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The "Count Every Vote" bill was recently resurrected by Senator Clinton and instantly embraced by People for the American Way and other good liberal groups enamored of sweeping federal election reform bills. And faster than you can say "centralized power" election reform activists began praising the bill and exhorting one another to support it. But one thing we election activists need to get through our heads: sweeping election reform at the federal level is always a disastrous path. History has proven this time and time again. You can read about that [here](#).

I think it's great for people to get excited about legislation, but does anyone actually read these bills before promoting them far and wide?

Maybe not. So, here we go. I have taken the liberty of going through the entire Clinton bill in its previous iteration from the last Congressional session. If the good Senator plans to revise it, we have not been informed of this, so we'll just assume that it is staying as is for now.

The "Count Every Vote" bill is what is known as a "Christmas Tree" bill. A little something for everyone is hanging off it. This means the bill is, in and of itself, complex. Complexity in legislation is always a red flag, because it easily obscures things. Items you might not want are easily hidden in the complexity. So in the interest of untangling some of the threads, I am simply listing below sections from the bill itself with my own comments, in italics, beneath that section.

The original text of the bill can be found here:

<http://www.govtrack.us/congress/bill.xpd?bill=s109-450>

S. 450 [109th]: Count Every Vote Act of 2005, 109th CONGRESS, 1st Session

To amend the Help America Vote Act of 2002 to require a voter-verified paper record, to improve provisional balloting, to impose additional requirements under such Act, and for other purposes.

The bill is going to impose new requirements on top of the already burdensome and unachievable HAVA requirements, which have broken our nation's election systems.

IN THE SENATE OF THE UNITED STATES, February 17, 2005

Mrs. CLINTON (for herself, Mrs. BOXER, Mr. KERRY, Mr. LAUTENBERG, and Ms. MIKULSKI) introduced the following bill; which was read twice and referred to the Committee on Rules and Administration

A BILL To amend the Help America Vote Act of 2002 to require a voter-verified paper record, to improve provisional balloting, to impose additional requirements under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the `Count Every Vote Act of 2005'.

TITLE I--VOTER VERIFICATION AND AUDITING

SEC. 101. PROMOTING ACCURACY, INTEGRITY, AND SECURITY THROUGH PRESERVATION OF A VOTER-VERIFIED PAPER RECORD OR HARD COPY.

This entire section is devoted to perpetuating the myth of DREs and VVPATs. If you didn't like it in Holt, you won't like it here. But just wait until you see what they have in mind for expanding HAVA to meet the needs of "language minority" voters. It's the old TEXT CONVERSION DEVICE.

(b) Voter-Verification of Results for Individuals With Disabilities and Language Minority Voters- Paragraph (3) of section 301(a) of the Help America Vote Act of 2002 ([42 U.S.C. 15481](#)(a)(3)) is amended to read as follows:

`(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES AND FOR LANGUAGE MINORITIES-

`(A) IN GENERAL- The voting system shall--

`(i) be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access, participation (including privacy and independence), inspection, and verification as for other voters;

`(ii) be accessible for language minority individuals to the extent required under section 203 of the Voting Rights Act of 1965 ([42 U.S.C. 1973](#)aa-1), in a manner that provides the same opportunity for access, participation (including privacy and independence), inspection, and verification as for other voters;

Yes, this expands the unachievable HAVA requirements to even more open ended and unachievable requirements, which will doom the states to failure. Technology can not be created to meet the myriad of language requirements, just as it couldn't meet all disability requirements. The Federal government is enacting laws that are IMPOSSIBLE,

and setting themselves up to take over our elections by establishing a situation in which the states have no choice but to violate the impossible law.

Are you ready to surrender state sovereignty to the federal government?

`(iii) satisfy the requirement of clauses (i) and (ii) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and

`(iv) if purchased with funds made available under title II on or after November 1, 2006, meet the voting system standards for disability access (as outlined in this paragraph).

`(B) VERIFICATION REQUIREMENTS- Any direct recording electronic voting system or other voting system described in subparagraph (A)(iii) shall use a mechanism that separates the function of vote generation from the function of vote casting and shall produce, in accordance with paragraph (2)(A), an individual paper record which shall be used to meet the requirements of paragraph (2)(B);

`(ii) shall be available for visual, audio, and pictorial inspection and verification by the voter, with language translation available for all forms of inspection and verification in accordance with the requirements of section 203 of the Voting Rights Act of 1965;

The talking and painting ballot: This is requiring technology that 1) doesn't exist 2) can not possibly exist to the extreme requirements shown here (imagine the cost and complexity of technology that can translate into any language on earth plus into pictures, every word on every ballot for every ballot design in the nation) 3) if it could be invented would be so prohibitively expensive that public election jurisdictions would have no budget to support it, and 4) would be so complex that citizen oversight of the election would be rendered completely impossible.

