

Presentation to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR)

Trust But Verify: Toward Increasing Voter Confidence in Election Results

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I want to thank the TACIR commission members and staff for this chance to address you today. It has been an interesting morning, hearing from voting machine vendors who continue to try to sell us on the virtues of their wares; and from Dr. Wallach, who has pointed out the many serious flaws with surrendering our election processes to private companies using secret software on insecure and poorly functioning equipment. Now you get ten minutes from me, representing two grassroots election organizations, Gathering To Save Our Democracy and Common Cause. It is fitting that my presentation comes at the end, because the organizations I am here to represent are composed of thousands of concerned Tennessee voters of all political parties and persuasions; and in Tennessee, as in all functioning democracies, the voters always have the last word.

Being allowed only ten minutes to address you this morning seemed like insufficient time to cover all the important reasons why Tennessee needs to act now to correct the serious mistakes we have made in changing our voting systems. After all, Tennessee used to be known as a leader in the voting rights movement, the state that insured that women's suffrage became a reality, that helped break Jim Crow laws and practices before the Voting Rights Act passed and that insured that each voter's ballot had equal weight through the landmark Supreme Court decision, *Baker v. Carr*.

Today, we are known as one of the eight most insecure states for election integrity, one of the states that made the worst decisions with our HAVA funds and that would most benefit from pending federal legislation to correct those errors. Ten minutes didn't seem like enough time, until I remembered that it takes only 7-10 seconds to break into these new voting machines to tamper with the vote-counting hardware and only 30 seconds to infect a single voting machine with a virus that is sufficient to change the vote totals in an entire county. From that perspective, ten minutes is an eternity.

My comments parallel what you have heard from Dr. Wallach today and what TACIR staff have presented over the months. Paperless touch-screen voting machines (or DREs) have now been proven conclusively to be inefficient, expensive, insecure, inaccurate and incapable of being audited. By using them, we have effectively privatized one of the most sacred public duties in our country -- the responsibility to completely and accurately measure and transfer the power inherent in the "consent of the governed" to our elected leaders. We now know that these machines perform two vital functions very poorly: they record each voter's choices, functioning much like \$3,000 pens that use disappearing ink, and they total those votes, as if they were \$5,000 abacuses that use invisible beads. If Ronald Reagan were here today, he would laugh out loud and ask us, "Just what part of 'Trust but Verify' do you not understand?" This is the bedrock legitimacy of our government we are talking about. Though the past few years, and the thousands of examples of voting machine malfunctions that we have witnessed, have been difficult ones for maintaining the trust of America's voters, I believe that those of you here today understand Reagan's words and know what we must do to live by them.

We have background material for you to supplement what TACIR has already provided. This packet includes more information on the groundbreaking decision to decertify equipment in California; a summary by Voters Unite on why this equipment is so inefficient, expensive, insecure and inaccurate; a map of major reports of vote-flipping on these machines (reports which were also coming out of Memphis last week); recent revelations in California and Kentucky that uncertified equipment has been sold intentionally by the companies represented today in those states, resulting in the potential for multi-million dollar fines; our memo to the State Election Commission regarding a major security flaw identified in the ES&S iVotronic equipment used in 17 Tennessee counties; and an efficiency comparison of optical scan versus DREs showing that opscans are 12-15 times faster in accommodating voters and also start and end with a voter-completed paper ballot.

