

MARK UP OF H.R. 3295, THE HELP AMERICA VOTE ACT OF 2001

MARK UP
BEFORE THE
COMMITTEE ON HOUSE
ADMINISTRATION
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS
FIRST SESSION

HEARING HELD IN WASHINGTON, DC, NOVEMBER 15, 2001

Printed for the Use of the Committee on House Administration



U.S. GOVERNMENT PRINTING OFFICE

89-916

WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
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(II)

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THURSDAY, NOVEMBER 15, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The committee met, pursuant to call, at 11:10 a.m., in room 1310, Longworth House Office Building, Hon. Robert W. Ney (chairman of the committee) presiding.

Present: Representatives Ney, Ehlers, Linder, Doolittle, Reynolds, Hoyer, Fattah and Davis.

Staff Present: Jeff Janas, Professional Staff Member; Paul Vinovich, Counsel; Chet Kalis, Professional Staff Member; Roman Buhler, Counsel; Sara Salupo, Staff Assistant; Bob Bean, Minority Staff Director; Keith Abouchar, Minority Professional Staff Member; and Matt Pinkus, Minority Professional Staff Member.

The CHAIRMAN. The committee is now in order for the purpose of consideration of H.R. 3295, the Help America Vote Act of 2001. I just wanted to make a statement that today's markup is the culmination of a long series of hearings, discussions and negotiations. In crafting this bipartisan election reform bill, we heard from and consulted with groups from across the country that represent the interests of voters, elections officials, State and local governments and others who care about this issue. From the outset of this process, our goal has been to craft legislation that could be supported by Members from both sides of the aisle, and with the introduction of the bill, I think it is very evident if you look at the sponsor and cosponsor list that they are from both sides of the aisle and from different political spectrums within both parties.

Improving our country's election system should not be a partisan issue. Republicans and democrats nationwide and here in this Congress agree on the necessity of ensuring that all citizens who wish to vote can and that their votes are counted accurately. I believe this bill will advance us towards the goal.

Members have been provided with a copy of the bill, but before we begin, I would like to just quickly go through some parts. The first title of the bill, title I, is the punch card replacement program, the hanging chads and all those issues. This title authorizes \$400 million to allow those jurisdictions that used punch card voting systems in the November 2000 election to get rid of them. It is obvious that we need to get rid of these antiquated technologies and replace them with machines that voters can have confidence in, and this title authorizes funds to make that happen.

I will make it clear. Some jurisdictions have said they may not do this, and that is fine. We are not telling them they have to do it, but if a future election has a tie and they have a hanging chad, don't call me to try to see how that works out for them. But, again, if they want to replace them, we will be there. If they don't want to, that is going to be their option.

Second title, title II, creates the new Election Assistance Commission. The new Commission will assume the functions of the Office of Election Administration, currently under the Federal Election Commission. The new EAC will serve as a national clearinghouse for the compiling of information and review of procedures affecting administration of Federal elections. The EAC will also be charged with developing new voluntary election management practice standards. It will distribute the election fund payments, research and development grants and pilot programs authorized by this bill.

I will point out that the name that we did choose, by the way, for this Commission is not an accident. The purpose of this Commission is to assist State and local governments with their election administration problems, basically taking the attitude we are the government, we are here to help. Its purpose is not to dictate solutions or hand down bureaucratic mandates. The Commission has no rulemaking authority. Its commissioners serve part-time. Of the four commissioners, no more than two can be of the same party, so we guarantee bipartisanship.

Additionally, it must consult with and consider the recommendations of the Advisory Board and the Standards Board established by this bill. These boards will consist of election officials from around the country as well as other interested groups with interest in or expertise in election issues. These boards will have a voice on this Commission and that voice will be heard.

I just want to say something about this bill. It is, I think, embarking on a unique area. Those who were concerned about creating a Federal agency that in fact was going to promulgate rules without the vote of Congress don't have to have a fear after this Commission is constituted.

The ranking member Mr. Hoyer came through with the Advisory Board idea, which was just a tremendous idea. It includes a lot of groups from around the country to have their voice heard. We had the standards part of it, which will be approximately 110 people from across the country. They will reach consensus. It forces a working group together, and we have a Commission. So it, I think, is one of the more unique ideas that was given to us, and I want to thank Mr. Hoyer for coming up with the Advisory Board.

The title also authorizes \$2.25 billion for the election fund payments to the States. The election fund payments will be used for a variety of things, from purchasing new equipment to updating registration systems, to assuring access for those with physical disabilities to the polls, increasing poll worker education and training, sending sample ballots, et cetera. The fund is designated to allow a State to determine its greatest needs and devote the resources to those needs.

Along with these funds come funding conditions. States that take payments must certify, for example, that they have provided one

dollar to match every three dollars provided by the Federal Government, a 25 percent match.

They have established a statewide benchmark for voting system performance. They have adopted the voluntary election standards developed by the new Election Assistance Commission or developed their own standards. They also have in each precinct or polling place a voting system in place which is fully accessible to people with disabilities. These funding conditions will ensure that the Federal dollars are spent appropriately and that the EAC will monitor compliance with these conditions.

Titles III and IV of this bill help create the Help America Vote Program. This program is designed to get the country's young people involved in our democratic process through volunteer services, nonpartisan poll workers and assistance.

Ranking member Mr. Hoyer proposed this idea. We have a college program and also a high school program. We all talk across the country and we all firmly believe we want young people involved in this process. Then let us get them to the polls, have them be poll workers, see how the process works, and it will give them, I think, a renewed spirit and energy to become future voters and to take that back to their schools to promote voting. I think this is a great program. The Help America Vote Program will be administered by the EAC. The high school program will be set up independently by Federal charter. Both programs will be administered in a nonpartisan manner.

Title V is the minimum standards section of this bill. The minimum standards approach I believe is the spirit of this bill. Some people fear that having funding conditions wasn't adequate, because voters who maybe lived in States who did not take funds would not be protected. Others opposed intrusive Federal mandates that become burdensome and inefficient, and that was a huge argument debated across this country.

The minimum standards we include in this bill strike the appropriate middle ground. They guarantee certain protections to all the voters of the country without imposing an intrusive Federally designed system.

There are seven minimum standards. Number one, the State will implement a statewide registration system that is networked to every jurisdiction in the State.

Two, the State has a system of file maintenance which ensures that the voting rolls are accurate and updated regularly.

Three, the State permits in-precinct provisional voting by any voter who claims to be a qualified voter to vote.

Four, the State has adopted uniform standards to define what constitutes a vote on the different types of voting equipment in use in the State.

Five, the State has implemented safeguards to ensure that military service personnel and citizens living overseas have the opportunity to vote and have their vote counted.

Six, the State requires that new voting systems provide a practical and effective means for voters with physical disabilities to cast a secret ballot.

Number seven, States that have technology that allows voters to check for errors must ensure that they are able to do so under con-

ditions which assure privacy, and States replacing all machines within their jurisdictions must do so with machines that give voters the opportunity to correct errors before the ballot is cast.

The EAC, the Commission, will monitor compliance with these minimum standards and can make referrals to the Justice Department in cases of noncompliance. I think that gives a certainty of feeling that these will be standards that will work and will have some teeth.

Title VI will help assure the voting rights of our service personnel and overseas citizens. It includes a number of provisions that will make it easier for our service personnel to obtain ballots and transmit them in a timely fashion. Additionally, we will require the Department of Defense to make sure there are an adequate number of voting assistance officers assigned and make sure the ballots are properly postmarked so they can't be challenged.

Finally, Title VII, VIII, and IX would allow official election mail to be sent at one-half of the regular first class rate, transfer the FEC's Office of Election Administration to the new EAC created in this bill, protect the privacy rights of voters in jurisdictions that have second-chance voting, and clarify the National Voter Registration Act procedures for removal of ineligible registrants from the poll.

In conclusion, just let me say that this bill is a culmination of a lot of hard work, and before I turn it over to the ranking member, I also want to take a moment to thank a lot of people who made this possible. Bob Bean and Keith Abouchar of the minority staff. I obviously want to recognize our majority staff that are also sitting here that participated. Chet Kalis, Roman Buhler, Paul Vinovich, Maria Robinson, Pat Leahy. Who am I missing? I am going to have to give them a pay raise to compensate for not saying their name here today.

I also want to acknowledge Congressman Roy Blunt, who was very, very helpful. His administrative assistant, Floyd Gilzow, who was very helpful. And let me also just say that we met with the Speaker of the House, Mr. Hoyer and I did. We also met with Leader Gephardt. I was very encouraged by the attitude of both of the leaders, and let me just say before I turn it over to Mr. Hoyer that things don't happen in a vacuum. We have been able to get to this point. I want to publicly recognize the work of Steny Hoyer and also the work of the members of this committee. We debated issues for quite a few months. We have debated issues for quite a few hours, quite a few days, quite a few weeks. We debated issues when they were in this building. We debated issues when we were strung out at GAO and also Rayburn. No matter what was happening, we were continuing to discuss the issues, outreaching, talking to people on both sides of the aisle.

Some will say this maybe isn't a perfect bill, but this is, I think, the way Congress should do its business, and there is still a process yet to go and I know that. But I believe that we worked together to put aside the politics, to come up with some ideas that I think is a good concrete plan that helps America vote. So I want to thank you publicly for all of your concern on this issue and due diligence. Thank you.

Mr. HOYER. Thank you very much, Mr. Chairman, and I certainly want to return the favor. We would not be here if it weren't for Chairman Ney. There is no doubt that he has demonstrated a commitment to working in a bipartisan fashion to come up with a bill that in my opinion is more than most would have hoped for, and I say that across the board in January or February or March or April when local groups were very concerned and others were very concerned about legislation. So I think Chairman Ney, his remarks that this is not a perfect bill, properly imply—undoubtedly apply to every bill that has ever been considered in the Congress of the United States. Having said that, I think this is a good bill. It is worthy of support and will move us forward.

That does not mean that I think it cannot be strengthened. I think it probably can be, but it does mean that I think it is a very worthwhile piece of legislation, and I thank not only Congressman Ney but all the members of this committee who have worked with-in and with me in a positive fashion, and I say that to both sides of the aisle on this committee. All have made various and substantial contributions.

I also want to thank John Conyers, the ranking Democrat on the Judiciary Committee, and Maxine Waters, the Chair of the Democrat Caucus Special Committee on Election Reform. Mr. Conyers does not believe this bill goes far enough. I understand his position. He has been critical of some of the things that we don't do, but I think and I hope that most people will focus on the things this bill does do, because they are very substantial. Chairman Ney has outlined them and I am going to reference some of those issues myself.

In addition, on our side of the aisle, we have been very attuned to trying to give very personal attention to the report issued by the Waters committee, and in my opinion, we have included most, not all, but most of the issues that were raised in that very excellent report.

As you will see, the legislation that we will mark up today incorporates many of the recommendations made not only by the Waters committee but by the Ford-Carter Commission, by the MIT-CalTech group, and I am not going to mention them all, but very substantive groups that have looked at this. As Chairman Ney has indicated, we have also worked with people who have the responsibility on the local level in States and counties, cities, precincts, wards, to implement whatever is adopted.

One year ago this month our Nation was in the throes of a political nightmare that would drag on for 5 excruciating weeks. None of us want to see that replayed. I recall that 1 year ago today the headline that dominated page one of the Washington Post was this, and I quote, "Bush's Florida lead swings to 300. Justification required on recounts. Pictures still muddled and legal tussles."

This bill is not to cast dispersions on any State, any candidate, any party. In point of fact, as we went on, we saw that no State was exempt from having problems with technology and with process. We hope that this bill will be a very definite contribution to fixing that.

Uncertainty reigned in our democracy. Public confidence in our election system was shaken. The United States of America, the most technologically advanced Nation in the world, had not fulfilled

its most basic election duty, the duty to count every citizen's vote, count it accurately and be able to report it quickly. In all the votes an estimated 2 million Americans went uncounted and, as was observed by the CalTech-MIT study, there were probably another 3 to 4 million votes that were not cast because of problems with registration. So this was not alone a problem of Election Day concerns, but of registration concerns as well.

