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110TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPORT 110–637

TO DIRECT THE ELECTION ASSISTANCE COMMISSION TO ESTABLISH A PROGRAM TO MAKE GRANTS TO PARTICIPATING STATES AND UNITS OF LOCAL GOVERNMENT WHICH WILL ADMINISTER THE REGULARLY SCHEDULED GENERAL ELECTION FOR FEDERAL OFFICE HELD IN NOVEMBER 2008 FOR CARRYING OUT A PROGRAM TO MAKE BACKUP PAPER BALLOTS AVAILABLE IN THE CASE OF THE FAILURE OF A VOTING SYSTEM OR VOTING EQUIPMENT IN THE ELECTION OR SOME OTHER EMERGENCY SITUATION, AND FOR OTHER PURPOSES

MAY 15, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House Administration, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 5803]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 5803) to direct the Election Assistance Commission to establish a program to make grants to participating States and units of local government which will administer the regularly scheduled general election for Federal office held in November 2008 for carrying out a program to make backup paper ballots available in the case of the failure of a voting system or voting equipment in the election or some other emergency situation, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

EMERGENCY PAPER BALLOT LEGISLATION (H.R. 5803)

REPORT

PURPOSE OF THE LEGISLATION

Introduced at the request of election advocates and elected officials, H.R. 5803 is intended to provide a simple solution to deal

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with some of the problems election officials may face on Election Day. H.R. 5803 provides reimbursement through grants to jurisdictions that choose to provide backup paper ballots in the event of voting machine failure or some other emergency situation during the November 2008 election.

The language in the legislation has been crafted, at the request of the state and local officials, to allow them to decide what constitutes an 'emergency situation.' This could mean anything from machine failure to long lines to problems with polling place staffing. It is entirely up to the jurisdiction to determine what circumstances justify the use of backup paper ballots and how to distribute them. H.R. 5803 also requires States and local jurisdiction to inform voters in certain circumstances that they could be voting on a backup paper ballot, but grants States and local jurisdictions the discretion to determine how and under what circumstances voters will be notified.

H.R. 5803 has been drafted in full cooperation with the National Council of State Legislators and the National Association of County Officials, and with various individual Secretaries of State. They have submitted letters of support for H.R. 5803 and Ohio Secretary of State Jennifer Brunner has praised the bill as "meaningful and respectful of state authority in election administration matters." In addition to the support of state and local governments, myriad election integrity groups including People for the American Way, the Brennan Center, the Lawyers Committee on Civil Rights, and Verified Vote also support H.R. 5803. As we have seen, broad support for election related legislation is not easy to accomplish. However, backup paper ballots are a unifying factor between election officials and election advocates.

H.R. 5803 is 100% optional and the responsibility and mechanisms for implementation are left to the state and local officials. The Committee expects that local jurisdictions will act in full cooperation with the States to coordinate and implement their backup paper ballot program. H.R. 5803 is a measured and proactive step toward improving the system of election administration in November 2008. If the record turnout in the primaries is an indication of turnout in November, providing state and local jurisdictions the option to have backup paper ballots could mitigate any challenges they may face on Election Day. H.R. 5803 helps ensure election integrity and national electoral confidence and respects state and local jurisdictions' responsibility to administer elections.

SECTION-BY-SECTION SUMMARY OF THE LEGISLATION

Section 1. Provides grants to States

(a) Requires the Election Assistance Commission (EAC) to establish a grant program for States or units of local government to participate in if they enact a program to make backup paper ballots available in the case of the failure of a voting system, voting equipment, or some other emergency situation during the November 2008 Federal election.

(b) Provides that for States or units of local government to be eligible, they must submit an application to the EAC that includes:

- a certification that the participant has established a backup paper ballot program that meets the requirements set forth in the bill;
- a statement of the reasonable costs expected to be incurred when carrying out the program;
- an assurance that they will provide a certification, no later than 60 days after the election, of the costs actually incurred; and
- a certification that the participant will repay the Commission any amount paid under this act that exceeds the actual costs incurred.

(c) Requires that, in the event of malfunctioning voting equipment at a polling place or some other emergency situation preventing the use of voting equipment, any voter who is waiting at the polling place and who would be delayed due to the malfunction or emergency situation shall be given a backup paper ballot pursuant to the following requirements:

- Individual voters must be provided notification of their right to a backup paper ballot;
- Voters must be provided with a backup paper ballot and instruction on and supplies necessary to mark the ballot;
- Participant States and local units of government must count every backup paper ballot as a regular ballot and tabulate it on the date of the election (unless the individual voter would have been given a provisional ballot for other reasons);
- Participant States and local units of governments must establish protocols for delivering and supplying backup paper ballots to polling places and for notifying voters of their right to use a backup paper ballot.