`(iii) shall not require the voter to handle the paper; and

So now, in addition to talking and painting ballots, we need ballots with hands. Yes, they actually want a requirement for the ballot to drop itself into the ballot box unaided by humans.

`(iv) shall not preclude the use of Braille or tactile ballots for those voters who need them.

The requirement of clause (iii) shall not apply to any voting system certified by the Independent Testing Authorities before the date of the enactment of this Act.

`(C) REQUIREMENTS FOR LANGUAGE MINORITIES- Any record produced under subparagraph (B) shall be subject to the requirements of section 203 of the Voting Rights Act of 1965 to the extent such section is applicable to the State or jurisdiction in which such record is produced.'

This expands HAVA to include more impossible requirements from the Voting Rights Act now. Voting Rights are a good thing, to be sure. We are fighting for them. But these open-ended and unachievable requirements conflict with, and in any reasonable case, would negate, other equally important voting rights, such as security, accuracy, and citizen oversight.

^(9) PROHIBITION OF USE OF UNDISCLOSED SOFTWARE IN VOTING SYSTEMS- No voting system shall at any time contain or use any undisclosed software. Any voting system containing or using software shall disclose the source code, object code, and executable representation of that software to the Commission, and the Commission shall make that source code, object code, and executable representation available for inspection upon request to any citizen.

Here we have the no-COTS (Commercial off the shelf) waiver predicament. Since every voting machine in existence uses COTS right now, the prohibition of undisclosed software with no COTS waiver would require the replacement of every voting machine in the country with equipment that doesn't yet exist: COTS-less. So that's great if the nation is prepared to go to hand counted paper ballots everywhere. Unfortunately, since the nation is not yet ready for that transition, this provision creates a situation where states must run elections using illegal equipment, setting them up for litigious hell and chaos to our nation.

^(10) PROHIBITION OF USE OF WIRELESS COMMUNICATION DEVICES IN VOTING SYSTEMS- No voting system shall use any wireless communication device.

OK – we like this provision. It can stay.

^(11) CERTIFICATION OF SOFTWARE AND HARDWARE- All software and hardware used in any electronic voting system shall be certified by laboratories accredited by the Commission as meeting the requirements of paragraphs (9) and (10).

With this provision, Clinton et al wish to perpetuate the EAC Certification Ponzi scheme, which, as we know, is a scheme wherein American taxpayers continue to pay for voting equipment that never meets the impossible Certification standards and testing requirements established by the EAC, and in which the States effectively lose their sovereignty because the EAC gains de facto regulatory control over the nation's voting equipment. For more information on the Ponzi Scheme, see:

<http://www.democracyfornewhampshire.com/node/view/3571>

^(12) SECURITY STANDARDS FOR MANUFACTURERS OF VOTING SYSTEMS USED IN FEDERAL ELECTIONS-

Security standards for vendors is a good thing, but the recertification of altered software provides a logistical problem....

(iv) In the same manner and to the same extent described in paragraph (9), the manufacturer shall provide the codes used in any software used in connection with the voting system to the Commission and may not alter such codes once certification by the Independent Testing Authorities has occurred unless such system is recertified.

The problem here is that inevitably, because of the nature of software, and because of the nature of elections, changes always occur in one or the other. If a state must then retest and recertify every change, it becomes quite a costly affair. Testing costs for one product alone have been estimated by the EAC itself in a public meeting as rising to between \$500,000 and \$1 million. Does every state need to pay these costs following every ballot change requiring a software change?

SEC. 102. REQUIREMENT FOR MANDATORY RECOUNTS.

On and after the date of the enactment of this Act, the Election Assistance Commission shall conduct random unannounced manual mandatory recounts of the voter-verified records of each election for Federal office (and, at the option of the State or jurisdiction involved, of elections for State and local office held at the same time as such an election for Federal office)

Before we go on, let's think about this. The bill wants us to invite the Election Assistance Commission, four people hand picked by the President of the United States, to conduct recounts of our federal, state, and local elections? Unannounced and at their discretion? This doesn't pass the smell test for any democracy loving Patriot.

in 2 percent of the polling locations (or, in the case of any polling location which serves more than 1 precinct, 2 percent of the precincts) in each State and with respect to 2 percent of the ballots cast by uniformed and overseas voters immediately following the election and shall promptly publish the results of those recounts in the Federal Register. In addition, the verification system used by the Election Assistance Commission shall meet the error rate standards described in section 301(a)(5) of the Help America Vote Act of 2002.