That situation was not and is not acceptable in our democracy now, after a year's examination and investigation of our election system by Congressional committee. I want to thank Bob Ney, in which Bob Ney in the House, who had hearings before anybody else did and right after the negotiations between Democrats and Republicans broke down about forming a bipartisan task force, when they no longer were viable, Chairman Ney came to me, and I came to him and we talked, and he said, we are going to have hearings right now. We had the earliest hearings. We had extensive hearings. They were broad-based. We included all interested parties, and those hearings were very, very useful in moving this process along.

Very frankly, I had introduced a bill early on. It was a bill that had made election reform conditioned upon the receipt of money. That became a problem, which I will discuss a little further in just a second. But the time for talk has now, in my opinion, ended. It is time for us to act.

Thus today, I am pleased to join Chairman Ney in strongly supporting the Help America Vote Act of 2001. This bipartisan legislation is not a magic elixir for the problems that plagued us last November. No legislation could be. But it prescribes the right medicine for our ailing election system, Federal assistance to the States and minimum election standards that are not optional, that are not conditioned upon the receipt of money. I think that is a critical addition to this bill which came after extensive discussions between myself and Chairman Conyers, Ranking Member Conyers, and Chairman Waters. This bill will significantly improve the integrity of our election process, improve voter participation, and I think go a long way towards restoring public confidence.

The Help America Vote Act authorizes \$2.65 billion for Federal election reform over 3 years. That is more money per year than any other bill that has been introduced, and that is a direct accomplishment, frankly, of Chairman Ney. He was tenacious on this. He felt that that sum at least was necessary to accomplish our objective, and I thank him for his leadership on that issue.

In addition, Speaker Hastert has represented to both of us that he is going to support supplemental appropriations for fiscal year 2002, up to 600—not up to—650 million, 400 million for the punch card buyout, which everybody recommended ought to be accomplished, and 250 million to accomplish the objectives set forth in the legislation for use of the general funds out of the election fund.

It allocates \$2.25 billion over 3 years for that general fund to help States establish and maintain accurate lists of eligible voters, obviously an issue that was confronted in 2000. Improve equipment, clearly necessary. Recruit and train poll workers, a real problem all over the country. Improve access for disabled voters, in

my opinion, a very important objective. And educate voters about their rights.

Furthermore, the Help America Vote Act establishes minimum standards for State election systems that will be enforced, and the chairman has said this. There is no disagreement on this by the Department of Justice. Under this bill, the States must adopt, not advisory, not optional, they must adopt a statewide voter registration system linked to local jurisdictions. Ford-Carter, Waters, other reports said that was critical to do. In-precinct provisional voting, so that Americans do not go to a polling place and because of mechanical registration problems are turned away. They will be able to vote there with a provisional ballot in that precinct, a critical important step forward, in my opinion. A system for maintaining the accuracy of voter registration records, a language which we believe is—and we have agreed between the parties is consistent with and in no way changes or undermines the motor-voter legislation, the National Voter Legislation Act.

Uniform standards defining what constitutes a vote on the different types of voting equipment certified for use, that obviously is an issue raised by Bush v. Gore. It is safeguards ensuring that absent uniformed and overseas voters have their votes counted. We found, to our shock, at least to mine, that there were many jurisdictions that received absentee ballots from overseas, civilian and military, that did not count them unless counting them would make a difference in the outcome. There is no American who wants to take the trouble to vote who believes their vote is not counted simply because the other side got more votes than their vote would have made a difference.

And assuring voters who make errors will be given opportunity to correct their ballots. And practical and effective means for voters with disabilities to cast secret ballots on new voting equipment. I intend to, as the chairman knows, because we have not gone as far as I thought we could have gone, offer an amendment to that section to be more specific, and I will offer that at the appropriate time, Mr. Chairman.

Let me stress, these minimum standards are not discretionary, nor are they contingent on receipt of election payments. States shall enact these basic minimum protections, and they shall be enforced. The chairman has made that very clear in his opening statement.

I especially want to thank advocates for the civil rights of disabilities communities for their help in crafting this bill. I do not attribute this bill to them, but they have been helpful and have been in communication with our staffs through the last 8, 9 months in getting to where we are. I understand that they are concerned that this bill does not go far enough.

I made the point yesterday, I will make it today, and I will make it in the days to come, that this bill will go to conference. There will be other recommendations made, assuming the Senate passes a bill, and we will certainly look at ways and means to ensure the objectives of making sure that every American is facilitated in their voting, that every American's vote counts and is counted accurately.

I appreciate and understand the views of those who are concerned about this bill. I think Mr. Fattah may have mentioned it, because we discussed it yesterday. We are committed to making sure that this bill is as good as we can get it. However, while this legislation is not perfect, it offers this distinct advantage. It has a realistic chance of passing this House and becoming law in time to avert another election nightmare 1 year from now.

As the end of this session of Congress draws near, time is of the essence. The train has sounded its whistle, set to pull away from the station, and election reform, in my opinion, must be on board.

Election reform is a down payment on the right that defines us, the basic right of every citizen to cast their vote and assist America in making its decisions.

I urge my colleagues to join us in making this crucial investment. I want to also join the chairman. He mentioned Bob Bean and Keith Abouchar. I also want to mention Beth Stein, who is sitting out in the audience. Beth Stein was on the House Administration staff at the beginning of this year. She is now with Senator Cantwell, the newly elected Senator from Washington State, but she was very important in working on the initial bill that we introduced, which was a good bill at the time it was introduced, and this is a stronger, more comprehensive version of a compromise bill. I also want to thank Neil Volz, the Staff Director of the House Administration Committee, who has done an extraordinary job of—where is Neil?

The CHAIRMAN. He is back there.

Mr. HOYER. I want to thank you, Neil, for the work that you have done in keeping us all targeted and keeping people happy. I want to thank Chet Kalis, who came in and did an extraordinary job. Chet, thank you for the hours you put in and the good humor that you exercised, even when I came back and said, no, we have got to make it stronger and you pulled out your hair because you thought that it had all been done, and I thank you for that.

Paul Vinovich—where is Paul? Is Paul in the room? Oh, there he is. Paul, an outstanding lawyer, who was very involved in putting on paper our ideas, and if there are mistakes here, it is all your fault, Paul, none of ours. Of course Bob Ney and I have done it right. But Paul has done a great job for us. Maria Robinson, I also want to thank Maria Robinson. I don't know if Maria is back there. And Pat Leahy as well. I also would be remiss if I did not thank, not necessarily profusely, but thank my friend Roman Buhler, who—

The CHAIRMAN. Can we make a note at 25 till 12:00, Mr. Hoyer said something nice about Roman.

Mr. HOYER. Those of you in the audience—

The CHAIRMAN. That is inside—

Mr. HOYER. Mr. Buhler is one of the longest serving staff members of the House Administration Committee, and has, therefore, one of the longest memories of what has been done and hasn't been done. There are grievances that exist, but he and I have had a checkered career, but I want him to know that I thought, notwithstanding the fact that we disagreed on many items, that he did make a positive contribution to our final product, and I thank him for his work on this.

Mr. Chairman, this has been a positive effort. We have much that is left to be done, but I think we can get it done.

The CHAIRMAN. Thank you. Thank you very much, and we will move on to—and I forgot to mention—I mentioned all our staff except our Staff Director, so I am glad you threw that in there, Neil Volz.

Mr. HOYER. I am trying to take care of him, you know.

The CHAIRMAN. And one enlightening thing that I have learned from Mr. Hoyer and Mr. Buhler, I learned the history of the House when I wasn't even here, so it was interesting.

Mr. Ehlers.

Mr. EHLERS. Oh, but, you know, when Wayne Hayes chaired this committee.

The CHAIRMAN. That is right.

Mr. EHLERS. Mr. Chairman, I congratulate you and Mr. Hoyer on this bill. I think it has gone a long way toward solving our election problems. I also want to thank you for including a bill that I had written separately, which passed the Science Committee, H.R. 2275, which dealt with a very important aspect of that, and let me just mention to those who are not aware of it, the role that this will play. I think it is going to be the most important factor in this bill in terms of the future development of voting equipment.

Some years ago, local election officials began moving toward computerized voting equipment. Before then, it had simply been the paper ballot and the big iron monsters where you pulled the little levers down, and everybody viewed the computerization as a great step forward, but in many cases local election officials did not have the technical expertise to judge the quality of the equipment, the accuracy, the security, the integrity or the ability to test that equipment.

At the same time, we have a Federal agency which is specifically devoted to setting standards and qualifications for the entire Nation, and that is the National Institute of Standards of Technology that has been in operation for much more than a century. It does an outstanding job for all of America, its industry and its commerce. So it was natural to ask them to become involved in helping to set standards for voting equipment.

The portions of the bill that deals with that gives that responsibility to the National Institute of Standards. And the reason this is so important, much of the issues in the disputed election in Florida last year rose from the lack of quality and maintenance of equipment and using proper procedures with all the computerized equipment. We hoped that as a result of this bill, standards will be developed, not only for the quality of the equipment, but also the way in which it functions and the way in which it is maintained.

There is another factor which is introduced in this section, which has not, to my knowledge, been ever discussed or brought forward in any major way, and that is the security of the voting system. We worry a great deal about locking up the ballots, sealing the ballot boxes and so forth, but we have not paid attention to the fact that almost any college freshman with a knowledge of computers could easily program the computer to read the results differently than the voters intended, and to therefore change an entire election just

by changing the software in some minor way. So the National Institute of Standards and Technology, which is also expert in information technology, will be charged with the responsibility of developing safeguards so that computer security is strengthened. And with all of that work, I am convinced that in the future, from the technical standpoint, we can almost guarantee a total quality, accuracy, security and integrity of our voting results, and that is extremely important, and I appreciate the willingness of the other persons writing the bill to include that in it.

Thank you.

Mr. HOYER. Mr. Chairman, if I can, I want to congratulate Mr. Ehlert. Mr. Ehlert I think is one of the experts in the House on technology, scientific background, and has been very helpful in modernizing the House's own technology. I think this was an extraordinarily useful and very important addition to the bill.

Mr. EHLERS. Thank you.

The CHAIRMAN. I do appreciate Mr. Ehlert's work, and Mr. Doolittle offered a lot on the list maintenance. Mr. Reynolds has an issue yet to help with the military, and I know members of both sides of the aisle have added their ideas and we appreciate that.

Mr. HOYER. Mr. Chairman, you were going to introduce Mr. Fattah and Mr. Davis I know now. I did not mention them, but both of them have been very, very helpful in the development of this bill from the—starting 9 months ago, 10 months ago till today, and I thank them. Without them we would not have gotten to this end. They both have been very helpful, and I want to thank them for that.

The CHAIRMAN. I want to recognize Mr. Fattah, and thank you.

Mr. FATTAH. And thank you, Mr. Chairman. I will try to be brief and concise, but I need to say a few things. One is I started my public career, if you will, sitting on a panel back home in Philadelphia in 1979, reviewing an election along with the district attorney and a number of other people from both parties. There had been a massive breakdown of voter machines that had taken place on Election Day. In that election, the primary of 1979, in which the first serious African American candidate for mayor had run, and it just so happened about 90 percent of these machines broke down in the wards in the African American community and he lost in a close race, and there was a lot of concern about the process. And when we finished that study, we determined that we needed to upgrade the machinery, and that we needed to do a better job in terms of locating polling places. It seemed that the more difficult and out of the way polling places for voters to find happened to be in the community most populated by African Americans. A whole host of other reforms, and I am happy to say, you know, a few decades later, we had just purchased these new machines in Philadelphia and spent a few hundred million dollars.

The problem is between 1979 and now it took that long to get to where we are. I am hopeful that as this legislation moves forward, and the other pieces that are moving through the process, the Conyers bill and the Dodd bill, and that we get to some conclusion around here collectively about election reform. It won't take us decades to actually implement the reforms and that there will be some more immediate relief, because I think that we see now that

our Nation, unfortunately, having gone through what we went through in the last presidential election, you know, really lost the ability to really shine our democracy in such a way around the world as some model for others to follow if we can't count votes of law-abiding citizens who come to the polling place. And we had just this week a rash of stories about how not only a lot of votes were not counted correctly, but how unfortunately, again, just like the Philadelphia story of 1979, somehow it wasn't evenly dispersed, this inability to get votes counted right. It seemed to be aggregated among racial minority groups, particularly African Americans, who for some reason or another, their votes in a larger proportion were not counted or those ballots were spoiled, and I think that raises a lot of concerns—and should—among us as policymakers and among the general public.

