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President Carter, Secretary Baker, and Members of the Commission on Federal Election Reform, thank you for inviting me to testify on the state of election reform in Congress.

Here is the bottom line: Three years after the passage of the Help America Vote Act (HAVA) in 2002, the need for additional election reform is great. But there is very little appetite in Congress to revisit election reform issues-- even though there are a number of important areas needing reform that were not touched on by HAVA, and there are many key issues that have arisen from its belated and under-funded implementation.

Many individual members of Congress are interested in these issues, as evidenced by the bills that have been introduced that I catalogue below. But the key leadership figures are not all inclined to act for the foreseeable future. To get some movement toward congressional action will require, I believe, a bold call for action and a bold plan for additional reform. Nothing else is likely to provide the motivation for Congress to act until there is another large controversy or scandal to jumpstart the process.

HAVA – its significance

Congress is to be commended for passing the Help America Vote Act in 2002. Election administration and reform is an area Congress through its history has been reluctant to take up. In 2002, Congress did act, and in a major and unprecedented fashion. For the first time in our history, federal funds were authorized to improve the administration of elections, and the dollar amounts are substantial. Congress also provided a mixture of standards and guidelines that will improve the way elections are conducted. Most significantly, HAVA has spurred states to buy new election machinery, develop computerized statewide voter registration systems and provide for provisional balloting.

Most remarkably, HAVA was crafted with strong bipartisan support, even though it impetus was the highly charged political atmosphere following the 2000 election controversy. HAVA required a difficult balancing act. It addressed traditional Democratic calls for greater ballot access along with Republican concerns about vote fraud. It respected our long tradition of local administration of and state responsibility

for elections, but balanced this with federal money, requirements, guidelines and standards.

All of this makes HAVA a remarkable achievement. Not surprisingly, it took a good deal of time to get the bill passed and enacted into law, thus delaying both the implementation of the law and its funding. But funds were appropriated and continue to flow to the states. Many of the law's key deadlines and milestones lie ahead. As some of HAVA's strongest supporters note, HAVA cannot be fully judged for several election cycles when there is full implementation.

Those supporters use that reason for justification to delay further legislation in the election reform area. Waiting for the full implementation of HAVA means waiting until late 2006—too late to affect the midterm elections, and with precious little time to pass additional legislation that could have an impact on the 2008 presidential and congressional contests. A delay now also means that other important issues, like voter ID, coordination across states of voter registration lists and election day, will be unaddressed for years.

Legislation before Congress

There are many bills on a variety of election reform topics introduced in both houses of Congress. It is important to emphasize, however, that only a few have been introduced by members sitting on the major committees of jurisdiction, the House Administration Committee and the Senate Rules Committee. There have been two hearings on the implementation of HAVA by the House Administration Committee in the 109th Congress and a recent hearing by the Senate Rules Committee on voter verification. But there is no indication from the chairmen of these committees that there will be major legislation produced as a result of these hearings, and every reason to believe what a senior congressional staffer responsible for election reform told members of the Commission earlier this month: that the key congressional figures in this area want to wait until HAVA is fully implemented before considering additional action.

The major bill introduced by a relevant member of a Committee of jurisdiction is S. 17 introduced by Senator Christopher Dodd, who is the ranking member on the Senate Rules Committee (a companion bill H.R. 533 was introduced by Representative John Conyers). The bill is one of only a handful that cut across a number of election reform topics, including in this case requiring same day voter registration, allowing identification through written affidavits, requiring some sort of verification of a vote before it is cast. Senator Mitch McConnell, the former chairman and current member of the Rules Committee has introduced a bill to stiffen voter identification requirements, requiring social security numbers to be used for voter identification, stiffening id requirements for voting by mail, and setting requirements for purging voters from election lists. John Larson, former ranking member of the House Administration Committee introduced H.R. 470 to ensure that the software on electronic voting machines is provided to the proper election officials and that there is proper testing of the software.

