

October 3, 2005

The Honorable Robert Ney,
Chair
House Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

The Honorable Juanita Millender-McDonald
Ranking Member
House Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

Dear Chair and Ranking Member,

As organizations representing American voters with a vested interest in the process that governs public elections, we urge that you direct the U.S. Election Assistance Commission (EAC) to adhere to all of the provisions of the Help America Vote Act (HAVA) law. In direct violation of the HAVA law, the EAC is attempting to delay a new testing laboratory accreditation process for voting systems used in public elections until 2007. The EAC's actions could undo HAVA's goal to create in practice more reliable, secure, accessible, transparent, accurate, and auditable public elections.

Specifically, we are very troubled by the decision of the EAC to keep in place the existing voting technology certification process beyond the period designated by HAVA. On August 18, 2005, the EAC announced that the current voting technology certification process will be in place until the spring of 2007, with only one change: instead of the National Association of State Elections Directors (NASED) providing oversight of the three NASED approved laboratories the EAC will perform that function.

“Provide for interim accreditation of National Association of State Election Directors (NASED) accredited Independent Test Authorities (ITA). The EAC will develop a process to temporarily accredit current NASED ITAs. This temporary EAC accreditation is needed to ensure that certified test laboratories are available in the near term. It has been determined that the EAC will not receive a recommended list of testing laboratories from the National Institute of Standards and Technology's (NIST) National Voluntary Laboratory Accreditation Program (NVLAP) until the spring of 2007.”¹

Allowing the current three certification laboratories to remain until the spring of 2007, as the only accredited laboratories that can certify voting systems intended for use in public elections, will not have a temporary effect. This decision will negatively affect those

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laboratories that have shown an interest in being accredited to certify voting technology. It may also diminish the intended results of the promulgation of new voting technology standards, and undermine public confidence in the accreditation and certification process. We strongly object to the continuation of the NASED ITA established voting technology laboratory accreditation and certification process because it allows failed voting technology to pass certification, is in violation of HAVA Section 231(b)(1), ignores the work already begun by NIST to replace the NASED ITA process, and hinders transparency.²

The widely reported failures of voting systems, which have passed NASED ITA certification, cannot be ignored. The failures are too numerous to summarize in this letter, but a few of the more notable ones are worth recounting.³

Sarpy County Recount (Nebraska): As many as 10,000 phantom votes were added in 32 of 80 precincts when a machine error doubled the votes during counting. Source: Channel Six Omaha NE WOWT, available at <http://www.wowt.com/news/headlines/1164496.html>. Nov. 5, 2004

Broward Vote-Counting Blunder (Florida): Vote tabulation software changes amendment results when the maximum capacity of 32,000 is reached, and the software begins to subtract votes. Source: Channel 4 WJXT Florida, available at <http://www.news4jax.com/politics/3890292/detail.html>. (Nov. 4, 2004)

Carteret County (North Carolina): A voting machine loses more than 4,000 votes leaving three races including the Superintendent of Public Instruction and the state Agriculture Commissioner's race in doubt. Source: WRAL.com <http://www.wral.com/news/3891488/detail.html>. (Nov. 4, 2004)

San Joaquin County (California): The Secretary of State's test of Diebold's TSx voting system recorded that almost 20 percent of the touchscreen machines crashed during the election simulation. Based on the voting systems performance California refused to certify the use of Diebold's TSX voting system in public elections. Source: Oakland Tribune <http://www.votersunite.org/article.asp?id=5818> (Aug. 3, 2005)

As you well know, HAVA Section 231(b)(1) states that "not later than 6 months after the Commission first adopts voluntary voting system guidelines under part 3 of subtitle A, the Director of the National Institute of Standards and Technology shall conduct an evaluation of independent, non-Federal laboratories and shall submit to the Commission a list of those laboratories the Director proposes to be accredited to carry out the testing, certification, decertification, and recertification provided for under this section."⁴ Further, the law requires the EAC Commissioners to vote to approve the list of accredited laboratories, once submitted by the Director of NIST, for the certification of voting technology used in public elections. The Commission is also directed by HAVA to

publish an explanation for the accreditation of any laboratory not included on the list submitted by the Director of the National Institute of Standards and Technology.