So even though I also would like to thank the chairman, I would like to thank the ranking member and the staff, I really want to thank the public for being patient as we attempt to perfect this democracy, and for African American voters in this country, it has always been the Federal Government that has really stood to protect their right to vote, from the Voting Rights Act and due to interventions against the poll tax and the literacy test and a whole range of maneuvers at the local governmental level that has sought to deprive people of the right to vote.

So I am hopeful that the Ney-Hoyer bill will be a part of that continuum of efforts by the Federal Government to ensure that people's rights will be protected. There is obviously items in the bill or not yet in the bill that I would like to see. I think we can do more to strengthen—I think we can do a lot more in terms of the disability communities, of concerns about access to polls and their ability to vote and have their votes protected. And I think there are issues related to the motor-voter implementation and the purge issue, even though I think we are probably a lot closer on some of those issues than we would suspect.

But I think that we have to have a vehicle in order to get to an end product, and this is a vehicle. It is a contribution. And I note that our colleagues in the Senate are working their will. And I think that through it all, the more that we learn about this process, the more we will understand that this country's ability to face crises, like the ones we are facing now, is dependent upon the election of our leaders in ways in which we can have confidence that they have earned the right to lead and that there be no doubt about that. And I think that it would be helpful to us as a Nation never to ever again allow us to be in a situation we were in the last presidential election, and I think this bill makes a contribution in that regard.

Thank you.

The CHAIRMAN. I want to thank the gentleman for his thoughtful and sincere comments.

Mr. Doolittle.

Mr. DOOLITTLE. Mr. Chairman, I think if we can ask one of our counsel to answer a question I have about a provision of the bill. By the way, I think it is a fine bill. I commend you and our ranking member and Mr. Blunt for putting together something I think we can all support. But the question I have specifically is on page 79.

I understand beginning at line 14—and I understand everything until we get to the phrase, which says, “except that no registrant may be removed solely by reason of the failure to vote.” and that seems to me to kind of muddy the water to what it said prior to that. So could I just ask what the effect of that is?

The CHAIRMAN. Counsel is telling me you can't be removed simply because you haven't voted. You have to have not voted and not responded to a notice.

Mr. DOOLITTLE. Well, my question is—I mean, that is very clearly set forth as the requirement, and I think this somehow impugns what has gone before. I would like to urge you to take that phrase out, because in the preceding paragraph, it makes very clear that you cannot remove someone unless they have not voted for two or more consecutive general elections for a Federal office and who have not responded to a notice. And I just think to have that extra phrase in there is frankly unnecessary and possibly causes problems.

The CHAIRMAN. And I wasn't here for motor-voter, but as I understand that law, it doesn't take you off anyway, the original motor-voter, for failure to vote. It doesn't.

Mr. HOYER. John, if I might respond, I think I understand what you are saying. If you read this two together, they both mean that you can't remove somebody for not voting solely. That is what the—

Mr. FATTAH. The gentleman suggested somebody that should be removed from the rolls?

Mr. HOYER. That is what the National Voter Registration Act says, and therefore from your perspective if that causes you some concern, it doesn't add anything or detract anything, but from our standpoint it makes it clear that is the intent. That is what the current law is and we just wanted to indicate so we don't create a controversy outside this bill that frankly we don't need. We have got enough controversy as it is.

Mr. DOOLITTLE. Well, I think I understand what the intent is, and I support the intent. I just think it is confusing. So maybe as we roll along, we can further evaluate what—

The CHAIRMAN. I think what we can do is to take a look at—and this bill is a thorough bill and that is why it tends to be a complicated bill. When we looked over these sections, you know, time after time after time again, we also had notified Justice to have a look, counsel, everybody has taken a look at it but—

Mr. DOOLITTLE. I guess, Mr. Chairman, my feeling is it lays out very clearly how someone is going to be removed and it stipulates, you know, you have to not vote in at least two Federal elections and you have to have not responded to a notice. But then when they go on the say, “except that no registrant may be removed solely by reason of the failure to vote,” well, that is not an exception, because the exception is contained in what goes before.

The CHAIRMAN. But, again, as this process continues on, we will be glad to sit with all the parties affected and also with all the attorneys we need to look at this, to clarify what position we have on this.

Mr. Ehlers.

Mr. EHLERS. Just a short comment. That means if you die, you can stay on the voter rolls.

The CHAIRMAN. I don't believe so. But any other opening statements?

Mr. DAVIS. Mr. Chairman, one of the more articulate spokespeople on this bill was the Ohio Secretary of State, and in representing your district and your State and the country, I think we have really been faithful to what he suggested we do and how quickly and how vigorously we do it. So I salute you and Mr. Hoyer for having in mind a single clear goal at the beginning that really helped us escape any partisan trappings that could have easily submerged this bill.

Everyone in this committee knows by now that what happened in Florida could have happened elsewhere and did to a certain extent, and I believe we are all resolved that that not happen again. As the most recent media reports make painfully clear once again, the margin of error exceeded the margin of victory in Florida. One of the painful lessons we learned was the need to have a voter verification system which is at the center of this bill. It will allow increasing numbers of first-time voters and people who have some difficulty in voting because of age or some other infirmity to be more assured of casting their vote appropriately and with confidence. Time is of the essence with this bill. I think we should stick with Congressman Hoyer's goal of trying to have some influence on the quality and integrity of the 2002 elections. I know that is getting increasingly difficult in certain parts of the country, but this money is not just for the machines. I think we all know that a lot of the cost of the election infrastructure in our State and local government suffers from benign neglect and at a time where State and local government is increasingly experiencing revenue shortfalls, the money that we are going to get out to deal with poll workers, training, education and those details that usually go unnoticed is going to be more important than ever.

To those who think this bill doesn't go far enough, let me just say that those of us in Florida who have become experts on election law, every Democrat in the Florida Congressional delegation is a cosponsor of this bill, and I am confident that most all of the Republicans will be as well, and certainly Chairman Young has been a strong supporter. We are resolved that we should not repeat the lessons that occurred in the last election in 2002. And while there may be room for improvement along the amendatory process or in the next session of Congress, we would urge those of you who want to improve the bill to keep in mind that ultimately something is better than nothing here, particularly since the clock is ticking on the 2002 elections.

So thank you again Mr. Hoyer, Mr. Chairman, for your work on this bill.

The CHAIRMAN. Thank you. Mr. Reynolds.

Mr. EHLERS. Thank you, Mr. Chairman, for giving me the opportunity—

The CHAIRMAN. Mr. Ehlers—I am sorry. Mr. Reynolds.

Mr. REYNOLDS. Mr. Chairman, at this point in our Nation's history, our society is once again reflecting on the great rights and privileges we enjoy as citizens of the United States. And no right

is more fundamental or basic in our way of life than the right to vote. I just want to join in the chorus of this committee to thank you as chairman and Ranking Member Hoyer for your leadership in working closely with this committee and the House as a whole as we brought experts from across the country in here in a bipartisan fashion to outline the challenges of elections at the State and local level and some of the solutions where we could be helpful. And you are both to be commended for putting together what is a comprehensive and challenging bill that now enjoys such strong support with cosponsorship as we move this through the House.

The CHAIRMAN. Thank you. Mr. Ehlers.

Mr. EHLERS. Thank you, Mr. Chairman. I just wanted to add a comment to my previous statement, and I ask unanimous consent that this be entered in the record with my original statement.

The CHAIRMAN. Without objection.

Mr. EHLERS. I neglected to mention an important factor of the bill that I had authored, which is incorporated here, is to require also in addition to the technical research, there will be human factors research on making the computer or the operating system or the ballot as understandable as possible, so research will have to be done so that there can be a minimum of voter confusion. I have often heard people say, well, we need better voter education. That is not the answer. You can't teach people very well to do something they only do a couple times a year and expect them to remember it. We have to have systems that are so simple and straightforward that there cannot be confusion, there cannot be any wrong voting as a result of misunderstanding. And so I hope that this addition will take care of it.

Mr. HOYER. Would the gentleman yield?

Mr. EHLERS. Yes.

Mr. HOYER. As you know, we have included in this bill grants, both for nonprofits, i.e., universities. Chairman Ney was very much involved in that, as you were, and for manufacturers who may want to participate like they do with DARPA in developing new technology to accomplish exactly that objective. I agree with you 100 percent. We ought to be able to make technology that is so voter friendly that in and of itself it will reduce very substantially errors, which of course is our objective.

Mr. EHLERS. I thank you very much, and I ask unanimous consent that that also be entered immediately after—

The CHAIRMAN. Without objection. I wanted to note on that that the three different ways to receive that money, you have public and private and the pilot program. If you talk to some of the people that came here from around the country that did the expo here in the room, some of these companies are developing devices that automatically take into account every form of a disability or the ability of a voter to vote that may have some technical problems with voting, and I am hoping that—and I am not saying secure of, but technology is going to be part of the ability to have good accurate votes, and I am hoping that that entrepreneurial money and research only will help towards that cause.

Mr. Linder.

Mr. LINDER. Thank you, Mr. Chairman. I will submit a statement in writing for the record, and let me just say that as we move

through these processes, I would hope at some point we take as much interest in making sure that the person who presents himself for a ballot is indeed who he says he is. We have not been doing enough to eliminate voter fraud and I hope as we move forward, we will do some of that.

Thank you.

[The statement of Mr. Linder follows:]

STATEMENT OF HON. JOHN LINDER

Mr. Chairman, as terrorists attempt to undermine our democracy, it is fundamental that Congress work to safeguard the very elements of that democracy. The right to vote—the ability to cast a ballot and influence the political state of affairs regardless of sex, race or circumstance—is the very essence of a democratic society, and without the opportunity to freely and openly voice thoughts and concerns at the ballot box, Americans would be no better off than the citizens oppressed by governments throughout the world. And thus, I am pleased to join my colleagues here today in marking-up legislation that will make significant strides in ensuring voting rights for all Americans.

The Founders of our nation intentionally avoided issuing specific guidelines by which the states were to conduct elections because they recognized that circumstances and needs would be different throughout the country. I believe this is the correct approach, and it is not the federal government's role to mandate the type of election equipment used in every voting precinct or to require a standard procedure for resolving election disputes for local office. The "Help America Vote Act" maintains this "hands-off" federal role, and reaffirms that our role is one of facilitation rather than regulation and imposition.

The bill provides federal guidance without imposing federal mandates, financial assistance without burdensome federal regulation. Additionally, it establishes minimum standards to help states create uniformity in election procedures and facilitate fair and accurate voting standards across precincts.

The "Help America Vote Act" will also eliminate a significant source of fraud and abuse that has plagued our election system for decades. The bill provides for list maintenance, which allows election officials to eliminate fraudulent and duplicate entries on registration rolls. Inaccurate voter registration lists condone voter fraud and undermine the integrity of our electoral process. If we are to have faith in the sanctity of election results, we must be able to confirm the identity of voters and know that only those individuals who are eligible to vote actually cast ballots.

As Americans, we are privileged to live in a society that recognizes the importance of an individual's right to vote. Perhaps this single act is among the most American that we undertake on a regular basis, as it recognizes our commitment to the principles of democracy and freedom. And today, Congress reaffirms our commitment to those principles and acknowledges the role of voting in maintaining them.

The CHAIRMAN. I want to thank the gentleman. The Chair lays before the committee the bill H.R. 3295 that has been provided to members in advance. Without objection, the bill will be considered as read and open to amendment at any point.

Are there any amendments? Mr. Reynolds.

Mr. REYNOLDS. Mr. Chairman, I am offering an amendment on behalf of our colleague Mark Kirk, who—with legislation that outlined what my proposal is to allow polling places to be located on military installations. This amendment repeals a 136-year-old Civil War law that the Defense Department only began to reinforce in 1999 to outlaw existing polling places. Language inserted in the fiscal year 2001 appropriations bill suspended the enforcement of this law in 2000, but a permanent solution is needed.

The amendment allows but does not require military base commanders to permit voting sites on military installations. These polling places would be only for residents of that military installation. The Kirk amendment keeps politics and the military separate. It

only allows military voters the right to vote near their residence, like any other American.

Without this amendment, on some large installations, base residents would have to travel for many miles to reach an off-base voting site. The Congressional Research Service has identified at least 20 affected jurisdictions' polling, some of which have been in use for at least 15 years. This amendment ensures that these base residents have the same convenient access to a local polling place as other Americans.

This language has been approved by the Defense Department and the White House, and I urge its adoption.