Now, let's think about these error rates. The Voting System Standards the bill refers to require the following with respect to acceptable error rates for voting equipment:

For each processing function indicated above, the system shall achieve a target error rate of no more than one in 10,000,000 ballot positions, with a maximum acceptable error rate in the test process of one in 500,000 ballot positions.

If there exists any equipment to meet this worthy, yet impossible, standard, we don't know about it. In April 2006, prior to the May 2 primary, the Cuyahoga County Commission contracted with the Election Science Institute (ESI) to conduct a comprehensive review of how their new voting system actually worked on an election day. ESI's report, including the performance of the Diebold Accuvote TSX voting system, was released by the Cuyahoga County Commissioners: "...members of the manual count team found that 10

percent of the paper ballots were physically compromised in some way.” (Election Science Institute, 08/22/2006)

In other words, the Cuyahoga County study showed a 1 in 10 error rate, not a 1 in 10 million. So we are off by 1 MIL times the standard.

SEC. 103. SPECIFIC, DELINEATED REQUIREMENT OF STUDY, TESTING, AND DEVELOPMENT OF BEST PRACTICES.

We think study is a good thing, and should be enacted. In fact, we think study should have been enacted prior to the proliferation of HAVA-paid-for voting equipment that broke our election systems and did not meet the most basic voting requirements for security, transparency, and accuracy, never mind accessibility.

SEC. 247. STUDY, TESTING, AND DEVELOPMENT OF BEST PRACTICES TO ENHANCE ACCESSIBILITY AND VOTER-VERIFICATION MECHANISMS FOR DISABLED VOTERS.

The Election Assistance Commission shall study, test, and develop best practices to enhance accessibility and voter-verification mechanisms for individuals with disabilities.'

As above, this is probably the best and only thing that should come out of Federal election reform. EXCEPT we don't want the EAC to exist anymore, so we would turn this task over to the GAO or another entity, which should convene a taskforce including all stakeholders and ordinary citizens as well.

SEC. 104. VOTER-VERIFICATION AND AUDIT CAPACITY FUNDING.

This section is authorizing the EAC to pay out \$500 Million to the states so they can “improve” their DRE equipment and make it VVPAT. Even if you thought this was a good idea, the sum is not enough, making the whole thing another unfunded mandate.

SEC. 105. REPORTS AND PROVISION OF SECURITY CONSULTATION SERVICES.

The EAC has already been conducting a “Death by Bureaucracy” campaign against our State election offices. Under the threat of Department of Justice intervention, our state election offices spend countless hours completing bureaucratic reporting requirements for the EAC. Now, we are all in favor of accountability, but bureaucratic requirements must be reasonable and achievable and must not come at the cost of election administration itself.

SEC. 106. IMPROVEMENTS TO VOTING SYSTEMS.

This section deals with the unachievable error rates mentioned above, and brings in the matter of “residual votes.” The residual vote benchmark refers to under- and over-voting, and is controversial in that it is often used in legal cases to justify the use of DREs. We contend this issue requires study and not mandates.

TITLE II--PROVISIONAL BALLOTS

SEC. 201. REQUIREMENTS FOR CASTING AND COUNTING PROVISIONAL BALLOTS.

This section tries to clean up the processing of provisional ballots. This is, in and of itself not a bad thing, but we’d like to get rid of the concept of “provisional ballots” altogether. It is a black hole for fraud. States are encouraged to implement election day registration, and the Federal requirement for provisional ballots in election day registration states ought to be abolished.

TITLE III--ADDITIONAL REQUIREMENTS UNDER THE HELP AMERICA VOTE ACT OF 2002

Subtitle A--Shortening Voter Wait Times

We can live with this provision. It appears to have good intent and to cause no harm.

SEC. 311. NO-EXCUSE ABSENTEE VOTING.

There is no justification for federal law to pre-empt state law on the matter of absentee voting. Absentee voting, while a lovely idea, does constitute a security risk in the chain of custody in elections. States must determine their own needs and requirements for absentee voting without federal intervention.

Subtitle C--Collection and Dissemination of Election Data

This entire section could be replaced with the Freedom of Access to Election Information as defined clearly and succinctly in the Request By Voters on www.wethepatriots.org. Here it is:

- 1) FREEDOM OF ACCESS TO ELECTIONS INFORMATION – Amend HAVA to require elections-related information at the local, state and federal levels be made available to any person under the civil rights principles embodied in the Freedom of Information Act in a way that addresses the special circumstances in elections.

- a. All information necessary to validate elections must be produced by the voting system and its accompanying elections procedures;
- b. When information to validate the election is requested, it must be provided before recount and contest periods have expired;
- c. The information must be provided in a usable and cost-effective manner;
- d. There will be no restrictions imposed by proprietary claims, nor shall access to information be placed outside of governmental custody.