Of the bills introduced by members not serving on the aforementioned committees, the one that has received the most attention is that of Representative Rush Holt, who has introduced H.R. 550 requiring a paper verification of vote to be used on electronic voting machines. Of all the subjects covered in bills before Congress, the one getting the most attention, not to mention the most visible support and opposition, is that of ballot verifiability and the need for a voter-verifiable paper trail. Also of note, Senator Hillary Clinton and Representative Stephanie Tubbs Jones, a member of the House Administration Committee, have introduced H.R. 939 and S. 450. These bills are comprehensive bills that include requirements for voter verification, provide voter ID cards to voters who cannot afford to obtain identification, require early voting and same day registration.

The major areas of legislation, which presumably reflect the interests and concerns of lawmakers, are as follows:

Voter Verification. Many states, like Nevada, have moved to require a paper trail for electronic voting machines. This allows the voter to check if his or her vote has been recorded accurately, and it provides an audit trail in the case of a recount or other investigation of irregularities. Many of the bills before Congress address this subject, with some requiring a paper trail and others requiring some sort of verification, which could include paper, audio, or electronic.

Voter Identification. A number of bills deal with voter identification, some requiring more stringent identification and others less stringent. Some cover absentee ballots. There is also the issue of how the voter is identified in the registration database, by Social Security Number or by other method.

Provisional Voting. The Clinton/Jones and Dodd/Conyers bills impose a nationwide standard for provisional ballots that they be counted if they are cast anywhere in the state.

Absentee and Early Voting. This issue has clearly engaged many lawmakers. Bills address the subject in a variety of ways. A number of the bills require states to have a period of early voting. Others address ID requirements for absentee voting.

Voter Registration. Several bills would require that states offer same day registration; others provide for Internet registration.

National Standards. Several bills address national standards on voting machine audits, recounts, and poll workers.

Purging Registration Lists. Bills address everything from the mechanics of removing a name from the list to allowing ex-felons to vote.

I will provide a more detailed look below at the bills currently in Congress. It is possible that the intensity of concern about the integrity of DREs and the problems that could come from a recount without creating some form of voter verifiability will provide enough impetus for action in this area during this Congress. But there is no sign at the moment of any interest on the part of the Speaker of the House, the Senate Majority Leader, or the chairs of the relevant House and Senate committees, or their minority party counterparts, in pursuing this or any other election issue beyond holding several hearings.

Let me reiterate my central point: piecemeal or incremental action on election reform is unlikely, and could be counterproductive, taking away any impetus or incentive for further action. In the face of the indifference or opposition to election reform by key figures in Congress, the greatest hope for action in this area is by proposing and promoting more comprehensive change, encompassing both new areas unaddressed by HAVA and continuing problems that have not been resolved by the passage and enactment of HAVA. In my judgment, that should be the goal of this commission.

APPENDIX: Election Reform Legislation

Paper Trail Legislation

The most common thread through all of the election reform legislation proposed in the 109th Congress is a modification to the Help America Vote Act of 2002 (HAVA) that would require a voter verified record of each vote cast. There is clearly substantial congressional unease that the new electronic voting machines are reliable, or that in a recount those without any paper trail can be used or accepted by the public. Most of the bills call solely for a voter verifiable paper trail, including HR278, HR550, HR704, HR939, S330, and S450. For example, Rush Holt's (D-NJ) bill, the Voter Confidence and Increased Accessibility Act of 2005 (HR550,) modifies HAVA as follows:

The voting system shall produce or require the use of an individual voter-verified paper record of the voter's vote that shall be made available for inspection and verification by the voter before the voter's vote is cast. For purposes of this clause, examples of such a record include a paper ballot prepared by the voter for the purpose of being read by an optical scanner, a paper ballot prepared by the voter to be mailed to an election official (whether from a domestic or overseas location), a paper ballot created through the use of a ballot marking device, or a paper print-out of the voter's vote produced by a touch screen or other electronic voting machine, so long as in each case the record permits the voter to verify the record in accordance with this subparagraph.

Not all of the bills would require only a paper trail as fulfillment of a voter verification modification to HAVA. HR533 and S17, the Voting Opportunity and Technology Enhancement Rights Act (VOTER) of 2005, proposed by Rep. Conyers (D-MI) and Sen. Dodd (D-CT.) would allow the means of voter verification to be either a 1) paper record, 2) audio record, 3) pictorial record, or 4) electronic record or other form of voter verification accessible to individuals with disabilities, including accommodations for the blind and hearing impaired.