[The information follows:]

AMENDMENT TO H.R. 3295

OFFERED BY Reynolds

Add at the end of title VI the following new section
(and conform the table of contents accordingly):

1 **SEC. 606. USE OF BUILDINGS ON MILITARY INSTALLATIONS**
 2 **AND RESERVE COMPONENT FACILITIES AS**
 3 **POLLING PLACES.**

4 (a) LIMITED USE OF MILITARY INSTALLATIONS AU-
 5 THORIZED.—Section 2670 of title 10, United States Code,
 6 is amended—

7 (1) by striking “Under” and inserting “(a) USE
 8 BY RED CROSS.—Under”;

9 (2) by striking “this section” and inserting
 10 “this subsection”; and

11 (3) by adding at the end the following new sub-
 12 section:

13 “(b) USE AS POLLING PLACES.—(1) Notwith-
 14 standing any other provision of law, the Secretary of a
 15 military department may make a building located on a
 16 military installation under the jurisdiction of the Secretary
 17 available for use as a polling place in any Federal, State,
 18 or local public election, but only if such use is limited to
 19 eligible voters who reside on that military installation.

20 “(2) If a building located on a military installation
 21 is made available under paragraph (1) as the site of a

1 polling place, the Secretary shall continue to make the
2 building available for subsequent elections unless the Sec-
3 retary provides to the appropriate State or local election
4 officials advance notice, in a reasonable and timely man-
5 ner, of the reasons why the building will no longer be made
6 available as a polling place.

7 “(3) In this section, the term ‘military installation’
8 has the meaning given the term in section 2687(e) of this
9 title.”.

10 (b) USE OF RESERVE COMPONENT FACILITIES.—(1)
11 Section 18235 of title 10, United States Code, is amended
12 by adding at the end the following new subsection:

13 “(c) Pursuant to a lease or other agreement under
14 subsection (a)(2), the Secretary may make a facility cov-
15 ered by subsection (a) available for use as a polling place
16 in any Federal, State, or local public election notwith-
17 standing any other provision of law. If a facility is made
18 available as the site of a polling place with respect to an
19 election, the Secretary shall continue to make the facility
20 available for subsequent elections unless the Secretary
21 provides to the appropriate State or local election officials
22 advance notice, in a reasonable and timely manner, of the
23 reasons why the facility will no longer be made available
24 as a polling place.”

1 (2) Section 18236 of such title is amended by adding
2 at the end the following:

3 “(e) Pursuant to a lease or other agreement under
4 subsection (c)(1), a State may make a facility covered by
5 subsection (c) available for use as a polling place in any
6 Federal, State, or local public election notwithstanding
7 any other provision of law.”.

8 (c) CONFORMING AMENDMENTS TO TITLE 18.—(1)
9 Section 592 of title 18, United States Code, is amended
10 by adding at the end the following new sentence:

11 “This section shall not apply to the actions of mem-
12 bers of the Armed Forces at any polling place on a mili-
13 tary installation where a general or special election is held
14 in accordance with section 2670(b), 18235, or 18236 of
15 title 10.”

16 (2) Section 593 of such title is amended by adding
17 at the end the following new sentence:

18 “This section shall not apply to the actions of mem-
19 bers of the Armed Forces at any polling place on a mili-
20 tary installation where a general or special election is held
21 in accordance with section 2670(b), 18235, or 18236 of
22 title 10.”.

23 (d) CONFORMING AMENDMENT TO VOTING RIGHTS
24 LAW.—Section 2003 of the Revised Statutes (42 U.S.C.
25 1972) is amended by adding at the end the following new

1 sentence: "Making a military installation or reserve com-
2 ponent facility available as a polling place in a Federal,
3 State, or local public election in accordance with section
4 2670(b), 18235, or 18236 of title 10, United States Code,
5 is deemed to be consistent with this section."

6 (e) CLERICAL AMENDMENTS.—(1) The heading of
7 section 2670 of title 10, United States Code, is amended
8 to read as follows:

9 **"§ 2670. Buildings on military installations: use by**
10 **American National Red Cross and as poll-**
11 **ing places in Federal, State, and local**
12 **elections".**

13 (2) The item relating to such section in the table of
14 sections at the beginning of chapter 159 of such title is
15 amended to read as follows:

"2670. Buildings on military installations: use by American National Red Cross
and as polling places in Federal, State, and local elections."

The CHAIRMAN. Is there any discussion on the amendment?

Mr. DAVIS. Mr. Chairman.

The CHAIRMAN. Mr. Davis.

Mr. DAVIS. I would like to ask a couple questions of Mr. Reynolds, if I can. I am generally a supporter of this concept, Mr. Reynolds, but the devil of course is in the details. Don't we already have language that is the subject of the conference committee on the defense authorization bill that comes reasonably close to doing what your amendment will be doing today?

Mr. REYNOLDS. I can say that the language that was inserted in the 2001 appropriation bill suspended the enforcement of the law in 2000, but it does not reflect a permanent solution, which this Representative would do.

Mr. DAVIS. Mr. Chairman, perhaps Mr. Reynolds would like to see a copy of this. I have a copy of a letter to the ranking Democrat on the Armed Services Committee, Mr. Skelton, that appears to be—it is from the Defense—the Justice Department. It appears to be commenting on language that is in the 2002 defense authorization bill.

Mr. REYNOLDS. Has that gone to conference and come before us?

Mr. DAVIS. I believe that it has, and I would like to give you a chance to look at this and see whether it might lead you to believe that perhaps this issue is already being addressed in the conference committee. And if it is not being addressed, this amendment could be offered on the floor.

And the other point I want to—

The CHAIRMAN. Would the gentleman yield? I just note that it was in the House version and not the Senate version. So I am not sure as to—it was in the House version.

Mr. REYNOLDS. And I do know from being on the Rules Committee that the conference committee has not concluded its work, and we have no final idea what is in the defense authorization bill. As a matter of fact, this body could consider an appropriations bill on defense before we actually have a conference report back on the defense authorization.

Mr. DAVIS. Well, the further point I wanted to make is that this is a letter to Congressman Skelton expressing concerns and suggestions about this language, which we have had no testimony on. We have absolutely no record on this, Mr. Chairman, and again, I am a supporter of the concept but if we are going to put something into this bill, I would prefer we do it with a little bit more preparation, and it does appear to be an active issue in the conference committee. I cannot speak to what is in the Senate bill, but perhaps we can find out more—

Mr. REYNOLDS. Would the gentleman yield?

Mr. DAVIS. Absolutely.

Mr. REYNOLDS. A similar bill, H.R. 2006, passed in the House on October 10, 2000 by a vote of 297 to 112 on this. So it is not a new concept or a new language of legislation. The House has seen it in prior existence, and we have just dealt with it on a temporary basis versus permanent.

Mr. DAVIS. And Mr. Chairman, and I believe I voted for that bill, Mr. Reynolds. And here is another letter. I would like to ask both these letters be entered into the record.

The CHAIRMAN. Without objection.
[The information follows:]

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, DC, November 13, 2001.

Hon. IKE SKELTON,
*Ranking Minority Member, Committee on the Armed Services,
House of Representatives, Washington, DC.*

DEAR CONGRESSMAN SKELTON: This letter presents the views of the Department of Justice on S. 1438, the "National Defense Authorization Act for Fiscal Year 2002," as passed by the House and Senate. The Department has constitutional and other concerns about both versions of the bill.

I. HOUSE VERSION

A. CONSTITUTIONAL CONCERNS

Section 141: Destruction of chemical and munitions stockpiles

Section 141 of the bill would amend section 152 of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106; 50 U.S.C. § 1521 note) to restrict the Secretary of Defense from initiating destruction of a chemical munitions stockpile stored at a site until, inter alia, the Under Secretary of Defense for Acquisition, Technology, and Logistics "recommends initiation of destruction at the site after considering the recommendation by the [oversight] board established by subsection (g)." Proposed section 152(b)(5). The oversight board in question "established by subsection (g)" would include as one of its six members an "individual designated by the Under Secretary from a list of three local representatives of the area in which the site is located, prepared jointly by the Member of the House of Representatives who represents the Congressional District in which the site is located and the Senators representing the State in which the site is located." Proposed section 152(g)(1)(F). If an oversight board were to recommend against initiation of destruction of the chemical munitions stockpile at a particular site, the Under Secretary then would be prohibited from recommending to the Secretary the initiation of destruction "until 90 days after the Under Secretary provides notice to Congress of the intent to recommend initiation of destruction," proposed section 152(g)(3)—which, in turn, would prevent the Secretary from initiating destruction of a chemical munitions stockpile until 90 days after the Under Secretary had provided the notice of intent to Congress. Ultimately, an oversight board that includes a member who is in effect designated by congressional agents would have the power to delay the Under Secretary's recommendation to the Secretary, and the Secretary's execution of a power otherwise duly delegated to him.

Such a power to delay Executive action, if viewed as the exercise of "significant authority pursuant to the laws of the United States," *Buckley v. Valeo*, 424 U.S. 1, 126 (1976)(per curiam), would render the Board members "Officers" who must be appointed in conformity with the Appointments Clause of the Constitution, U.S. Const. art. II, section 2, c1.2 (providing that principal officers must be appointed by the President with the advice and consent of the Senate and that inferior officers may be appointed by the President alone, the courts, or the Heads of Departments). The "sixth" member of each oversight board would be appointed, not by the Head of a Department, but instead by the Under Secretary, which would raise an Appointments Clause problem assuming the member is an inferior officer. Moreover, the bill would limit the pool of persons that the Under Secretary may consider for such positions to those persons recommended by the designated members of Congress. The Constitution does not permit Congress to direct the appointing authority (the President, the Federal Courts, or the heads of departments) to select an officer from a list submitted by Congress, or otherwise to restrict unduly the appointment discretion. See, e.g., *Civil-Service Comm'n*, 13 Op. Att'y Gen. 516, 520-21, 524-25 (1871); *Promotion of Marine Officer*, 41 Op. Att'y Gen. 291 (1956). Moreover, congressional officials' power to establish the lists from which persons would be chosen for service on the oversight boards also raises separation of powers questions, because Congress may not vest executive functions in a person or entity subject to congressional control. See, e.g., *Metropolitan Washington Airports Auth. v. Citizens for the Abatement of Aircraft Noise, Inc.*, 501 U.S. 252 (1991); *Bowsher v. Synar*, 478 U.S. 714 (1986).

Section 542: Medal of Honor for Jewish and Hispanic Veterans

Section 542 of the bill would require the Secretary of each military department to review the service records of certain Jewish American and Hispanic American war veterans to determine whether or not those veterans should be awarded the Medal of Honor. Subsections 542(e) and (f) would provide that the President could make an award of the Medal of Honor to such Jewish American and Hispanic American war veterans, in accordance with a recommendation of a Secretary, without regard to: (1) any regulation or other administrative restriction on the time for awarding the Medal of Honor; (2) any regulation or other administrative restriction on the awarding of the Medal of Honor for service for which a Distinguished Service Cross, Navy Cross, or Air Force Cross has been awarded; and (3) specific statutory criteria, restrictions, and limitations (e.g., time limitations) respecting the award of the Medal of Honor that are codified in 10 U.S.C. §§ 3744, 6248, and 8744. Subsection 542(g) would define “Jewish American war veteran “to mean” any person who served in the Armed Forces during World War II or a later period of war and who identified himself or herself as Jewish on his or her military personnel records.”

The exemptions and exceptions contained in subsection 542(f) raise serious concerns under the Establishment Clause of the First Amendment and the Equal Protection component of the Due Process Clause of the Fifth Amendment, by making certain Jewish and Hispanic veterans eligible for the Medal of Honor under circumstances in which other, similarly situated veterans would not be eligible to receive the award. With respect to Jewish American war veterans, the distinction in question likely would be viewed as a sect-based religious classification. “The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another.” *Larson v. Valente*, 456 U.S. 228, 244 (1982). Accordingly, a denominational preference can be constitutional, if at all, only if it “is justified by a compelling governmental interest * * * and * * * is closely fitted to further that interest.” *Id.* at 247. Similarly, the Equal Protection Clause of the Fourteenth Amendment in many contexts would prohibit States from discriminating on the basis of religion,¹ and this prohibition would apply to the Federal government by virtue of the equal protection component of the Due Process Clause of the Fifth Amendment.²

With respect to Hispanic American war veterans, the distinction in question likely would be viewed as a racial classification. The equal protection component of the Due Process Clause of the Fifth Amendment permits such a racial classification only if it furthers a compelling government interest (such as remedying past discrimination) and is narrowly tailored to achieve that interest. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995).