(d) Provides that the amount of the grant given to a participant should be equal to the amount of the reasonable costs incurred to carry out this program.

Section 2. States defined

(a) Defines "States" to include the District of Columbia, Commonwealth of Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands.

Section 3. Authorization of appropriations

(a) Authorizes $75 million for grants until this program until expended.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On April 15, 2008, Ms. Lofgren of California introduced the bill, which was referred to the Committee on House Administration.

HEARINGS

On April 9, 2008, the Committee on House Administration held a hearing entitled "2008 Presidential Primaries & Caucuses: What We've Learned So Far." The following Members were present at the hearing: Committee Chair Robert Brady, Reps. Zoe Lofgren, Charles Gonzalez, Vernon Ehlers, Daniel Lungren and Kevin McCarthy.

Witnesses

Panel One:

1. Mr. Tom Joyner
2. Mr. Greg Moore, Director of NAACP National Voter Fund
3. Mr. John Bonifaz, Legal Director, Voter Action
4. Ms. Cecilia Martinez, Executive Director, Reform Institute
5. Mr. Ken Smukler, President, InfoVoter Technologies

Panel Two:

1. Ms. April Pye, Interim Director, Fulton County Department of Registration and Election, Georgia
2. Ms. Alisha Alexander, Elections Administrator, Prince George's County Board of Elections, Maryland
3. Ms. Linda Weedon, Director, Maricopa County Board of Elections, Arizona

MARKUP

On Wednesday, May 7, 2008, the Committee met to mark up H.R. 5803. The Committee favorably reported H.R. 5803 by a voice vote, a quorum being present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires that the results of each record vote on an amendment or motion to report, together with the name of those voting for and against, to be printed in the committee report.

Amendments defeated by voice vote

The Committee first defeated by voice vote Mr. Ehlers' Amendment #1, which would have restricted the funding provided for in H.R. 5803 only to develop and produce a template of an original backup paper ballot, but not to produce additional copies of the ballot.

The Committee also defeated by voice vote Mr. Ehlers' Amendment #2, which would have restricted funding only to local jurisdictions and would have provided for grants to be disbursed based the voting age population of the participant local jurisdictions.

The Committee defeated by voice vote Mr. Ehlers' Amendment #3, which would have given to the EAC Standards Board the responsibility of determining whether a State or local jurisdiction's costs in implementing its backup paper ballot program were reasonable.

Finally, the Committee defeated by voice vote Mr. Lungren's Amendment #1, which would have prevented an individual or class of individuals from using the Act or any triggering event in the Act to create a private right of action.

Record votes on amendments to H.R. 5803

The first recorded vote of the markup was on Mr. McCarthy's Amendment #1, which would have required a State to certify that, prior to voting an emergency ballot, a voter would be required to show either a photo identification or a copy of a current utility bill, bank statement, government check, paycheck or other government

document that shows the name and address of the voter. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady		X	
Ms. Lofgren		X	
Mr. Capuano		X	
Mr. Gonzalez		X	
Mrs. Davis (CA)			
Mr. Davis (AL)		X	
Mr. Ehlers	X		
Mr. Lungren	X		
Mr. McCarthy	X		
TOTAL	3	5	

The Committee then voted on Mr. McCarthy's Amendment #2, which would have prevented the Election Assistance Commission from carrying out any action and H.R. 5803 from taking effect until the amount appropriated for grants pursuant to the bill equals the amount authorized to be appropriated. The vote was 3–5 and the amendment was not agreed to.

Member	Ayes	Noes	Present
Mr. Brady		X	
Ms. Lofgren		X	
Mr. Capuano		X	
Mr. Gonzalez		X	
Mrs. Davis (CA)			
Mr. Davis (AL)		X	
Mr. Ehlers	X		
Mr. Lungren	X		
Mr. McCarthy	X		
TOTAL	3	5	

The Committee then voted to favorably report H.R. 5803 by a recorded vote of 5–3.

