



HR 550: What's Right about it, and What Needs to be Amended

By Nancy Tobi

The Holt bill has been called "the Gold Standard" by voting rights activists all over the country. It has been co-sponsored by leading political figures, and many voting activist groups are aggressively working towards the passage of this legislation. The bill holds promise and voting activists are excited about it because it talks about mandating paper trails for elections. Verifiable paper audit trails belong in any democratic election, and we should all applaud the bill's attempt to codify this.

However, since the drafting of HR 550 we have learned a lot about our election systems, and currently many election integrity activists oppose HR 550 as written for a number of reasons.

HR 550 opponents rightfully assert that the bill would be strengthened by specifically defining real paper ballots as opposed to allowing for error-prone computer printouts as the vote of record. Printers jam, receipts are not ballots, and adding technology-based printing to the act of voting unnecessarily complicates what is a simple act. Many activists oppose the approach in HR 550 that supports "paper trails" that **might** be audited rather than **real paper ballots** that **are** – and not **might be** – counted.

Additionally, election activists raise questions about the audit protocols in the Holt Bill. Simon and O'Dell provide the following analysis of the audit protocols in HR 550:

Our key finding is that in a typical U.S. Congressional race a hand-count audit of 100% of the vote in a random 2% of the precincts *would fail about 40% of the time* to detect vote count corruption large enough to alter the outcome. This result is derived theoretically and confirmed by computer simulation. Even in those cases where HR 550 can detect a discrepancy, there will often be only a single precinct in which corruption is detected.

We question whether such a finding would be sufficient to trigger a recount, given a real world in which public perceptions have already been framed, and political pressures to accept the initial count are substantial. HR 550 offers no guidelines or criteria for a mandatory recount. Instead, the decision is left to a commission appointed by the President and inherently subject to partisan pressure.

Simon and O'Dell have developed a tested approach to auditing elections that eliminates these pitfalls and could be incorporated into HR 550.

Another problematic feature of HR 550 is its support for centralized Executive power over the nation's election systems. This, perhaps the most troubling, aspect is explored below.

How the Holt Bill Supports Centralization of Executive Power

The democratic processes of the American Republic are based on decentralized power. Centralized power led to the American Revolution. Centralized power is the antithesis of a government of the people, by the people, and for the people. Provisions in HR 550 will lead to a dangerous centralization of Executive power, as described below.

1. Centralization of Executive Power-White House Control over Counting the Votes:

HR550 extends beyond the existing expiry date the power and authority of the Election Assistance Commission (EAC), establishing a Presidential Commission authorized to control the counting of votes in every election--federal, state, and local--in the nation.

2. Centralization of Executive Power-Crony Appointments: The potential for stacking of the EAC is evident in the scenario already played out under the current Administration. In early 2006, the Bush White House made numerous recess appointments, putting political cronies into positions of power and authority without any Congressional oversight or checks and balances. Of the eight recess appointments made on January 4, 2006, three were Commissioner to the Federal Election Commission. Two of those appointed Commissioners are known for their opposition to voting rights and clean elections. The third is a political crony of Senate Minority Leader Reid of Nevada. (Nevada is now positioned to take a lead role in the Democratic presidential nomination process. For this privilege, Nevada has promised to play the nomination process by Party rules, financed by the Casino industry.)

3. Centralization of Executive Power-Regulatory Authority: Federal regulatory authority means the federal entity preempts state and local authorities. The EAC was created as an advisory commission with one exception: it was granted regulatory authority over the National Voter Registration Act (NVRA). The EAC has been steadily positioning and even suing to assert its regulatory authority in other areas under its domain. Even if it does not succeed through litigation, the EAC could, with the insertion of a single line of text in ANY congressional act, become regulatory. This is how the FEC gained regulatory powers. A regulatory EAC means that a Presidential Commission--potentially stacked with political cronies--would have legal decision making and enforcement power over the following areas, for every state in the nation:

- Which voting systems are approved for use in our elections
- Who counts the votes in every election
- How votes are counted in every election
- How recounts are administered and how their outcomes are determined

A recent editorial in the New York Times, entitled "Strong Arming the Vote" (August 3, 2006) describes how the Department of Justice under the Bush Administration has been heavily involved in partisan ploys to negate necessary checks and balances in election practices. HR 550, if passed as written, will establish a whole new arm of Executive power with dangerous authority to subvert the entire democratic process of elections that supports our system of government.

It would result, in effect, in a bloodless coup.

How Can HR 550 Be Amended?

An amended bill would gain nearly universal grassroots support.

An amended Holt Bill would remove those dangerous provisions that centralize Executive power and expand judicial election decision making authority. An amended Holt Bill will enable us to deal with the incontrovertible damage already caused by sweeping national legislation such as the Help America Vote Act (HAVA). An amended Holt Bill will support real paper ballots that can be observably counted, and properly audited when technology is used for vote tabulation. An amended Holt Bill will allow us to pause and reasonably assess where we are and what we need to do to repair the nation's election systems so that they will be secure, transparent, accurate, and auditable.

A Holt Bill that amends HAVA and provides real solutions to the problems in our election system need only include three items:

- The incontrovertible and legally defensible system of verifiable elections through the use of real, voter-marked and verifiable paper ballots (as distinguished from paper trails)
- The elimination of secret vote counting through the use of black box voting products.
- An extension of all HAVA mandated deadlines pending a complete independent investigation, analysis, and audit of HAVA monies distributed and spent on electronic voting systems, the outcomes thereof, with said investigation including information on the most advanced system of checks and balances for elections: hand counted paper ballots.

Authors Bio:

Nancy Tobi is the author of numerous articles on election integrity, including "The Gifts of HAVA: Time to Ask for a Refund," "What's Wrong with the Holt Bill," and the newly released "We're Counting the Votes: An Election Preparedness Kit." She is co-founder and Chair of Democracy for New Hampshire, Chair of the Democracy for New Hampshire Fair Elections Committee, and a founding member of the Coordinating Council of the Election Defense Alliance. Her writings may be found at www.DemocracyForNewHampshire.com and www.ElectionDefenseAlliance.org, and she can be reached at ntobi@democracyfornewhampshire.com.