The bill itself does not explain what compelling government interests might underlie the religious and racial classifications in section 542(f). To survive strict scrutiny, the provision needs—at a minimum—to be supported by specific findings (backed up by a documented record) of past governmental discrimination against Jewish and Hispanic veterans with respect to the award of such medals.

Section 1051(a): Plan for securing Russia’s nuclear weapons, material, and expertise

Section 1051(a) of the bill would require the President to submit to Congress, not later than June 15, 2002, a plan “for cooperation with Russia on disposition as soon as practicable of nuclear weapons and weapons-usable nuclear material in Russia that Russia does not retain in its nuclear arsenal; and * * * to prevent the outflow from Russia of scientific expertise that could be used for developing nuclear weapons or other weapons of mass destruction, including delivery systems.” Subsection 1051(c), in turn, would provide that “[i]n developing the plan required by subsection (a), the President shall consult with Russia regarding the practicality of various options.”

The Constitution commits to the President the primary responsibility for conducting the foreign relations of the United States, see, e.g., *Department of Navy v. Egan*, 484 U.S. 518, 529 (1988) (the Supreme Court has “recognized ‘the generally accepted view that foreign policy was the province and responsibility of the Executive’”) (quoting *Haig v. Agee*, 453 U.S. 280, 293–94 (1981)); *Alfred Dunhill of London, Inc. v. Republic of Cuba*, 425 U.S. 682, 705–06 n.18 (1976) (“[T]he conduct of [foreign policy] is committed primarily to the Executive Branch”), and the exclusive responsibility for formulating the position of the United States in international fora and for conducting negotiations with foreign nations, see, e.g., *United States v. Lou-*

¹ See, e.g., *Niematko v. Maryland*, 340 U.S. 268 (1951); *Fowler v. Rhode Island*, 345 U.S. 67 (1953); *McDaniel v. Paty*, 435 U.S. 618, 643–46 (1978) (White, I., concurring in the judgment).

² See *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (citing *Oyler v. Boles*, 368 U.S. 448, 456 (1962)).

isiana, 363 U.S. 1, 35(1960) (the President is “the constitutional representative of the United States in its dealings with foreign nations”). Subsection 1051(c) would appear to violate these principles by requiring the President to “consult” with Russia on a particular subject, even in circumstances where the President might conclude that such consultation would be detrimental to United States foreign relations. Therefore, we recommend that the word “shall” in subsection 1051(c) be changed to “should.”

B. OTHER CONCERNS

Sections 552 and 2813: Electronic voting demonstration project

While we do not object to sections 552 and 2813, we note that the implementation of certain aspects of these sections by States and localities that are subject to section 5 of the Voting Rights Act, 42 U.S.C. 1973c, would require preclearance pursuant to the Act. For example, the discretionary decision to establish new polling places on military installations would need to be submitted for section 5 review. With respect to the electronic voting demonstration project, any covered State or locality that chose to participate would be required to submit for section 5 review its implementation procedures for carrying out the alternate method of voting. Such submissions were made by counties around the country that participated in a similar Defense Department project in the 2000 election.

Section 1024: Assignment of Armed Forces to assist the INS and the Customs Service

Section 1024 of the House version would authorize the Secretary of Defense (upon presidential certification of a request of the Attorney General or by the Secretary of the Treasury) to assign members of the military to assist the Immigration and Naturalization Service (“INS”) and the Customs Service in combating terrorists and drug traffickers. We support section 1024 except for its requirement that the assisted agency reimburse the Defense Department for assistance provided (in the absence a waiver from the Defense Department). The legislation should not give the Secretary of Defense—or the Attorney General—the authority to decide unilaterally which of the two Executive departments involved will pay from its appropriations the cost of the support provided. Instead, the legislation should leave that decision to the President, to be made at the time in the light of the circumstances then prevailing.

Section 1107: Limitation upon premium pay

Section 1107 of the House version would make Government-wide changes to overtime pay provisions of FEPA. The Administration strongly opposes section 1107 and urges its deletion from the bill.

We also note that section 1107 contains what appears to be a typographical error that would significantly limit Federal civilian employees’ entitlement to overtime pay under title 5. Currently, an employee’s entitlement to receive premium pay for overtime work is capped at rate of GS–15, step 10. Section 1107 provides that an employee may be paid premium pay under FEPA only to the extent that the employee’s aggregate pay “would . . . exceed” the maximum rate of pay of a GS–15. Thus, as drafted, section 1107 would permit agencies to pay premium pay only when an employee’s aggregate annual pay, i.e., basic pay plus premium pay, exceeded the rate of GS–15, step 10. This effectively would limit payment for overtime work to the highest-paid General Schedule employees.

Presumably, the drafters intended that section 1107 permit premium pay for an employee only to the extent the employee’s aggregate pay would not exceed the statutory pay limitation. See 5 U.S.C. §5547(a) (which currently provides that an employee may be paid premium pay “only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS–15”).

Additionally, section 1107 would change the period of time used to determine an employee’s aggregate pay from “any pay period” to “in any calendar year.” This change would make it difficult—if not impossible—to determine the appropriate amount of pay in any given pay period because the agency could not determine prospectively whether or to what extent an employee’s aggregate annual pay would exceed the maximum limitation on premium pay.

Currently, an agency determines at the end of each pay period the extent to which an employee’s basic pay at the time, plus any premium pay due for approved overtime hours during the pay period, would exceed the GS–15, step 10, pay limitation and adjusts the employer’s total pay accordingly. However, because an agency likely would not know at the end of each pay period the amount of any adjustments that would be made to an employer’s basic pay during the remainder of the calendar year (such as fiscal year cost of living or locality pay adjustments, unscheduled pro-

motions or within grade increases (or denial of otherwise scheduled promotions or within grades)), or the total amount of premium pay the employee would receive during the calendar year (due both to fluctuations in the statutory rate for premium pay and the number of compensable overtime hours that will be worked), it would be necessary to wait until the end of the calendar year to determine the employee's aggregate pay and whether, and to what extent, it had exceeded the statutory limit. As a result, an employee's final pay check in each calendar year would have to be adjusted, i.e., reduced to account for any overpayments or increased for underpayments, made during the course of the calendar year that resulted from the employee's annual aggregate pay having exceeded the pay limitation. The proposed change of the time period for computing the pay limitation in proposed subsection (c) also would affect the payment of overtime to certain law enforcement officers.

Section 2812: Defense Department Indemnification for pollutant harm

Section 2812 of the House version would require the Secretary of Defense to indemnify persons or entities that own or control property that previously was part of the Brooks Air Force Base in Texas. Among other things, the Secretary would be required to hold harmless, defend, and indemnify in full the persons or entities with respect to any liability arising from the release or threatened release of any hazardous substance, pollutant, or contaminant, or petroleum or petroleum derivative as a result of Defense Department activities, including liability under the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"). We strongly oppose the broad indemnification this provision would establish.

First, the provision does not condition the United States' liability upon previously appropriated monies. This contravenes the sound principles underlying the Anti-Deficiency Act, 31 U.S.C. § 1341.

Second, section 2812 expands the United States' potential tort liability well beyond that provided in the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671, which provides a well-established and effective mechanism for dealing with the government's potential tort liability. Further, an important element of tort law is deterrence, not simply compensation after the fact of injury. This indemnity clause creates a disincentive for unknown future lessees and transferees of the property to make full disclosure, issue appropriate warnings, and exercise due care concerning the prior use and potential contamination from the property.

Finally, section 2812 would be a potential source of legal uncertainty. In accordance with existing law, including section 120 of CERCLA, the Defense Department already has a legal responsibility to clean-up, or pay for the clean-up of, Defense Department property. We are concerned that section 2812 would imply that the current legal requirements are insufficient and therefore create both significant legal problems for the Federal government as well as the potential for large unfunded liabilities. Depending on the clean-up issues attendant to the site, subsection 2812(a)(3) of this section might create a situation in which United States is required to defend commercial or corporate entities against which it had brought an enforcement action under CERCLA.

We urge that section 2812 be stricken from the bill. If it is retained, it should be modified to clarify that indemnification payments can be made only from previously appropriated Department of Defense funds. Moreover, any decision of whether to settle or defend a claim brought against a transferee should be subject to approval by the Attorney General. Finally, the obligation to indemnify should terminate at a time certain, for instance, five years after the transfer.

Section 2813: Use of military buildings as polling places

Section 2813 would implicate two Federal criminal statutes relating to voting. It would incorporate into permanent law authorization for polling places on military installations and reserve facilities, "notwithstanding" chapter 29 of title 18, and specifically, notwithstanding section 592, which prohibits stationing armed troops at polls, and section 593, which prohibits interference with voting by military officers.

Section 2813 is consistent with the temporary authorization approved last year for such voting places for the 2000 general election. Section 2813 should more fully address the potential applicability of sections 592 and 593 of title 18 to actions that an installation commander might be required to take in order to protect people or property from imminent harm while a building on a military installation is being used as a polling place. We suggest that both provisions include an exception for the legitimate law enforcement actions of military personnel to protect people or property from imminent harm at any place where a general or special election is held on a military installation in accordance with sections 2670(h), 18235, or 18236 or title 10.

II. SENATE VERSION

A. CONSTITUTIONAL CONCERNS

Two sections of the Senate version raise constitutional concerns.

Section 823: Mentor-Protégé procurement program

Section 823 would codify the “Mentor-Protégé” defense contracting program (“mentor program”) as a permanent provision at 10 U.S.C. § 2403. We have serious constitutional concerns about this program. These concerns are underscored by a recent Federal court of appeals opinion reversing a lower court decision that had upheld the constitutionality of a defense contract preference program (section 1207 of the National Defense Authorization Act of 1987) that was based on the same definition of “disadvantaged small business concern” underlying the mentor program (i.e., 15 U.S.C. § 637(d)(3)(C)). See *Rothe Development Corp. v. U.S. Dept. of Defense*, 262 F.3d 1306 (Fed. Cir. 2001).

The mentor program extends various substantial Federal contracting benefits and preferences to “eligible small business concerns.” The provision defines “eligible small business concerns” to mean either “a disadvantaged small business concern” or “a small business concern owned and controlled by women.” The former term is defined to mean “a small business concern owned and controlled by socially and economically disadvantaged individuals, as defined in section 8(d)(3)(C) of the Small Business Act (“SBA,” 15 U.S.C. 637(d)(3)(C)),” business entities owned and controlled by Indian tribes or Native Hawaiian Organizations, or qualified organizations employing the severely disabled. Under section 8(d) of the SBA, there is a statutory presumption that certain designated racial or ethnic groups (e.g., Blacks, Hispanics, Native Americans, and Asian Pacific Americans) satisfy the requirement for social and economic disadvantage. See 15 U.S.C. § 637(d)(3)(C).

The provisions of the mentor program applicable to minority institutions—as distinguished from the women-owned concerns³—would be subject to strict scrutiny under *Adarand Constructors Inc. v. Peña*, 515 U.S. 200 (1995), “as racial or ethnic classifications.” From the fact of the bill’s language establishing the program, we cannot discern the objectives or supporting evidence that would be likely to satisfy review under that test. Our concerns in this respect are amplified by the *Rothe* opinion.

The *Rothe* opinion sets forth exacting standards that would have to be satisfied upon remand if the Defense Department’s “Section 1207” contracting goal program could be considered constitutionally sustainable. Apart from demonstrating a compelling government interest that is applicable to all of the racial or ethnic groups that benefit from the bill’s statutory presumption of social and economic disadvantage, the following factors must be considered in evaluating whether the program is narrowly tailored to satisfy such compelling interest: (1) the necessity of the remedy; (2) the efficacy of alternative, race-neutral remedies; (3) the flexibility of the remedy; (4) the relationship of the remedy to the relevant labor market; (5) the impact of the remedy on the rights of third parties; and (6) the overinclusiveness or underinclusiveness of the racial or ethnic classification used in the program. Section 823’s mentor-protégé provisions likely would be subject to the same or similar standards. In the absence of a supporting demonstration that the mentor program satisfies these standards, the provisions is constitutionally objectionable.