Member	Ayes	Noes	Present
Mr. Brady	X		
Ms. Lofgren	X		
Mr. Capuano	X		
Mr. Gonzalez	X		
Mrs. Davis (CA)			
Mr. Davis (AL)	X		
Mr. Ehlers		X	
Mr. Lungren		X	
Mr. McCarthy		X	
TOTAL	5	3	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on the oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article I, Section 4 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI, H.R. 5803 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act of 1974 requires the report of any committee on a bill or joint resolution to include a committee statement on the extent to which the bill or joint resolution is intended to preempt state or local law. H.R. 5083 is intended to apply in all States and preempt laws to the contrary in their application to Federal elections.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

H.R. 5803—A bill to direct the Election Assistance Commission to establish a program to make grants to participating states and units of local government which will administer the regularly scheduled general election for federal office held in November 2008 for carrying out a program to make backup paper ballots available in the case of a failure of a voting system or voting equipment in the election or some other emergency situation, and for other purposes

Summary: H.R. 5803 amend current law to establish a grant program to be administered by the Election Assistance Commission (EAC). Under the legislation, the EAC would provide grants to states and local governments to purchase backup paper ballots to be used in the November 2008 elections. Those paper ballots would be available in the event an electronic voting system failed to operate properly. The legislation would authorize the appropriation of $75 million for the grant program. In addition, CBO estimates that the EAC would need $2 million in fiscal year 2009 to administer the grant program.

Assuming appropriation of the specified and estimated amounts, CBO estimates that implementing H.R. 5803 would cost $77 million in 2009. Enacting the bill would not affect direct spending or revenues. H.R. 5803 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, and tribal governments.

Estimated cost to the Federal Government: For this estimate, CBO assumes that the legislation will be enacted near the start of fiscal year 2009 and that the authorized and estimated amounts

will be appropriated that year. CBO estimates that implementing the bill would cost $77 million in fiscal year 2009. Outlays are estimated based on information from the EAC and historical spending patterns of similar grant programs. The estimated budgetary impact of H.R. 5803 is shown in the following table. The cost of this legislation falls within budget function 800 (general government).

	By fiscal year, in millions of dollars—				
	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Backup Paper Ballot Grants:					
Authorization Level	75	0	0	0	0
Estimated Outlays	75	0	0	0	0
Administrative Oversight:					
Estimated Authorization Level	2	0	0	0	0
Estimated Outlays	2	0	0	0	0
Total Proposed Changes:					
Estimated Authorization Level	77	0	0	0	0
Estimated Outlays	77	0	0	0	0

Intergovernmental and private-sector impact: H.R. 5803 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit state, local, and tribal governments that receive grants.

Estimate prepared by: Federal Costs: Matthew Pickford; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

MINORITY VIEWS OF THE HONORABLE VERNON J. EHLERS, THE HONORABLE DAN LUNGREN, AND THE HONORABLE KEVIN McCARTHY

H.R. 5803—To direct the Election Assistance Commission to establish a program to make grants to participating States and units of local government which will administer the regularly scheduled general election for Federal office held in November 2008 for carrying out a program to make backup paper ballots available in the case of the failure of a voting system or voting equipment in the election or some other emergency situation, and for other purposes.

The Committee on House Administration ordered H.R. 5803 reported favorably by a recorded vote of 5–3. H.R. 5803 provides an optional grant program for states or jurisdictions to purchase backup paper ballots for any subjectively determined emergency situations that may occur during the upcoming general elections for Federal office. We are not opposed to grant programs, so long as there is necessity for, sufficient funding for and ample time to administer such programs. While well intended, there is no exigency that warrants the Federal government establishing an optional grant program that provides states with funding to produce backup paper ballots for the November 2008 general elections. A vast majority of states already have contingency plans in place in the event of a voting machine or voting system malfunction or other emergency situation. It would be impolitic and careless to support an incentive program that is unnecessary and has little chance of receiving the full appropriation of authorized funds.

AN UNNECESSARY SOLUTION

H.R. 5803 is an unnecessary and costly solution to a problem that does not exist. H.R. 5803 provides an optional grant program to states and local units of government for carrying out a program to make backup paper ballots available for the November 2008 general elections for Federal office. Under this scheme, election officials from participating states or local jurisdictions must advise voters of their right to request a paper ballot if they are at a polling location and would be delayed in casting a ballot due to voting machine failure, voting system failure or other emergency situation. Certainly, circumstances may arise on Election Day at any given polling location, which would delay a voter from casting a ballot in a timely manner. We recognize that a voter may have to wait in line longer if he or she arrives during peak voting hours or in the event a voting machine experiences technical problems and is inoperable for a period of time. We find it rather insulting to state and local election officials and city and county clerks, however, to assume that they do not have contingency plans in place to address these routine occurrences or emergency situations. In fact, a survey recently conducted by the Elections Center (National