Subtitle D--Ensuring Well Run Elections

Training is not a bad thing, we can live with this provision.

SEC. 332. IMPARTIAL ADMINISTRATION OF ELECTIONS.

We like this provision as well.

SEC. 341. STANDARDS FOR PURGING VOTERS.

These problems would be eliminated with election day registration, but barring that, this provision is supportable except for the references to empowering the EAC with this authority. The EAC as a four person commission appointed by the President is an undemocratic, nonrepresentational, consolidation of Executive power and must be abolished.

SEC. 351. ELECTION DAY REGISTRATION.

We like election day registration. But we like state sovereignty as well. And this provision empowers the EAC again to enforce state election laws. This is unacceptable. We would like each state to rise to the challenge of providing election day registration, but we will not pay the cost of the loss of state sovereignty, as embodied in this provision, to make this happen.

SEC. 352. EARLY VOTING.

As with absentee voting, there are security risks involved in enabling early voting. Each state must decide on its own and not be pre-empted by the federal government in the administration of its own elections.

TITLE IV--VOTER REGISTRATION AND IDENTIFICATION

Again, this is an unnecessary federal intervention in the conduct of elections. Each state must decide on its own and not be pre-empted by the federal government in the

administration of its own elections. The US Constitution wisely decentralized power by endowing the States with authority over the conduct of elections. This bill has too many pre-emptive provisions. This is a risky strategy for lovers of democracy, which relies on decentralized power and checks and balances.

SEC. 249. STUDY ON INTERNET REGISTRATION AND OTHER USES OF THE INTERNET IN FEDERAL ELECTIONS.

Now what the heck is this in here for? I don't want my money used for this boondoggle. Democracy depends on COMMUNITY. We need to connect our votes with our lives, and when we vote in our community-based elections, we know it matters, and we can see that it COUNTS. Staying in your community keeps things in balance and in check. We take care of things when we are part of the community. As my woodland friends like to say, "you don't shit where you live."

SEC. 402. ESTABLISHING VOTER IDENTIFICATION.

No thanks, I don't want the EAC making decisions that my state legislature can make with input from and accountability to me and my fellow citizens. Besides, this provision is cementing photo identification into the system. Under the guise of paying for it. No thanks.

SEC. 403. REQUIREMENT FOR FEDERAL CERTIFICATION OF TECHNOLOGICAL SECURITY OF VOTER REGISTRATION LISTS.

On the face of it, this sounds like a good idea. But so did the idea of certifying voting machines, and we see where that has led us. I vote for further study before sending any more of my taxpayer dollars to the federal government to carry out more voting equipment certification schemes.

TITLE V--PROHIBITION ON CERTAIN CAMPAIGN ACTIVITIES

SEC. 501. PROHIBITION ON CERTAIN CAMPAIGN ACTIVITIES.

Okay, this pretty much makes sense. But I'm not sure it belongs in this bill. Should probably be dealt with in a separate bill that can give it the full study.

SEC. 601. ENDING DECEPTIVE PRACTICES.

Okay, this also pretty much makes sense, but may not belong in this bill. Should probably be dealt with in a separate bill that can give it the full study. Obama tried that, but he brought in the EAC to oversee things. Unacceptable for all the reasons already explained above.

SEC. 701. VOTING RIGHTS OF INDIVIDUALS CONVICTED OF CRIMINAL OFFENSES.

Okay, this also pretty much makes sense, but may not belong in this bill. Should probably be dealt with in a separate bill that can give it the full study.

TITLE VIII--FEDERAL ELECTION DAY ACT

Not a bad idea. But I'm not sure it belongs in this bill. Should probably be dealt with in a separate bill that can give it the full study.

SEC. 803. STUDY ON ENCOURAGING GOVERNMENT EMPLOYEES TO SERVE AS POLL WORKERS.

Not a bad idea, except it further relies on the EAC. Also, I'm not sure it belongs in this bill. Should probably be dealt with in a separate bill that can give it the full study.

SEC. 901. TRANSMISSION OF CERTIFICATE OF ASCERTAINMENT OF ELECTORS.

Not sure what this is accomplishing. It seems to want to speed up reporting information or something.

SEC. 1001. STRENGTHENING THE ELECTION ASSISTANCE COMMISSION.

OK – the title says it all. This provision can not stand. We need to abolish and not strengthen the democracy-demolishing entity called the EAC.

SEC. 209. SUBMISSION OF BUDGET REQUESTS.

On the face of it, this is fine. But we need to abolish the democracy-demolishing entity called the EAC. We need to revisit the role of NIST and its authority with respect to voting systems as well.