Section 1044: Chief Operating Officer of the Armed Forces Retirement Home

Section 1044 of the bill provides for the appointment of a Chief operating Officer of the Armed Forces Retirement Home by the Secretary of Defense. It appears that this Chief Operating Officer would be an inferior officer of the United States, whose appointment is governed by the provisions of the Appointments Clause, U.S. Const. art. II, sec 2 cl.2. Section 1044 requires that the person appointed to this office must, inter alia, (1) be a continuing care retirement community professional; (2) possess experience and expertise in the operation and management of retirement homes; and (3) possess experience and expertise in the provision of long-term medical care for older persons. We have objected consistently to legislative provisions that unduly restrict the “scope for the judgment and will of the person in whom the Con-

³ Gender-based classifications currently are subject to a form of equal protection scrutiny (“intermediate scrutiny”) that is less exacting than the strict scrutiny applied to racial or ethnic classifications. However, it is not at all clear that S. 1438’s preferential provision for female-owned concerns would satisfy even that level of constitutional scrutiny without a factual demonstration of the “exceedingly persuasive justification” required to satisfy that standard. See *United States v. Virginia*, 116 S. Ct. 2264, 2274 (1996).

stitution vests the power of appointment” as being inconsistent with the Appointments Clause, Civil Service Commission, 13 Op. Att’y Gen. 516, 520–21 (1871). Because we believe the above provisions unduly restrict the Secretary’s appointment power, we object to this provision.

B. OTHER CONCERNS

Section 821: Competition requirements for required source purchases

Section 821 of the Senate version would limit the applicability of mandatory source requirements to the Secretary of Defense with regard to procurement from the Federal Prison Industries (“FPI” or trade name UNICOR). The FPI is the Bureau of Prisons’ most important management program to relieve inmate idleness and to provide job skills that reduce recidivism. We have sent a separate letter setting forth our concerns with this provision.

Section 1066: Radiation exposure compensation

Section 1066 of the Senate version would establish capped entitlement payments for the Radiation Exposure Compensation Act program. We support this provision because we expect the amounts provided under it to cover the cost of the awards we project. However, the House version does not contain funding language for the radiation compensation program. We urge the inclusion of section 1066 of the Senate version in the ultimate version of the Defense Authorization Act.

Section 3151: Energy employees occupational illness compensation program

The Department of Justice opposes section 3151(c), which would loosen the standard for recovery for chronic silicosis under the Energy Employees Occupational Illness Compensation Act (“EEOICA”). Under current law, chronic silicosis is the only condition for which the EEOICA provides compensation where the exposure to potentially hazardous material was not unique to the Nation’s nuclear weapons program. Thus, it does not promote the objectives of the EEOICA to “ensure fairness and equity” for civilians who “performed duties uniquely related to the nuclear weapons production and testing programs” of the Government for “beryllium-related health conditions and radiation-related health conditions.” See Pub. L. 106–398, § 3602(a)(8). Far too many of these civilians were unable to secure State workers’ compensation benefits, due, in part, to the unusual nature of their occupational exposures.

In contrast, chronic silicosis comes from exposure to silica (a non-radioactive substance) in the course of digging nine shafts, in these cases, for underground nuclear testing. But there was nothing “uniquely-related” about these activities and—more importantly—unlike the other diseases EEOICA covers, impaired victims of silica exposure have been able to secure traditional workers’ compensation. Nevertheless, the Administration acceded to the inclusion of chronic silicosis.

But section 3151 would take the inclusion of this condition even further from the policies underlying the EEOICA: Our Government’s intention to provide a type of Federal workers’ compensation program for those who were injured by hazards uniquely connected to the development of nuclear weapons for national defense. The current EEOICA standard for what may constitute chronic silicosis may not have a connection to whether a claimant was impaired. Indeed, it is akin to measurements of asbestos exposure (asbestos fibers and silica fibers enter the body in very similar ways), in which workers may have evidence of asbestos exposure, but no actual impairment. Section 3151(c) would compound these problems by lowering the standards for the required silica measurement. Thus, the proposed amendment would exacerbate a situation in which workers demonstrating the most minimal exposure measurable may secure payments of \$150,000, although they have no impairment whatsoever. Indeed, part of the asbestos litigation problem is the presence of enormous numbers of lawsuits in which claimants secure recovery for similarly-unimpaired people who can demonstrate minimal presence of asbestos.

We urge the deletion of this provision.

Thank you for the opportunity to present our views. Please do not hesitate to call upon us if we may be of additional assistance. The Office of Management and Budget has advised us that from the perspective of the Administration’s program, there is no objection to submission of this letter.

Sincerely,

DANIEL J. BRYANT,
Assistant Attorney General.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, October 26, 2001.

Hon. BOB STUMP,
*Chairman, Committee on Armed Forces,
 House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Defense on H.R. 2006, 107th Congress, a bill "To amend titles 10 and 18, United States Code, and the Revised Statutes to remove the uncertainty regarding the authority of the Department of Defense to permit buildings located on military installations and reserve component facilities to be used as polling places in Federal, State, and local elections for public office."

We note that the House of Representatives incorporated the substantive provisions of H.R. 2006 as section 2813 of H.R. 2586, the National Defense Authorization Act for Fiscal Year 2002. The Department would support section 2813 if it is modified as discussed herein.

The rights of American citizens to participate in the democratic process are among the important freedoms members of our armed forces defend. Therefore, the Department believes every effort should be made to ensure that they have the ability to vote, without obstacles. At the same time, the Department is concerned that allowing its facilities to be used as polling sites may result in conduct that could inadvertently violate criminal statutes discussed below.

Section 592 of title 18, United States Code, provides that: "[w]hoever, being an officer of the Army or Navy, or other person in the civil, military or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held, unless such force being necessary to repel armed enemies of the United States, shall be fined under this title or imprisoned not more than five years or both. * * *"

Similarly, section 593 of the same title subjects members of the Armed Forces to criminal penalties if they "impose or attempt to impose any regulations for conducting any general or special election in a State, different from those prescribed by law," or "interfere in any manner with an election officer's discharge of his duties."

The proposed conforming amendments to sections 592 and 593 of title 18 do not fully address the potential applicability of these criminal provisions to actions that an installation commander might be required to take in order to protect people or property from harm while a building on a military installation is being used as a polling place. We suggest that both provisions include an exception for the actions of military personnel at any place where a general or special election is held on a military installation in accordance with sections 2670(b), 18235, or 18236 of title 10.

Furthermore, we believe it is important that the availability of polling places on military installations be limited to use by individuals who reside on that military installation, or other military personnel. It is imperative that the commander of a military installation have complete control over the facilities within his or her authority. The Department is concerned that if a commander closes or restricts access to a military installation in order to respond to a threat soon before, or on the date of, an election, he might be seen as preventing citizens from being able to vote. Even if his response to a threat is only to require all those wishing to enter the facility to present valid identification and subject their vehicles and packages to search, he could be perceived as intimidating private citizens to such an extent that they would not enter the installation to vote.

Additionally, under the proposed legislation, once an installation is made available as a polling place, the Secretary concerned would be required to make it available for subsequent elections unless the Secretary provided notice to the Congress. The provisions should be clear in its application that it refers only to those installations made available as polling places in accordance with this legislation. Further, we suggest that the notice be sent to "the State or local officials responsible for providing for polling places," rather than to the "Congress." Certainly, those responsible for providing polling places need to have timely notification that facilities that they might be relying upon will not be available. If the State or local officials believe that the Secretary's action is unwarranted, they certainly would inform interested members of Congress.

National Guard armories or other Guard facilities are subject to the control of state Governors through their Adjutants General, not the Department of Defense, and our concerns noted above do not apply to such facilities. Decisions on the use of such facilities are the responsibility of the concerned states.

The Office of Management and Budget advises that, from the standpoint of the Administration program, there is no objection to the presentation of these views for the consideration of Congress.

Sincerely,

WILLIAM J. HAYNES II.

Mr. DAVIS. To Chairman Stump expressing concerns about that language, which I think we would further want to address before we adopt—

Mr. REYNOLDS. Who was the letter from?

Mr. DAVIS. This is a letter from the General Counsel at the Department of Defense, William Haynes, and it may be that what Mr. Kirk has done is to address the concerns that have been expressed in both these letters, but I don't think either you or I nor members of the committee know this, and I think it would be useful if we knew it before we acted today on this very important issue.

Mr. REYNOLDS. Would the gentleman yield?

Mr. DAVIS. Absolutely.

Mr. REYNOLDS. As I indicated in my remarks, I had brought the amendment to the floor, there has been consultation. This language has been approved by the Department of Defense and the White House prior to me bringing it before this body for consideration. And I also understand that our language is different from the Armed Services language, based on the fact that this language does reflect the discussions with DOD.

The CHAIRMAN. If the gentleman would yield, also I wanted to make a note of this. I was a conferee for a small portion, which was on the military voting. I had originally asked that just everything be removed from the conference. I don't know where this specific part lies. I know one from the House, one in the Senate is probably being discussed. Then it became a little bit confusing, because after that we did talk to individual members, Mr. Skelton, Mr. Hoyer, took out bits and pieces. My theory was we were looking at military voting in this bill that would be good if we would pursue it here, although they had bits and pieces that did tie in.

So I think that bill—I am not speaking directly to this, but just the process. That part of military voting is going to be in DOD and part is going to be in here and that sometime we have got to make them mesh together and work. I think it was a little tough process—

Mr. FATAH. If the chairman would yield for one second—the people who are dealing with these issues in the Armed Services Committee and in Defense—is there something here that I am missing about why they would not be dealing with this language and why we would be dealing with it, because it is possible we might not have all the information about such a subject, since I at least don't serve on any such a committee that would have great knowledge about why this could or could not be such a wonderful idea for DOD. So for it to be sprung and we put it in and then we go to the floor and then you have got Members, one of the committees of jurisdiction who then raises objections to it, it would seem to me it might be better to do it in a reverse way, Mr. Chairman.

Mr. REYNOLDS. Would the gentleman yield? Just a reminder on the amendment. This amendment allows but does not require military base commanders to permit the voting sites on the military installation, and as I said, it was only for the residents of the mili-

tary installation, but it is still on the front line. The military commanders will make that decision on the base, as this language is written, not that it is a mandate on those commanders.

Mr. FATTAH. You mean that in certain elections the commander could allow a polling place and in certain elections they would disallow it?

Mr. REYNOLDS. Well, I would hope that not be the case, but it gives the discretion of having polling places to the military commander of that base, not that the Congress mandates that there will be those polling places.

Mr. FATTAH. I will just ask one more question. I am going to move on from here. Has this matter been the subject of the Armed Services Committee itself, which would be the jurisdiction in terms of military bases and what is allowable and not allowable?

The CHAIRMAN. We did have communication with the majority-minority staff of the Armed Services Committee on this.

Mr. FATTAH. And they felt that this was a wonderful thing for us to do, Mr. Chairman, or they paused and gave us reason to pause?

Mr. HOYER. Mr. Chairman, if I might interject.

Mr. CHAIRMAN. I will yield to you in a second. We were addressing it here, because it was not clear if it would be in the DOD bill.

Mr. FATTAH. Well, all I am asking is did the chairman and the ranking member staff on Armed Services want us to address this?

The CHAIRMAN. Some do, some don't. But it was a staff-to-staff thing.

Mr. HOYER. Mr. Chairman.

Mr. DAVIS. Mr. Chairman, I recognize you are not going to spend much more time on this, but I would like to make one further point. The letter which I have now read to Congressman Skelton specifically suggests a concern about two Federal criminal statutes interfering with the ability of the base commander to control security on the base, and perhaps somebody can point it out to me, but I don't see where those two specific points have been addressed in the Kirk amendment.

The reason this is such a good bill, Mr. Chairman, is we have developed this with a very strong factual predicate. We have had a lot of testimony. We have had absolutely no testimony on this issue, and this document which is now a part of the record, once you so choose, addresses two specific concerns. If the Kirk bill addresses those concerns, Mr. Reynolds, I think your amendment is in order and perhaps an improvement over what is in the conference committee. But if it doesn't, I think at best we are acting prematurely here, Mr. Chairman.

The CHAIRMAN. I would note to you that on a couple of issues, one, the gentleman from New York had stated, you know, about the previous vote on this bill in support of it, we also have had this issue around for about a week or so between the majority and minority of the committee here. So I do want to let you know, it had been out there and discussed, this specific amendment and issue.