Association of Election Officials) indicates that virtually all of the states surveyed that use Direct-Recording Electronic (DRE) voting machines provide backup paper ballots in the event of machine failures; the very problem this bill proposes to solve.[1] Further, testimony presented to the Committee revealed that the majority of election administration malfunctions are caused by human error.[2]

Unfortunately, the Majority did not support the amendment offered by Mr. Ehlers that would limit the use of grants under this bill to the creation of a single copy of an original paper backup ballot per polling place, so that poll workers could photocopy additional ballots if needed. It is not the proper role of the Federal government to pay for pre-printing backup ballots. Furthermore, most states and local jurisdictions are required to store all voted and non-voted paper ballots produced for an election for 22 months; therefore it is fiscally and environmentally irresponsible for the Federal government to pay for the printing of paper ballots by states and localities that use other voting systems and which may never be used.

Clearly, the impact of printing and storage when multiplied by states and jurisdictions across the country is considerable. Congress has the duty to spend taxpayers' money in a judicious manner. Rather than continuing to introduce redundant and costly election reforms that propose solutions to non-problems, we should focus our efforts and attention on areas of election administration that may need improvement.

OTHER EMERGENCY SITUATION

H.R. 5803 directs the Election Assistance Commission (EAC) to make grants to participating jurisdictions that develop a plan to make available backup paper ballots "in the case of the failure of a voting system or voting equipment . . . or some other emergency situation." Unfortunately, the legislation does not define the term "other emergency situation," and the bill's sponsor declined to provide any examples to illustrate her intent. We believe this shortcoming constitutes a major flaw in the program.

The term "other emergency situation" is not defined in H.R. 5803, and the record is silent as to its intended meaning. However, section 1(a) uses the term "other emergency situation" to, in part, define the scope of the grant program (beyond the failure of a voting system or equipment); and section 1(b)(1)(A) provides that an applicant must certify to the EAC that it has established a program to make backup paper ballots available in the case of the failure of a voting system or equipment or some other emergency situation. In fact, it appears seven times in the five-page long text of H.R. 5803, as well as in the title. In addition to our objections to the program itself, we cannot support a grant program that is so ill-defined in its scope and requirements for participation. Without a definition of "other emergency situation," how is the EAC ex-

[1] Submission for the record, Committee on House Administration, U.S. House of Representatives, Committee Markup for H.R. 5803, May 7, 2008.

[2] Testimony of Cecilia Martinez, Committee on House Administration, U.S. House of Representatives, Hearing on "2008 Presidential Primaries and Caucuses: What we've learned so far", April 9, 2008. Ms. Martinez also noted that 78% of all calls received for the 2008 Presidential Primaries by the national MyVote1 hotline were from voters inquiring about poll locations and stressed the importance of increased voter education and poll worker training.

pected to appropriately administer this program in accordance with Congressional intent, and how are states and local jurisdictions expected to know if their programs qualify? As a matter of common sense and good government, we believe it is irresponsible to support legislation that fails to define such a critical term.

PRIVATE RIGHT OF ACTION

Regrettably, the Majority also did not accept an amendment offered by Mr. Lungren clarifying that H.R. 5803 does not establish a private right of action for any individual or any class of individuals. Although the amendment failed, the bill's sponsor acknowledged, during the colloquy, that H.R. 5803 does not under any circumstances create a private right of action. She maintains that the sole intent of H.R. 5803 is to reimburse states and local units of government for the costs associated with printing backup paper ballots to be provided to voters in the event they are waiting at their polling place and would be delayed due to voting machine failure, voting system failure or other emergency situation.

CONCLUSION

While this optional grant program may appear attractive to some states and local jurisdictions, a change in the process of election administration could pose burdens or unintended consequences. It would not be prudent for the Federal government to establish a 75 million dollar grant program on behalf of the taxpayers with the general elections less than six months away. We must proceed with caution and use considered judgment when contemplating any changes to the Federal elections process.

VERNON J. EHLERS.
KEVIN MCCARTHY.
DANIEL E. LUNGREN.

Appendix A

NATIONAL ASSOCIATION OF COUNTIES,
Washington, DC, May 6, 2008.

Re H.R. 5803.

Hon. ZOE LOFGREN,
Chairwoman, House Subcommittee on Elections,
Washington, DC.

DEAR REPRESENTATIVE LOFGREN: On behalf of the National Association of Counties I write in support of H.R. 5803. We understand the legislation does not mandate but instead provides a voluntary opt-in grant program for states and counties that wish to provide for emergency paper ballots in the November, 2008 presidential election.