Absentee/Early Legislation

Two bills have called for amending HAVA with respect to early voting and absentee voting. The Count Every Vote Act of 2005 (HR939 and S450) and the Voting Opportunity and Technology Enhancement Rights Act (VOTER) of 2005 (HR533 and S17) both call for a mandatory 15-day minimum period of early voting and stipulate that early voting must be conducted under uniform conditions each day. Absentee voting is a different story, as proposals vary from mandating no-excuse absentee voting for federal

offices to creating a new, federal absentee ballot. The federal write-in absentee ballot proposes a different way of voting for national office than has ever been done in the past. Senator Dodd (D-CT) has proposed the following for the federal write-in absentee ballot:

- (1) In completing the ballot, the voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).
- (2) In the case of the offices of President and Vice President, a vote for a named candidate or a vote by writing in the name of a political party shall be counted as a vote for the electors supporting the candidate involved.
- (3) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of the ballot.

Ostensibly, the voter, under this proposal, would always be allowed to vote by mail and would be allowed to vote for a party rather than an individual. One bill – the Universal Right to Vote by Mail Act of 2005, HR 1835, introduced by Rep. Susan Davis (D-CA) – deals exclusively with absentee voting. It would prohibit states from imposing any further restrictions on an individual’s right to vote in federal elections by mail than to set the deadline for requesting and returning a ballot by mail.

Election Day as a National Holiday Legislation

Most of the bills either propose to create a national holiday for presidential elections or mandate studies to examine the benefits of such a holiday. One bill, the Election Weekend Act of 2005 (HR1647 and S144) introduced by Rep. Alcee Hastings (D-FL) and Sen. Herb Kohl (D-WI), deals exclusively with changing election day. Their bill would move Election Day from the first Tuesday after the first Monday in November to the first consecutive Saturday and Sunday in November in even numbered years. Rep. Hastings’ bill also includes a section that expresses the sense of Congress that private employers should ensure that on one of those two weekend days, employees have the day off to be able to vote. Sen. Kohl’s bill mandates uniform polling hours during all federal elections.

Same-Day Registration Legislation

Another common thread through much of the legislation is allowing for same-day registration. While the wording varies, the theme of the legislation is to have the polling places serve as registration places at the same time. One bill, the Same Day Voter Registration Act of 2005 [HR496, Rep. Sabo (D-MN)] would amend the National Voter Registration Act (NVRA) of 1993 to require that the states allow all citizens to register to vote in Federal elections on the day of the election.

Other Issues

Some of the bills include provisions for a wide-variety of action that are hard to classify into any one category. Rush Holt's bill proposes to direct the Election Assistance Commission to conduct an unannounced, hand-recount of at least two percent of the precincts in every state. The Jones/Clinton Count Every Vote Act of 2005 proposes similar conditions, the goal being to assure all citizens that the election is truly free and fair and to keep election officials honest. Two bills – HR 663, the Ex-Offenders Voting Rights Act of 2005 (Rep. Rangel (D-NY,)) and HR 1300, the Civic Participation and Rehabilitation Act of 2005 (Rep. Conyers (D-MI) – deal exclusively with the reinstatement of convicted felons' right to vote after they have served their term. The Voter Choice Act of 2005, HR 2690, introduced by Rep. Cynthia McKinney (D-GA,) provides that a state may establish a proportional voting system for newly-created multi-seat congressional districts and would require the use of instant runoffs in certain federal elections. A fuller description of the bills introduced so far this year is below:

Bill	H.R.550 Rep. Rush Holt (D-NJ)	H.R.704 Rep. Jim Gibbons (R-NV)	S.330 Sen. John Ensign (R-NV)	H.R.939 Rep. Stephanie Tubbs Jones (D-OH)	S.450 Sen. Hillary Clinton (D-NY)
Name	Voter Confidence and Increased Accessibility Act of 2005	Voting Integrity and Verification Act of 2005		Count Every Vote Act of 2005	
Voter ID				EAC shall set uniform standards of identification and make payments to the states to provide free photo identification cards to registered voters who do not have an identification card and who cannot obtain an identification card without undue hardship	
Voter-Verified Audit Trail	Yes. A paper verification that affords the voter the opportunity to change his/her vote before it is cast.	Yes. A paper verification that affords the voter the opportunity to change his/her vote before it is cast.		Yes. A paper, audio, pictorial, or electronic verification that affords the voter the opportunity to change his/her vote before it is cast	
Provisional Ballots				Ballots cast anywhere in the state by an eligible voter will be counted	
Absentee Ballots				No-excuse absentee voting	
Early Voting				Yes. Not less than 15 days prior to a federal election for no less than 4 hours each day (except Sunday) and uniform hours each day	
Election Day Registration				Yes. An eligible individual must be allowed to register at the polling place and vote in that election	
Election Day Federal Holiday				Yes	
Internet Voter Registration				EAC shall conduct a study to determine the feasibility of internet registration for federal elections	
Election Observers					
Voting Machine Audits					
Recounts	EAC shall conduct random manual recounts in at least 2% of the precincts in each state			EAC shall conduct random manual recounts in at least 2% of the polling locations in each state	
Poll Workers				EAC shall establish standards for the minimum amount of poll workers. It shall also conduct a study into how much training poll workers need and another study on appropriate methods to encourage State and local government employees to serve as poll workers in Federal elections	
Voting Machine				Must be open source software. No wireless communication devices may be used.	
Removal from Voter Registration Rolls				Each state must provide public notice of all names removed from registration rolls no later than 45 days before a federal election	
Ex-felons right to vote				Restore voting rights	
Other					

Bill	H.R.533 Rep. John Conyers, Jr. (D-MI)	S.17 Sen. Christopher Dodd (D-CT)	H.R.278 Rep. Steve King (R-IA)	H.R.1647 Rep. Alcee L. Hastings (D-FL)	S.144 Sen. Herb Kohl (D-WI)
Name	Voting Opportunity and Technology Enhancement Rights Act of 2005		Know Your Vote Counts Act of 2005	Election Weekend Act	Weekend Voting Act
Voter ID	Identification is established through written affidavits				
Voter-Verified Audit Trail	Yes. A paper, audio, pictorial, or electronic verification that affords the voter the opportunity to chance his/her vote before it is cast		Yes. A paper verification that affords the voter the opportunity to chance his/her vote before it is cast		
Provisional Ballots	Ballots cast anywhere in the state by an eligible voter will be counted				
Absentee Ballots	Nationwide write-in absentee ballot with SPECIAL CONDITIONS: In completing the ballot, the voter may designate a candidate by writing in the name of the candidate or by writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party).				
Early Voting	Yes. Not less than 15 days prior to a federal election for no less than 4 hours each day (except Sunday) and uniform hours each day				
Election Day Registration	Yes. An eligible individual must be allowed to register at the polling place and vote in that election				
Election Day Federal Holiday	A report on Election Day as a national holiday shall be submitted not later than 6 months after the date of the enactment of the Voting Enhancement and Technology Accuracy Rights Act of 2005.			The first Saturday and Sunday after the first Friday in November, in every even numbered year, are established as the days for the election, in each of the States and Territories of the United States, of Representatives and Delegates to the Congress and in every fourth year for the presidency of the United States. H.R1647 – It is the sense of Congress that private employers in the United States should give their employees a day off on either day of the first consecutive Saturday and Sunday in November in 2006 and each second year thereafter to enable the employees to cast votes in the Federal and other elections held on that day. S.144 – Each polling place in the continental United States shall be open, with respect to a congressional general election, beginning on Saturday at 6:00 p.m. eastern standard time and ending on Sunday at 6:00 p.m. eastern standard time. A polling place may close between the hours of 12:00 p.m. (midnight) and 5:00 a.m. local time as provided by the law of the State in which the polling place is located.	
Internet Voter Registration	Each State shall establish a program under which individuals may access and submit voter registration forms electronically through the Internet.				
Election Observers	Access to polling stations for party challengers; voting rights and civil rights organizations; and, nonpartisan domestic and international observers				
Voting Machine Audits	EAC to establish standards				
Recounts	EAC to establish standards				
Poll Workers	EAC shall establish standards for the minimum amount of poll workers. Poll workers must all be certified as having completed the poll worker certification program.	EAC shall establish standards for the minimum amount of poll workers.			
Voting Machine	Must be open source software.				
Removal from Voter Registration Rolls	Each state must provide public notice of all names removed from registration rolls no later than 45 days before a federal election				
Ex-felons right to vote					
Other					