NIST began work last year to produce a list of accredited laboratories for the certification of voting systems. On June 23, 2004, NIST announced in the Federal Register that it was establishing an accreditation program for laboratories that perform testing of voting systems, including hardware and software components. On August 17, 2004, NIST's National Voluntary Laboratory Accreditation Program (NVLAP) hosted a public workshop to exchange information among NVLAP laboratories interested in seeking accreditation for the testing of voting systems under HAVA. NIST has also published the National Voluntary Laboratory Accreditation Program's Voting System Testing Handbook 150-22. The handbook outlined the technical requirements and guidance for the accreditation of laboratories under the NVLAP Voting System Testing laboratory accreditation program. Finally, on June 17, 2005, NIST published a solicitation for applications and fees from those laboratories interested in being considered in the initial group of applicant laboratories. The notice stated that accreditation would begin on or about September 15, 2005.

In light of the work already done by NIST to provide for a new list of laboratories to be certified by the EAC to conduct certification of voting technology, why is the process being delayed until 2007? The consequences for this delay may be a reduction in the number of new qualified laboratories seeking work in this area, further erosion of public trust in the election system, and more failed voting technology being deployed by states.

The role of NIST in this process should not be limited to the submission of a list of laboratories to the EAC Commission. NIST should continue to monitor and review, with the cooperation of the Commission and in consultation with the Standards Board and the Board of Advisors, on an ongoing basis, the performance of the laboratories accredited by the Commission. NIST is also responsible for making recommendations to the Commission regarding continued accreditation of these laboratories, which includes recommendations to revoke laboratory accreditation for the certification of voting technology. NIST must have sufficient funding to perform these vital tasks necessary for the full implementation of the HAVA Law.

Transparency is not part of the current laboratory testing and certification process for voting technology. The NASED process did not and would not provide information on the testing process for any voting system.⁵ Further, NASED would not answer specific questions regarding a voting technology manufacturer or a specific voting system.⁶ In California, Diebold was found to have used uncertified software on voting systems operated during public elections.⁷ When asked by California election officials about their certification of Diebold's AccuVote-TSx voting system, Wyle Laboratories refused to discuss the status of the testing.⁸ It was reported that Wyle Laboratory told the state that the information was proprietary. These conditions should not be tolerated, especially in light of the need to provide proof to the American public that the promise of HAVA will be fulfilled.

We seek Congressional inquiry into the work being done by NIST and the EAC in accordance with HAVA Subtitle B—Testing, Certification, Decertification, and Recertification of Voting System Hardware and Software.

We support the goals of HAVA to address serious deficiencies in the accreditation of laboratories that certify voting technology intended for use in public elections. We thank you for your diligence, and continued efforts to secure public elections in this nation.

Common Cause
Computer Professionals for Social Responsibility
Electronic Frontier Foundation
Electronic Privacy Information Center
Miami-Dade Election Reform Coalition
National Committee for Voting Integrity
Verified Voting
TrueVote Maryland
Voters Unite

cc House Committee on Science

¹ U.S. Election Assistance Commission, Staff Recommendation: EAC Voting System Certification & Laboratory Accreditation Programs Adopted August 23, 2005: EAC Public Meeting, Denver, CO, available at, < http://www.eac.gov/VSCP_082305.htm>

² Lillie Coney, Testimony, U.S. Election Assistance Commission, Denver, Colorado, August 23, 2005, available at < http://www.epic.org/privacy/voting/eac-8_23.pdf>

³ National Committee for Voting Integrity, Election News, 2004, available at < <http://votingintegrity.org/archive/news/e-voting.html>>

⁴ Help America Vote Act Law, Public Law 107-252, available at < http://www.fec.gov/hava/law_ext.txt>

⁵ House Science Committee's Subcommittee on Environment, Technology, and Standards, Hearing: "Testing and Certification for Voting Equipment: How Can the Process be Improved?" 108th Congress Second Session, June 24, 2004

⁶ *id.*

⁷ Thomas Peele, "State allows unapproved machines for March election" Contra Costa Times, January 16, 2004

Ian Hoffman, "E-voting software problems worsens," Alameda Times-Star, May 15, 2004.

⁸ Elise Ackerman, "Vote-machine labs' oversight called lax" Contra Costa Times, May 31, 2004