NACo appreciates the voluntary nature of this legislation. It is important that states and counties have the flexibility of a voluntary program to determine if what has been proposed federally will actually work at the state and local level. The Help America Vote Act created a relationship between states and localities which needs to be maintained and fully funded.

We understand that the bill provides that states certify to the Election Assistance Commission (EAC) any reasonable costs they expect to incur by participating in the emergency ballot grant program. We ask that report language clarify that the EAC may not unilaterally reject a state/county-certified reasonable cost.

NACo thanks you for your leadership in introducing this legislation and appreciates the opportunity to work with you and your staff to craft a reasonable bill. Please direct any questions or comments to our Legislative Director, Edwin Rosado. Thank you for your support of America's counties.

Sincerely,

ERIC COLEMAN,
President.

NATIONAL CONFERENCE OF STATE LEGISLATURES,
Washington, DC, April 28, 2008.

Re H.R. 5803.

Hon. ZOE LOFGREN,
Chairwoman, House Subcommittee on Elections,
Washington, DC.

DEAR REPRESENTATIVE LOFGREN: On behalf of the National Conference of State Legislatures (NCSL) I write in support of H.R. 5803, legislation that would provide a voluntary opt-in grant program for states that wish to provide for emergency paper ballots in the November, 2008 presidential election. NCSL greatly appre-

ciates your and the Subcommittee's willingness to work with state officials on this legislation that is meaningful and respectful of state authority in election administration matters.

NCSL further appreciates the voluntary nature of this legislation. It is important to states that they have the flexibility of a voluntary program to determine if what has been proposed federally will actually work at the state level. That being said, NCSL has two questions that I hope will be answered during the markup of this bill. First, because the bill provides for participation by both localities and states, is there a mechanism in the bill to provide that localities that decide to apply for funding notify their state of their intentions? The Help America Vote Act created a relationship between states and localities which needs to be maintained. NCSL asks that report language or an amendment be made that requires localities to notify their state if they are going to apply. Second, the bill provides that states certify to the Election Assistance Commission (EAC) any reasonable costs they expect to incur by participating in the emergency ballot grant program. Are these costs in any way reviewable by the EAC? NCSL would ask that report language clarify that the EAC may not unilaterally reject a state-certified reasonable cost.

Again, NCSL thanks you for your leadership in introducing this legislation and appreciates the opportunity to work with you and your staff to craft a reasonable bill. Please direct any questions or comments to NCSL staff Susan Parnas Frederick. Thank you.

Sincerely,

DONNA STONE,
State Representative, Delaware,
President, NCSL.

BRENNAN CENTER FOR JUSTICE,
New York, NY, April 30, 2008.

Re support for H.R. 5803, the "Back Up Paper Ballot Bill."

Representative ZOE LOFGREN,
Chair, Subcommittee on Elections, Committee on House Administration, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE LOFGREN: Thank you for your leadership and commitment to improving the security, reliability, and accessibility of our voting systems. In an election year that has garnered unprecedented voter interest, it is particularly important to have good policies and procedures in place in advance of the November elections.

For this reason, we strongly support H.R. 5803, the Back Up Paper Ballot Bill. News reports of machine problems during states' recent presidential primary elections provide a preview of potentially widespread machine failure and disenfranchisement in November. H.R. 5803 would reimburse jurisdictions for costs associated with providing voters emergency paper ballots in the event of machine breakdowns.

In elections past, machine failures have caused long lines at the polls and disenfranchised untold numbers of voters. Encouraging the use of emergency paper ballots will help ensure that every

voter may have her vote counted and make it much less likely that voters will be forced to wait on long lines or turned away from the polls because of machine malfunction—these are particularly important considerations for November's elections, when turnout is expected to be high.

Sincerely,

LAWRENCE NORDEN,
Counsel.

COMMON CAUSE,
Washington, DC, May 6, 2008.

Hon. ROBERT A. BRADY
Chair, Committee on House Administration,
Washington, DC.

DEAR REPRESENTATIVE BRADY: I am writing to express the strong support of Common Cause for HR 5803 which would allow states to receive grants to make "emergency back-up paper ballots" available in the event of the failure of voting equipment.

As you know, 32 states deploy voting systems which are electronic and need to "boot up" before a voter can cast a ballot. When these machines fail, and precincts aren't equipped with back up paper ballots, voters can be disenfranchised. Already in this election cycle we have seen voters turned away at the polls because machines couldn't be used. In Horry County South Carolina, during the Republican primary, 80% of the machines were not working at the opening of the polls, and precincts were not equipped with enough back-up paper ballots to accommodate voters. Under this legislation, each precinct could be stocked with back-up paper ballots, no voter would have to be turned away at the polls due to voting machine malfunction.