You all received an email with the TACIR agenda that included a number of documents for your review. I highly recommend that you read "Trust But Verify", Tab 6 in your email. Overall, this is an excellent report that, with a few needed edits, would be useful background for anyone in Tennessee and the nation who is concerned about the sanctity of our election process and how we can overcome the serious mistakes of recent years. There are three important sections:

1) Page 18: TACIR has devoted so much important time to this issue for two reasons:

a) The reports of serious malfunctions, security risks and shoddy workmanship associated with electronic voting machines have continued to mount over the years. These machines have demonstrated time and time again that they are not trustworthy. The TACIR report reviews nine examples of machine failures in Tennessee sufficient to have received media coverage. In 2004, there were over 200,000 calls from American voters to national hot-lines set up to report voting problems; over 1,100 of those calls were from Tennessee. In 2006, 25% of all calls to similar hot-lines nationwide involved reports of machine malfunctions. In Tennessee, the reports of machine malfunctions represented 30% of all hot-line calls from our state.

b) The American people are aware of this sad state of affairs. As one national survey (now a year old) demonstrated, over 60% of voters know that these machines are easily vulnerable to accidental problems or intentional tampering that can affect the outcome of an election; 80% believe that the way that votes are counted on these machines (without any possibility for public oversight) is unacceptable; and over 90% believe citizens have a right to view and obtain information on how election officials count votes. Every independent study of the vulnerabilities in these machines (at Johns Hopkins, Princeton, Cal, Rice, Florida State, etc.) have demonstrated that they can be hacked with a minimum of effort and computer sophistication, and the American public now knows it.

2) page 21-22: This report includes a frightening summary of what was learned during the one and only time that voting equipment in Tennessee has been inspected by competent outside experts. The many security problems found on the central tabulator in Shelby County, including uncertified software packages, any one of which would allow vote counts to be manipulated, and software that allowed access from any computer inside Memphis/Shelby County government to change votes, astounded the outside expert who examined the machine. Today, we have no evidence these problems have been corrected. Again, this singular inspection of Tennessee voting equipment is now considered to be among the most serious multiple security violations found anywhere in the country.

3) TACIR's recommendations for what is needed immediately to correct our voting systems are listed twice in the report, on pp. 7-9 and pp. 31-33. We strongly believe the first five recommendations need immediate implementation. These recommendations would replace all paperless DREs with optical scan voting systems and would implement routine audits to insure that the opscan equipment counts votes properly. We might strengthen these recommendations by also suggesting that Tennessee's new optical scan machines be operated with open source software (rather than secret software) that can be programmed, examined and certified more easily than the current proprietary software.

Our support of TACIR's recommendations proves we are not anti-technology, not the "Rip Van Winkles" we have been labeled by state election officials. The track record of voting machine companies has taught us that, in addition to "trust but verify", we must remember "buyer beware". We are all sophisticated enough to know that more complicated and more modern solutions are not always better. Some of us remember when DDT and other pesticides were widely used without regard for their impact on the world around us. It has taken 50 years for the bald eagle to recover enough from that mistake to be taken off the "endangered list". Others can remember when one widely-touted solution for morning sickness during pregnancy -- thalidomide -- resulted in thousands of deformed babies being born before that "new and improved" morning sickness medicine was removed from the market. Even more of us know there was a time when every college and professional football team (and even some high schools) rushed to cover their fields with Astroturf at great expense. While those fields were certainly more attractive, faster and cleaner than traditional grass fields; they also resulted in a rash of serious, career-ending blown-out knees and ankles for the athletes who used them. How long can our franchise remain on the "endangered list", how many more blown elections should we experience, how much more deformed democracy must we endure, before we correct the mistakes we have made with our elections? I hope your answer is none.

If you support TACIR's recommendations as we do and want Tennessee to correct its mistakes before 2008, what can we do? Here are seven suggestions. Implementing just a few of them would move us toward freer, fairer and more verifiable elections in time for the 2008 elections. (Contrary to what you have been told, we have twice as much time remaining to obtain better equipment than our counties were given in 2006 to make their decisions on how to spend their allotted HAVA funds.)