Mr. HOYER. Mr. Chairman, speaking to Mr. Reynolds' amendment, I will offer two amendments. We have discussed these three amendments among ourselves, obviously could not agree on the conclusion of these three amendments and therefore they are not

in the base bill. My concern with the circumstance amendment—and, by the way, I talked to Ike Skelton last night. I had dinner with Ike last night. He indicates that the conference has not yet disposed of this issue. It is still you should have active consideration in the conference. However, we do deal with a large number of military voting issues in this bill, obviously overseas. My problem, however, with the Kirk amendment is a fundamental problem, and my concern that historically one of the great strengths of America has been that we have separated our military from our politics.

Mr. HOYER. We don't have our military guarding polling places. We don't have any special sort of operations for military voters. Many nations do that. Many nations, the military plays a very dominant role in the election process. I am concerned that this, in effect, violates that principle of the separation of the political sphere of our country and the military sphere of our country.

Having said that, I am not going to live or die on whether this amendment is adopted in terms of my support of this bill, obviously. And I think the amendment, I presume is going to be adopted. But it is a more basic concern. I think the Defense Department is ambivalent at best. I think they will be more pleased, obviously, with it being a discretionary act on behalf of the base commander.

And the other problem I have there—Mr. Skelton and I were discussing this and I have not read the CRS report—is that we have a very large military facility in Prince George's County down the road, which all of you know about and every one of you has visited—Andrews Air Force Base. I have not asked and therefore don't know, but my—Ike Skelton and I were both sort of speculating. I will bet you there probably aren't 25 people on that base who are Maryland voters, but living on base. There are a lot of people who are working in Andrews, military and nonmilitary, who live off base and who may well be registered in Maryland because they have chosen Maryland not only as their domicile, but as their residence. They are legal residents of the State, and so they vote here.

But I would presume that the overwhelming number of people who live on military bases are residents of another State. Therefore, the complexity of trying to offer it to each one of them, the opportunity to vote, would be overwhelming. So, therefore, I presume the Kirk amendment is limited to a polling place for the candidates in that particular area wherein the base is located. Am I correct in that promise?

Mr. REYNOLDS. I believe so.

Mr. HOYER. Tom, you see my problem? Because obviously a base commander has got maybe 100 different—1,000 different jurisdictions represented on base by his residents. He clearly cannot provide, nor would he provide, for polling places for every one of those—Montana, California, Florida, et cetera.

So as a practical matter, knowing philosophically I do think I have a concern, but also as a practical matter, I am not sure how you implement it unless you limit it to the jurisdiction in which the base is located. And if you do, I can't believe there would be very many people that would be affected. But again—

Mr. REYNOLDS. Would the gentleman yield?

Mr. HOYER. Sure.

Mr. REYNOLDS. As I listened to our generation and Vietnam veterans talk about some of the problems of voting when they were in Vietnam that are similar to what we are now resolving today, or what we learned firsthand from this last election, we have heard those challenges. And I certainly have heard the opponents talk about not putting politics and the military in any way together. But I don't see the election and a vote as politics. I understand politics. I have been elected since I was 23, and I know about where the line ends on Election day when you go in to pull a lever. In my State, you have to be 500 feet away from the poll to even talk politics or campaign. So I think they are kept separate. And I think the right to vote is just what this is, giving military voters the right to vote.

I was thinking, while I am not an expert of Andrews Air Force Base—

Mr. HOYER. I want to reclaim my time. I hope nothing that I said implied in any way that I don't think that every member of the military not only has the right to vote but ought to be facilitated in doing so.

Mr. REYNOLDS. What I heard was that some opponents who—felt that politics and the military should be kept separate. I agree with that. To make it very clear on the record, that Election Day, walking in to cast a vote is not politics. It is entering a right to vote and having that privilege that we have as Americans to do.

And I am not expert on Andrews Air Force Base, but I know it is big. I know it is bigger than the village that I come from. And I know when I vote, I go up the street to my church, and there are three precincts there. So trying to envision some of our large military bases, particularly coming from the CRS study that had 20 jurisdictions with polling places that would be affected polling places—some which have been used for 15 years—if it is off base, and Andrews military personnel that are able to meet the viewpoint of being able to vote, have a significant travel off base.

Mr. HOYER. Tom, I think you missed my point. I don't think that there are more than probably—I don't know the number—take a guess, high number of 50, who live on base, who are Maryland residents and therefore can vote at a polling place 2 miles, 5 miles, 50 miles away from Andrews Air Force. My presumption is that most of the people who live on base—there are people that live off base, uniformed and civilians, who are in fact residents of Maryland and live in my district or Al Wynn's or other districts. But the people who live on base largely are voting absentee because their residence is in a State other than that in which they are living on Andrews Air Force Base. That was my point. Not that I wanted them to travel to long places. I don't think they should.

Let me make another point that politics—all of us have been in this business for some period of time. For instance, a complication. If you had a precinct on base that had a substantial number of voters which would justify its existence—I understand what you are saying about 500 feet—but at all my polling places throughout my district, I have a "Vote Hoyer for Congress" sign. That is my right. And some people, tragically, have the right to put up signs that say vote against Hoyer. They say vote for X, Y or Z, but that is their right. Would we allow that on a base that had a precinct or polling

place so that we can notify them that we want them to vote for either Ney or for Hoyer?

The CHAIRMAN. I assume you could see billboards on the way.

Mr. FATAH. If the gentleman would just yield for a brief moment. My brother was in the Air Force and stationed in Texas. Under this amendment would there be a polling place at the base where he could walk in and vote for his brother running for Congress in Pennsylvania, or would he have to be a legal resident of Texas and vote in the elections in Texas?

The CHAIRMAN. To answer the gentleman's question, you would have to be a legal resident—I hope the day technology comes where you can vote.

Mr. FATAH. I want to be clear about the legislative intent. This would be limited to having those people who are legal residents of the districts in which these bases where in existence to vote, and not for anyone who happened to be on the base, assigned or otherwise?

The CHAIRMAN. That would be correct, unless, of course, a person changed their registration for some reason.

Mr. FATAH. Absent that, it is only for those people. I think that it is a minor consequence and we should move on.

Mr. REYNOLDS. Just in conclusion of me offering the amendment, basically in the spirit of this, bases that had polling sites that have been used for the last 15 years obviously are a value to the voters who use them.

One of the things I have from the Minnesota Secretary of State—because I don't know what the Andrews Air Force voting block is, as my colleague, Mr. Hoyer, has presented— but the Secretary of State of Minnesota, she writes to then her Senator that for several decades local jurisdictions have been using military bases and reserve facilities as polling places. As a result many voters, including military personnel, will be inconvenienced at best, and deterred from voting at worst, due to the loss of these accessible traditionally polling places, urged the Secretary, so that the longstanding use of military facilities as sites for nonpartisan Election Day activity can continue, and signed by the Secretary of State of Minnesota in March, 2000.

The CHAIRMAN. With that, the question is on the amendment.

Those in favor of the amendment will say aye.

Those opposed will say nay.

In the opinion of the Chair, the ayes have it and the amendment is approved.

Are there any further amendments? Mr. Hoyer, do you have an amendment?

Mr. HOYER. I have two amendments that I am going to offer. I think—and this is, as all of you know, because you have heard about it and you are going to hear more about it—as all of you know, I sponsored the Americans with Disabilities Act. I like to think that I am very sensitive to the issues regarding access to public accommodations. In my opinion, there is no more important public accommodation in a Nation than a polling place. It is central to our democracy. And therefore, the Americans with Disabilities Act, in my opinion—and, frankly, the district court in New York has held this as well—has not been appealed because the jurisdic-

tion said, yeah, you are right. But I think the ADA applies fully to the election process. We had discussions. I think the bill provides for that as well.

But I offer two amendments which are efforts to clarify and set forth with some degree of particularity. Obviously, we could not agree on this or I wouldn't be offering the amendment to be included in the bill. I am not sure it will be adopted, because I understand the concerns about being particular as it relates to implementation and the costs of implementation. I understand that.

But I offer these amendments. And, Mr. Chairman, I will offer the en bloc amendment first, which amends section 102(a)(2) of the bill regarding eligibility of States and what they need to assure as it relates to getting punch card money.

[The information follows:]

EN BLOC AMENDMENTS TO H.R. 3295
OFFERED BY MR. HOYER

Amend section 102(a)(2) (relating to eligibility for funding to replace punch card voting systems) to read as follows:

1 (2) assurances that in replacing punch card vot-
2 ing systems the State will ensure that the voting
3 system in operation in each precinct allows each in-
4 dividual who is blind, visually impaired, or has a
5 sensory or motoric disability to vote in a private,
6 independent, and anonymous manner, and provides
7 alternative language accessibility for individuals with
8 limited proficiency in the English language, and that
9 the State will continue to meets its duties under the
10 Voting Accessibility for the Elderly and Handi-
11 capped Act (42 U.S.C. 1973ee et seq.) and the
12 Americans With Disabilities Act;

Amend section 112(a)(2) (relating to eligibility for funding to enhance performance of punch card voting systems) to read as follows:

13 (2) assurances that in enhancing the perform-
14 ance of such voting systems the State will ensure
15 that the voting system in operation in each precinct
16 allows each individual who is blind, visually im-

1 paired, or has a sensory or motoric disability to vote
2 in a private, independent, and anonymous manner,
3 and provides alternative language accessibility for in-
4 dividuals with limited proficiency in the English lan-
5 guage, and will continue to meets its duties under
6 the Voting Accessibility for the Elderly and Handi-
7 capped Act (42 U.S.C. 1973ee et seq.) and the
8 Americans With Disabilities Act;

Amend the second sentence of section 221(a)(4) (re-
lating to the content of voluntary election standards) to
read as follows: “Additionally, in accordance with section
223, the Commission shall develop (through the Execu-
tive Director of the Commission), adopt, and update (not
less often than every 4 years thereafter) voluntary stand-
ards for maintaining and enhancing the accessibility and
privacy of registration facilities, polling places, and voting
methods with the goal of ensuring that in each precinct
each individual who is blind, visually impaired, or has a
sensory or motoric disability is able to vote and register
to vote in a private, independent, and anonymous man-
ner, and that alternative language accessibility is pro-
vided for individuals with limited proficiency in the
English language, and shall include in such standards
voluntary guidelines regarding accessibility and ease-of-

use for States and units of local government to use when obtaining voting equipment and selecting polling places.”.

Amend section 231(b)(8) (relating to the use of Election Fund payments) to read as follows:

1 (8) Assuring access to voting in each precinct
2 in a private, independent, and anonymous manner
3 for all voters who are blind, visually impaired, or
4 have sensory or motoric disabilities, and providing
5 alternative language accessibility in each precinct for
6 individuals with limited proficiency in the English
7 language.

Amend section 233(a)(4) (relating to conditions for the receipt of Election Fund payments) to read as follows:

8 (4) A certification that each voting machine in
9 each precinct in the State permits each individual
10 who is blind, visually impaired, or has a sensory or
11 motoric disability to vote in a private, independent,
12 and anonymous manner, and provides alternative
13 language accessibility for individuals with limited
14 proficiency in the English language.

Amend section 502(6) (relating to minimum standards) to read as follows:

1 (6) The State ensures that each individual who
2 is blind, visually impaired, or has a sensory or
3 motoric disability is able to enter each polling place
4 and (if eligible) vote in the polling place in a private,
5 independent, and anonymous manner, and ensures
6 that alternative language accessibility is provided in
7 each polling place for individuals with limited pro-
8 ficiency in the English language.

Mr. HOYER. This amendment will require with a degree of specificity that is not now in the bill, but which I think is incorporated in the bill, assurances that in replacing those machines—and you can read it yourself—but that each individual who is blind, visually impaired, or has a sensory or motor disability to vote in a private, independent, and anonymous manner. We had testimony here from the blind in particular. Technology does exist. And, of course, it is audiotext technology which allows the voter to be, in effect, walked through audibly, as opposed to visually, the voting process. Obviously, that gives the person who is blind the opportunity to do their voting as all the rest of us do our voting alone in private, secret, protecting the secrecy of that ballot.

This language is designed to set forth with, again, particularity that we are covering that and assuring that that in fact happens.