This legislation is also critical because poll workers are often told to give voters provisional ballots if electronic machines fail to work. This practice is highly problematic as provisional ballots are counted differently than regular ballots. Confusion will be mitigated if voters are given emergency paper ballots which are designated as such. Provisional ballots should not be used in the event of machine failure.

Thank you for turning your attention to this important issue and for your continued dedication to ensuring that every vote counts—and is counted as cast.

Sincerely,

BOB EDGAR,
President.

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW,
Washington, DC, April 29, 2008.

Hon. ZOE LOFGREN,
Chair, Subcommittee on Elections,
Cannon House Office Building, Washington, DC.

DEAR REPRESENTATIVE LOFGREN: As the legal leader of Election Protection, the nation's largest non-partisan voter protection coalition, I write to thank you for introducing critical legislation to pro-

vide voters with backup paper ballots in the event that election machines fail. The bill is a measured, proactive step towards improving the system of election administration before this year's critical federal election.

Election Protection is a year round, comprehensive voter protection effort providing support to coalition partners and voters alike in their efforts to cast a meaningful ballot. In addition to preparing for Election Day activities, the Lawyers' Committee works with local and state election officials, as well as in the halls of Congress, to facilitate election reform. In its role as the legal leader of the coalition, the Lawyers' Committee will recruit, train and deploy over 10,000 attorneys and law students to participate in Election Protection efforts. Law firms host command centers on Election Day, and attorneys and other trained volunteers answer hotline calls from voters. The Lawyers' Committee creates, revises, and distributes legal manuals with current election law in all target states and coordinates comprehensive election administration activities conducted by Election Protection Legal Committees (EPLC), the coalition of local volunteers working with us throughout the country. When necessary, litigation may occur.

In addition to helping our coalition partners and voters, since 2004, Election Protection has developed the most comprehensive picture of election administration from the perspective of the American voter. That experience has shown first hand scores of voters turned away because election machinery broke down without an adequate safeguard. Likewise, in places where there are procedures to administer emergency paper ballots in the wake of a machine failure or other emergency situation, poll workers had not been adequately trained to distribute the ballots to people waiting to cast a vote.

As detailed in our report "Election Protection 2008: Looking Ahead to November," we have seen these problems in Maryland, New York & Texas. The Potomac Primaries, held on February 12, 2008, provided examples of why this legislation is much needed. In Maryland near record turnout swamped poll workers and precincts throughout the state. The Election Protection hotline, 1–866–OUR–VOTE, which is administered by the Lawyers' Committee, received numerous reports of voting machines breaking down. Making the problem worse, many poll workers were not properly trained to hand out emergency ballots, causing voters to leave without casting a ballot.

The Lawyers' Committee strongly supports Rep. Lofgren's initiative to direct the Election Assistance Commission to make grants available to states and local governments that implement a program to make backup paper ballots available in the case of the failure of a machine voting system or other emergency situation.

The bill calls for poll workers to provide paper ballots to any individual who is waiting at the polling place on that date to cast a ballot in the election and who would be delayed due to a machine malfunction or other emergency situation.

These ballots will be treated as regular ballots in lieu of the provisional status afforded to some paper ballots cast in accordance with federal law via the Help America Vote Act.

Machine breakdowns, long lines and a shortage of poll workers have hampered effective election administration throughout the country. Rep. Lofgren's bill provides a proactive solution to an anticipated problem at the polls on November 4, 2008.

The Lawyers' Committee for Civil Rights Under Law strongly encourages the passage of this bill. It is a proactive step in improving the administration of elections across the country.

Sincerely,

JONAH H. GOLDMAN,
Director, National Campaign for Fair Elections, A Project of the Voting Rights Section of the Lawyers' Committee for Civil Rights Under Law.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, May 5, 2008.

COMMITTEE ON HOUSE ADMINISTRATION,
House of Representatives,
Washington, DC.

DEAR COMMITTEE MEMBER: On behalf of the hundreds of thousands of members of People For the American Way, we write in support of H.R. 5803 to ensure the use of emergency paper ballots during voting equipment failures in the upcoming elections.