- 1) Approve the TACIR staff recommendations today
- 2) Endorse the Tennessee Voter Confidence Act to move that parallel legislation forward
- 3) Support HR811, the Voter Confidence and Increased Accountability Act, due to be heard next week in Washington. If it passes, it will include new funds to help Tennessee correct our mistakes.
- 4) Revisit Tennessee's remaining HAVA funds. We can produce a statewide voter registration database for 1/20th of what is budgeted for that project, leaving enough money for statewide opscan.
- 5) Use some of the state's surplus revenues to protect our franchise. 2-5% of those funds is enough.
- 6) Some counties are already planning to spend their own local funds to purchase more DREs because the ones they own now are inefficient to handle their voters in a reasonable time frame. Encourage those counties to use their funds to purchase opscan equipment instead. (The money Davidson County plans for 300 more DREs would be more than enough for countywide opscan.)
- 7) Several California counties (and counties in other states) are taking legal action to return their DREs and demand a full refund from the voting machine companies. We should communicate with some of these ground-breaking counties and considering doing likewise here in Tennessee.

It is interesting to consider how the several states that are working so hard now to protect their franchise, states like California, Ohio, New Jersey, Colorado, New Mexico and Kentucky, differ from states like Tennessee that have lagged behind in remedying our recent bad voting system mistakes. Are those other states inhabited by more patriotic people, are their elected leaders more intelligent and aware, are they more pivotal to the direction this country will take in the future? Are they “bluer” states, or more red? The answer, at least to me, is that these states share at least one thing in common, for their many other differences. These states have more democracy than some others who have not moved as swiftly.

By that, I mean that these states all elect those constitutional officers -- their Secretaries of State or their Attorney Generals -- who are responsible for overseeing elections in their states. In all of these states, candidates who ran on platforms that included calls for election reform and election integrity measures won their elections. These states gave citizens the opportunity to express how important free, fair and verifiable elections are in the voting booth; and their votes produced action that the rest of us should copy. I hope it does not require that Tennessee go to direct election of our constitutional officers for our leaders finally to “hear” that our citizens want the same election guarantees, the same assurances.

In closing, I want you to consider what failing to act while we still can might bring us. Imagine that it is 2008 and America is choosing between two candidates -- Al Gore and Fred Thompson -- to be our next President. (The country could certainly do much worse than a choice between these two native sons of Tennessee.) On election night, returns pour in from across the state. However, in this election, the results are unexpected (to say the least). In Knox county, Sullivan county and Hamilton county, 100% of the votes are reported to have been cast for Al Gore. In Shelby county, Davidson county and Madison county, 100% of the votes are reported to have been cast for Fred Thompson. In all six counties, reports of major malfunctions in the electronic voting equipment are blamed for the results.

What would we do then, besides chastising ourselves for not taking action in 2007? Well, in five of those counties, we would likely begin to invest the considerable time and the major expense to re-run the election. In Hamilton county, they would simply count their opscan paper ballots, declare a winner and pat themselves on the back for being one of only two Tennessee counties to have made the right (i.e., most secure and most verifiable) decisions with their HAVA funds to select opscans back in 2006.

A scenario like this is certainly unlikely, even if someone intentionally tampers with our elections in 2008, which they could do easily with the paperless voting equipment now in place in 93 of our 95 counties. But something so dramatic is unlikely to happen precisely because the results would not be believable by anyone in Tennessee and would impel immediate action to remedy our flawed voting systems. There is, after all, a reason why bank robbers get caught more quickly than embezzlers.

We cannot afford voting systems that allow either wholesale election theft, or a smaller scale improper and illegal siphoning of votes from one candidate to another, to occur without detection or remedy. Tennessee should not wait to be forced by federal legislation to correct our recent mistakes. Tennessee has been the much-praised national model for supporting, expanding and protecting the franchise for the past century. We need to take action ourselves, today and over the next year, to insure that our 2008 elections (and those that follow) are as free, fair and verifiable as possible. There is no time like the present to do what has to be done, and we are the ones we have been waiting for to do what is necessary.

Thank you for your service and for what you can do today through TACIR to save our democracy. If we can provide additional information or assistance, do not hesitate to contact me (tracevu@bellsouth.net).