Bill	H.R.470 Rep. John B. Larson (D-CT)	H.R.496 Rep. Martin Olay Sabo (D-MN)	H.R.663 Rep. Charles B. Rangel (D-NY)	H.R.1300 Rep. John Conyers, Jr. (D-MI)	H.R.1835 Rep. Susan A. Davis (D-CA)
Name	Improving Electronic Voting Standards and Disclosure Act of 2005	Same Day Voter Registration Act of 2005	Ex-Offenders Voting Rights Act of 2005	Civic Participation and Rehabilitation Act of 2005	Universal Right to Vote by Mail Act of 2005
Voter ID					
Voter-Verified Audit Trail					
Provisional Ballots					
Absentee Ballots					No-excuse absentee voting
Early Voting					
Election Day Registration		Yes. An eligible individual must be allowed to register at the polling place and vote in that election			
Election Day Federal Holiday					
Internet Voter Registration					
Election Observers					
Voting Machine Audits					
Recounts					
Poll Workers					
Voting Machine Removal from Voter Registration Rolls	In addition to any other requirements under this subsection, a State or other jurisdiction may not use an electronic voting system in an election for Federal office unless A) the manufacturer of the software used in the operation of the system has provided the State with an updated copy of the software used in the operation of the system; B) not later than 30 days before the date of the election (and at least once on the date of the election) the State tests each type of voting machine used in the system to ensure that the software used in the operation of that type of machine is working correctly; and C) the manufacturer of the software used in the operation of the system has provided the Commission with updated information regarding the identification of each individual who participated in the writing of the software, including specific information regarding whether the individual has ever been convicted of a crime involving fraud.				
Ex-felons right to vote			The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless, at the time of the election, such individual is serving a felony sentence in a correctional institution or facility or is on parole or probation for a felony offense.	The right of an individual who is a citizen of the United States to vote in any election for Federal office shall not be denied or abridged because that individual has been convicted of a criminal offense unless, at the time of the election, such individual is serving a felony sentence in a correctional institution or facility or is on parole or probation for a felony offense.	
Other					

Bill	H.R.2690 Rep. Cynthia B. McKinney (D-GA)	S.414 Sen. Mitch McConnell (R-KY)
Name	Voter Choice Act of 2005	Voter Protection Act of 2005
Other	<p>State that is entitled to more than one Representative in Congress may establish a number of districts for election of Representatives that is less than the number of Representatives to which the State is entitled so long as Representatives are elected under a system which meets the following conditions:</p> <p>(1) The system meets the constitutional standard of majority rule and of individuals having equal voting power.</p> <p>(2) The system ensures the election of any candidate in a multiseat district who receives a share of votes cast that is at least one vote greater than one-third of the total number of votes cast in the district.</p> <p>(3) The number of residents per Representative is equal for all Representatives elected in the State.</p> <p>AND, instant runoff elections</p>	Use social security numbers
Voter ID		
Voter-Verified Audit Trail		
Provisional Ballots		
Absentee Ballots		An application for an absentee ballot for an election for Federal office may not be accepted and processed by a State unless the application includes--
Early Voting		(1) in the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number; or
Election Day Registration		(2) in the case of any other applicant--
		(A) a photo copy of a current and valid photo identification issued by a government entity;
		(B) at least the last 4 digits of the applicant's social security number
Removal from Voter Registration Rolls		
Election Day Federal Holiday		(1) the registrant has not voted or appeared to vote in 2 consecutive general elections for Federal office; and
Internet Voter Registration		(2)(A) the registrant has not notified the applicable registrar (in person or in writing) during the period described in subparagraph (A) that the individual intends to remain registered in the registrar's jurisdiction; and
Election Observers		(B) the applicable registrar has sent a notice which meets the requirements of paragraph (d)(2) and the notice is undeliverable.
Voting Machine Audits		
Recounts		
Poll Workers		
Voting Machine		
Ex-felons right to vote		