It also amends section 112(a)(2) relating to eligibility for funding to enhance performance of punch card voting systems, so that we will enhance the performance of those systems to ensure that voting systems in operation allow each individual who is blind, visually impaired, or has a sensory or motor disability; again, simply particularly referencing the disabilities that we have already referred to in a number of places under the rubric of the Americans with Disabilities Act generally and the Voting Accessibility for the Elderly and Handicapped Act as well.

Mr. Chairman, I am not going to read all of the amendment. It is 4 pages in length, and you can see what it says. The other sections that deal with money going to jurisdictions is also affected so that when we have the election fund payment, which is the 2.25 billion, in assuring access to voting in each precinct in a private, independent, and anonymous manner for all voters—again, blind, visually impaired; simply repeats it in the various sections.

The purpose for offering the amendment—I would hope it would be adopted, but I understand there are concerns about the particularity as we move through this. But the purpose of offering the amendment is to make it very clear what I think we ought to do for those who are—who have disabilities and therefore need to have a reasonable accommodation. Reasonable accommodation is the language that we used in the Americans with Disabilities Act. We also make it clear that reasonable accommodations are in the context of undue burdens.

But it seems to me, Mr. Chairman, and you and I have discussed this and I appreciate your sensitivity to this, and I am sorry we couldn't get it included in the language—but that jurisdictions throughout this country ought to make every effort to ensure full accessibility by citizens with disabilities to this most basic American right, the right to vote. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. We do have a little bit—before we go on to discussion with this—we have a little bit of confusion on two different sheets we have. So the clerk will report the amendment.

The CLERK. En bloc amendments to H.R. 3295 offered by Mr. Hoyer.

Mr. HOYER. I said I had two amendments. And what I have done is, I have handed you the en bloc, which included the second amendment. I want to talk about the second amendment separately, so if I could just do the first one.

The CHAIRMAN. The clerk will report which amendment?

Mr. HOYER. Do we delete page 4?

The CLERK. En bloc amendment to H.R. 3295 offered by Mr. Hoyer.

Mr. HOYER. Mr. Chairman, all it does is delete page 4. So, just the first 3 pages.

The CHAIRMAN. Let me make a comment and then we will move on to anybody else who would like to make a comment. I know that this bill is an important breakthrough for the voting rights of persons with disabilities. All new voting systems must provide a practical and effective means for voters with physical disabilities to cast a secret ballot. This language is taken directly from the Ford-Carter Commission.

All States receiving Federal funds under this bill must certify that in each precinct or polling place, there is at least one voting system available which is fully accessible to individuals with physical disabilities. And it also states that use of Federal funds to purchase new machines must ensure that at least one voting machine at each polling place in the State will be fully accessible to individuals with physical disabilities. The language of this bill goes actually beyond the bipartisan compromise reached by the Ford-Carter Commission, demonstrating broad support. So this bill goes a step further.

Now, the proposed additional amendment, what it would require would be new voting machines for over 200,000 precincts that, due to available technology, still may not solve all the problems, and modifying and relocating tens of thousands of polling sites, often spending public money to improve private facilities.

This, I think, would be a strain to go further with it and would hurt the ability of local governments to actually respond to a lot of critical needs. I think the bill took a big step.

Now I want to say, having said that, though, I fully understand where the author, or the Ranking Member, is coming from. In the State legislature, I worked with a lot of issues with disabilities. I believe the bill takes a huge step above Ford-Carter, but I understand, again, where the gentleman is coming from to have this to the point where he would like to get it.

I can't support the amendment because of the fact that I think that what we have is a good step that goes above Ford-Carter, but to go this direction, in fact, although the intent is sincere and it is decent, would in fact economically not be able to carry out the bill. The bill—no matter what happens with this amendment, this bill takes probably one of the first major steps in dealing with the issue of access in years on the machines.

Mr. HOYER. Mr. Chairman, I looked at this again. There really is no reason to separate out page 4. Let's include that page. We will just do it in one vote. And the reason I say that is because it deals with a different section, but again it deals with the blind, the visually impaired and those with motor disabilities. So it is the same issue, just in a different section of the bill.

Mr. FATAH. Will the gentleman yield? We just went through this thing about people living on military bases. Say you were in the military and went off to war and you lost both of your legs, and you came back and you are discharged and you are living in Phila-

delphia. Your amendment is not part of this bill. The city of Philadelphia could have a polling place that would require you to go down the steps or up the steps or some other way that would make it impossible for you to go exercise your right to vote?

Mr. HOYER. No, sir. Not in my opinion.

Mr. FATTAH. Absent your amendment?

Mr. HOYER. My answer is no, sir. I am not sure whether this amendment is going to pass, and I want to make my position very clear for the record. I believe the Americans with Disabilities Act applies to every voting precinct, every voting jurisdiction, every voting system in America. That is my premise. Understand, whether we pass this bill or not—whether we never touch this—I may or may not be wrong. There has been no Supreme Court case or circuit court case on that. That is my premise. That is why I want to make it very clear for the record.

I believe right today, Philadelphia has to make sure that that veteran who lost two legs can come to his voting place, have a fully accessible voting—physical place to come into so that there is a ramp or an elevator, so that he can get to the polling place and can use the technology that is being offered, so he can vote and he can vote in private.

Mr. FATTAH. Well, you do understand, if you believe that to be the case today, that there is probably no place that I know about that has their polling places completely accessible to the disabled. So if your view is that the law presently requires it and that we have massive noncompliance—

Mr. REYNOLDS. Will the gentleman yield? I also concur with Mr. Hoyer, at least from a New York perspective. And I have always felt that it was by Federal statute that the compliance of both the spirit of the local election jurisdictions—and I have seen inadequate sites, and as they are brought to the attention of the election authorities, which are usually the towns that contract with fire departments, to churches, to schools, and other aspects, they are brought under compliance.

And I, from my days of being a local official as well as a State legislator, believe it has been under the same pretext that Mr. Hoyer has outlined here. Are there violations? Sure there are. It is up to who administers local election law to follow through on making sure there is compliance.

The CHAIRMAN. One point I would like to make on this issue. There are two issues here in my opinion. One is what this committee looks at dealing with access and availability to the machines and voting. This reaches into another area, though, of access to buildings, which I am not sure we have the ability in this committee to look at that. Should it be looked at? Sure.

One other fear I have, too, in the 14 counties I represent, we have—and not just me, but we have one bus that goes between three cities. And we have probably three taxicabs in the entire 14-county area. If certain things weren't carefully looked at and it was instituted, we probably would have to actually shut down most of the sites and then take persons who have some form of disability and try to find a way to have them vote somewhere, and that may be indirectly affected.

Mr. FATTAH. Mr. Chairman, if you would just yield for one second. I know the gentleman is a much more capable scientist than I am. Some of this is not art. A lot of it is science. Part of the problem with a polling location, that if you sit in the precinct you get a larger turnout. If you put it on the edge of the precinct, the further people are from it, the least likely they are to vote. If you have circumstances in which people have to go down steps or up steps, you are more likely to break the machinery delivering it to the location and therefore have mechanical breakdowns at the location. If you make it inaccessible to people who are disabled, you are going to dissuade many of them from casting their vote. And it is not a guess about any of that, it is just factual.

And so to the degree that you want to separate the building in the location of a precinct in which people cast their vote in a Federal election from the casting of the vote, it is a—you can't be intellectually coherent about it and separate those two things. We have to have some burden on those who are selecting these locations to do it in such a way where they enhance the likelihood that people will vote versus dissuading people from voting.

Mr. HOYER. Let me say to the gentleman, I think the gentleman from New York and I agree. First of all, my response is—and I want to make it very clear, I believe that is the law today. I agree. Everybody doesn't comply, and they are working towards it. There are some costs involved. We all contemplated that in the Americans with Disabilities Act. We gave the transportation people a number of years to comply because of the costs involved and the technology application. But I believe the law currently requires that. B, this law will reaffirm that. This amendment is simply to make more specific—and I understand the Chairman's concerns about that, but I want to offer the amendment because that is what I think is covered.

The CHAIRMAN. Let me just say one thing and see if someone else has something to say, and I will rest my case on this. I don't question the intent of this. And I understand exactly where Mr. Fattah is coming from on this.

I want to figure out an idea here that if, in fact, we would do this at this point in time, you do have situations where billions and billions of dollars come into play because right now you have polling places at a private shopping mall. And all of a sudden, do we take money to subsidize the private shopping mall to put a ramp up? Maybe we should say it shouldn't be done at the private shopping mall.

If this would kick in, I am not sure, as it would be instituted, if we could even get to an election process. So I am not totally separating out—I understand what you are saying about access. But I only use the district that I come from as an example, and I want everybody to vote. And in a rural area, you can bet if somebody can't get access, our office is going to hear about it and they are going to do something about it.

When you look at this in a wide brush that it would paint, it would be questionable, and maybe we shouldn't have private places as polling places. But you get into where election officials all of a sudden build a ramp versus getting a machine. I think it is an

issue that needs looking at. It makes me have a hesitation of supporting this at this point in time.

Okay. Any further discussion on the amendment? The question is on the amendment.

Those in favor of the amendment will say aye.

Those opposed will say no.

In the opinion of the Chair, the noes have it. Roll call has been requested. The clerk will call the roll.

The CLERK. Mr. Ehlers.

[No response.]

The CLERK. Mr. Mica.

[No response.]

The CLERK. Mr. Linder.

Mr. LINDER. No.

The CLERK. Mr. Doolittle.

Mr. DOOLITTLE. No.

The CLERK. Mr. Reynolds.

Mr. REYNOLDS. No.

The CLERK. Mr. Hoyer.

Mr. HOYER. Aye.

The CLERK. Mr. Fattah.

Mr. FATTAH. Aye.

The CLERK. Mr. Davis.

Mr. DAVIS. Aye.

The CLERK. Chairman Ney.

The CHAIRMAN. No.

4 to 3. The amendment fails. The question is now on the bill, as amended.

Those in favor will say aye.

Those opposed will say nay.

In the opinion of the Chair, the ayes have it. The clerk will call the roll.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Mica.

[No response.]

The CLERK. Mr. Linder.

Mr. LINDER. Aye.

The CLERK. Mr. Doolittle.

Mr. DOOLITTLE. Aye.

The CLERK. Mr. Reynolds.

Mr. REYNOLDS. Aye.

The CLERK. Mr. Hoyer.

Mr. HOYER. Aye.

The CLERK. Mr. Fattah.

Mr. FATTAH. Aye.

The CLERK. Mr. Davis.

Mr. DAVIS. Aye.

The CLERK. Chairman Ney.

The CHAIRMAN. Aye.

8 to zero. The bill is adopted, as amended.

The Chair recognizes Mr. Linder for the purpose of offering a motion.

Mr. LINDER. Mr. Chairman, I move that H.R. 3295, as amended, be reported favorably to the House.

The CHAIRMAN. The question is on the motion.

Those in favor say aye.

Those opposed say nay.

The clerk will call the roll.

The CLERK. Mr. Ehlers.

Mr. EHLERS. Aye.

The CLERK. Mr. Mica.

[No response.]

The CLERK. Mr. Linder.

Mr. LINDER. Aye.

The CLERK. Mr. Doolittle.

Mr. DOOLITTLE. Aye.

The CLERK. Mr. Reynolds.

Mr. REYNOLDS. Aye.

The CLERK. Mr. Hoyer.

Mr. HOYER. Aye.

The CLERK. Mr. Fattah.

Mr. FATTAH. Aye.

The CLERK. Mr. Davis.

Mr. DAVIS. Aye.

The CLERK. Chairman Ney.

The CHAIRMAN. Aye.

8 to zero, the motion is agreed to and H.R. 3295, as amended, is reported favorably to the House.

Mr. HOYER. Mr. Chairman, I announce that pursuant to the provisions of clause 21 of rule 11, to seek not less than the 2 additional calendar days provided by that rule to prepare additional views to be filed with the committee report.

The CHAIRMAN. Without objection. Motion for submitting material to the record. I ask unanimous consent that the Members have several legislative days for statements and materials to be entered at the appropriate place in the record. Without objection, the material will be so entered.

Technical and conforming changes. I ask unanimous consent that the staff be authorized to make technical and conforming changes on all matters considered by the committee at today's meeting. Without objection, so ordered.

Having completed our business for today, the committee is hereby adjourned. Thank you.

[Whereupon, at 12:40 p.m., the committee was adjourned.]