Electoral reform is a priority for People For the American Way, and we welcome efforts to remedy the system's current flaws in order to increase voters' faith and participation in our democratic process. As a founder and leader in the non-partisan Election Protection coalition with numerous allied organizations, including over 150 civil rights and voting rights organizations throughout the years, People For the American Way Foundation has helped document the major problems that voters across the country have had leading up to and on Election Day. These incidents include numerous reports of inadequate resources and poll worker training regarding emergency ballots.

Emergency ballots are just that: ballots voters can cast in "emergencies" (i.e.—when voting machines crash or are otherwise unavailable on Election Day). These ballots are meant as a back-up paper option when technology fails. But even emergency ballots are not failsafe, as some poll workers and election officials have been improperly treating emergency ballots and provisional ballots as one and the same. They fail to recognize, for example, that voters who are forced to cast paper ballots when systems fail are not the same as voters who are subject to after-the-fact investigations of their eligibility as required under the Help America Vote Act (HAVA). This poor training can lead to a delay in counting the ballots of otherwise eligible voters. H.R. 5803 makes it clear that emergency ballots and provisional ballots must be treated in separate manners and cannot be used interchangeably.

Further, when mass problems require their usage and supplies are inadequate, the potential arises for polling places to run out of emergency ballots, causing voters to be left without the ability to cast a ballot. This problem is exacerbated by the increased voter turnout we have seen in the 2008 primaries and expect to see this November. According to the Center for the Study of the American

Electorate, on Super Tuesday 12 states saw record turnouts in their Democratic primaries and 11 in their Republican contests. The Chesapeake Primary (Maryland, Virginia, and Washington, DC) also saw exceptionally high turnout. Especially exciting are exit polls in many states that indicate that turnout increased exponentially among historically disenfranchised communities—in some places over 50 percent. This increased voter turnout means that additional resources are needed at polling places in case of machine failure. H.R. 5803 would require, and allocate funding for, the adequate distribution of enough emergency ballots, taking into account the potential for increased voter turnout.

People For the American Way is extremely encouraged that H.R. 5803 will help address many of the problems voters have consistently encountered by increasing resources and making emergency balloting procedures more uniform and clear for voters and poll workers. For these reasons and more, People For the American Way urges the Committee to support passage of H.R. 5803.

Sincerely,

KATHRYN KOLBERT,
President.

TANYA CLAY HOUSE,
Director, Public Policy.

VERIFIEDVOTING.ORG,
MAY 6, 2008.

Hon. ZOE LOFGREN,
Cannon House Office Building,
Washington, DC.

DEAR REPRESENTATIVE LOFGREN: I write to you today to express VerifiedVoting.org's strong support of H.R. 5803, a bill to provide funding for backup paper ballots in the November 2008 elections. VerifiedVoting.org's focus is the verifiability, accessibility, and transparency of election equipment, and we are deeply thankful for your efforts to pass excellent verification legislation in the 110th Congress and in previous Congresses. A large percentage of our nation's voters cast ballots on electronic systems the accuracy of which cannot be independently verified. Recent elections have witnessed a number of elections marred by unreliable voting systems, as well as security reports documenting the possibility of even worse problems in the future.

But there can be no verification of a voters' intent if that voter is turned away from the polls, or is forced to wait in a long line while missing work or while faced with family obligations. It is unlikely that any supplemental appropriation will be made in time for jurisdictions to convert from an unauditable voting system to a paper ballot voting system in time for the November elections. However, Congress must to everything in its power to ensure that voting equipment problems do not compromise the integrity of the 2008 elections, and H.R. 5803 takes necessary and sensible steps in this direction.

As I write this afternoon, there are reports of long lines at voting centers in the Indiana Presidential primary, with frustrated voters

leaving the polls.[1] In last month's Pennsylvania Presidential primary, there were numerous reports of polling places at which all available machines were broken, and emergency paper ballots not being offered in a timely fashion.[2] In South Carolina's Republican Presidential primary on January 19, thousands of voters were turned away from the polls when electronic voting machines failed to activate.[3] Still others were forced to vote on crudely improvised slips of whatever paper was available.

Federal funding would provide counties and states the resources they need to supply all machine-based polling places with emergency paper ballots for use in case of equipment failure and/or other emergency situations, such as the long lines widely expected in this year of record-high voter turnout. Backup ballots can serve as insurance for Congressional elections in close districts in which machine malfunction could result in long lines, voters denied the opportunity to vote, or uncertainty about results. No voter should be disenfranchised by failing equipment, long lines, or other avoidable contingencies.

Thank you for introducing H.R. 5803, and for leadership on the issue of verifiable voting. We look forward to continuing to work with you ensure the security, accuracy, auditability, and accessibility of America's federal elections.

