohibitive for states to use one type of equipment for federal elections and another for state and local elections, the bill, in practice, would give the EAC sole authority to determine the pool of equipment available for use in U.S. elections. This mandate alone gives four Presidential appointees, in combination with the four dominant voting system corporations, enormous control over the conduct of OUR elections.

On other fronts, the EAC would also establish guidelines for the number of voting systems, poll workers, and other resources that state should provide in each poll site; guidelines for the locations of early voting sites (which S. 1487 would require in every state); guidelines for conducting audits of elections; and more guidelines as well.

Only after the EAC granted permission could a state certify the results of its federal election and declare the winners for Presidential electors, Senators, and U. S. Representatives.

What would be left to local and state officials? They could administer elections following the EAC’s guidelines, using equipment allowed by the EAC, and submitting federal election results to the EAC for approval. They would become administrative assistants to the EAC bureaucracy that would inevitably result from the enactment of this bill.

Undermining of the Voting Rights Act. S. 1487 also gives the EAC authority to set up different classes of voters, with less protection from fraud and machine malfunction for “distinct communities” that have been historically disenfranchised. In this bill, Congress instructs the EAC to use studies of lost votes in prior elections – not, as such studies are intended, to detect problems and investigate the causes – but to expand the potential for future lost votes into other areas where those “distinct communities” are present.

By distorting the purpose of lost-vote studies, this bill would invite an increase in lost-vote rates among racial minorities or any other “distinct community” the EAC decided to target.

What Should be Done. S. 1487 is unworthy of consideration by Congress. If enacted, it would give large corporations and Presidential appointees control over federal elections, prevent citizens from gaining access to essential information about OUR elections, and provide a blueprint for discriminating among classes of voters.

The bill would “reform” our elections into the antithesis of the grand experiment envisioned by the founding fathers. It is beyond amendment. It must be withdrawn or defeated.

Instead, if Congress takes action at all, it should attempt to solve, rather than exacerbate, problems that have been uncovered in recent years. It should pass simple, doable, common sense election reform for 2008 to provide meaningful checks and balances without undue federal intrusion into – and obstruction of – the rights of states and citizens.