Respectfully,

WARREN STEWART,
Senior Projects Director.

OHIO SECRETARY OF STATE,
Columbus, OH, April 29, 2008.

Re letter of support for H.R. 5803.

Hon. ZOE LOFGREN,
Cannon House Office Building,
Washington, DC.

DEAR CONGRESSWOMAN LOFGREN: I write to extend my support for H.R. 5803, which would create a grant program for states to print and utilize backup paper ballots for the November 2008 federal elections. In Ohio, we thoroughly tested the reliability and security of direct recording electronic (DRE) voting machines and found them susceptible to performance problems and security lapses. Until we can obtain funding to replace DRE voting systems in the 53 counties in Ohio that utilize DREs as their primary voting system, we have found that backup paper ballots:

- Ensure that voters have the option to vote a paper ballot,
- Alleviate congestion due to long lines, and
- Serve as emergency ballots in the case of machine or power failure.

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[1] "Richmond vote centers packed; computer glitch adds to wait." The Palladium-Item. May 6, 2008. Published on the Internet at: *http://www.pal-item.com/apps/pbcs.dll/article?AID=/20080506/UPDATES/80506015*

[2] "Machine, Registration Issues in Pa. Primary Election." Philadelphia Inquirer, April 22, 2008. Published on the Internet at: *http://www.philly.com/philly/news/homepage/20080422—Few—problems—in—Pa—primary—elections.html*

[3] "South Carolina Voting Machine Failure Underscores for Swift Federal Action for Voting Security." Statement by Common Cause, January 22, 2008. *http://votetrustusa.org/index2.php?option=com—content&do—pdf=1&id=2721*

Ohio utilized backup paper ballots during the March 4, 2008 primary election. In at least two specific instances, they proved to be vital when machines could not be used because they were programmed incorrectly and when sustained power outages exhausted the life of batteries in DRE voting machines. We plan to utilize backup paper ballots again in November with even greater specifics in their implementation and use. In short, we believe that in Ohio, backup paper ballots offer a transitional solution to a wholesale change of voting systems and provide a means to better ensure election integrity this November.

Recently, I worked with Congressman Rush Holt on H.R. 5036, which included backup paper ballot provisions similar to those found in H.R. 5803. I supported his efforts concerning reimbursements to the states for backup paper ballots. Likewise, I support your advancement of H.R. 5803's grant program for backup paper ballots and offer any assistance I can provide toward passage of this worthwhile measure.

In December 2007, my office released what is known as the "EVEREST Report," a massive voting machine study of the three voting systems used in Ohio: Premiere (formerly Diebold), ES&S, and Hart Intercivic. The EVEREST Report contained scientific and industrial findings that Ohio's voting systems (also used throughout the country), specifically DRE voting systems, lack basic security safeguards required and provided in other applications throughout the computer industry, are prone to deterioration in performance and software operation, and need reengineering and improved procedures for operation. In response, I issued a directive (Directive 2008–01) to all boards of elections on January 2, 2008, requiring all counties utilizing DRE voting machines as their primary system of voting to print backup paper ballots in the amount of at least 10% of the number of voters who voted in a similar, previous election.

The directive permitted any voter who preferred a paper ballot to vote by paper ballot and for such paper ballots to be counted on election night as part of the unofficial count. Until Ohio has secured funding to move its counties utilizing DRE voting technology to optical scan paper ballot technology, backup paper ballots provide needed security and reliability to ensure that disenfranchisement does not occur and to provide for greater integrity in post-election audit procedures.

My office has ordered our 53 county boards of elections that utilize DREs as their primary voting system to provide the Ohio Secretary of State's office with the costs of implementing the backup paper ballot directive, and once we have obtained these numbers, I will be happy to share them with you. I can tell you, initially, the costs for even the largest counties were in the low 5 figures, and for most, they were in the low 4 figures. From initial figures provided, it appears that your proposal would be a cost effective means to ensure election confidence, especially since the November 2008 election will be the first presidential election where DRE use will be widespread.

I appreciate the opportunity to communicate my support for H.R. 5803. Restoring and ensuring confidence in Ohio elections is an essential goal of my administration. Our state has made great strides

in this respect, and we will continue to work toward this end, especially for November's election, when Ohio again is likely to be a pivotal state in the presidential contest. H.R. 5803 would provide Ohio, along with many other states, a simple but important tool to ensure election integrity and increase national electoral confidence. Please feel free to contact me if I can provide you with additional information or support.

Sincerely,

JENNIFER BRUNNER.

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