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CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

STEPHEN L. WEIR, PRESIDENT
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April 25, 2007

The Honorable Dianne Feinstein
Chair, Committee on Rules and Administration
United States Senate
331 Hart Senate Office Building
Washington, DC 20510

Dear Madam Chair,

The Elections Legislative Committee of the California Association of Clerks and Election Officials has reviewed H.R. 811, the Voter Confidence and Increased Accessibility Act and voted to oppose this legislation.

California election officials are dedicated to ensuring fair, accurate, secure and accessible elections. We have just completed full implementation of the 2002 Help America Vote Act that enacted nationwide election reforms, many of which were already implemented in California. Moreover, we are committed to continuing our work to further improve voting systems, accessibility, voter confidence, and security. Unfortunately, H.R. 811 and other similar legislative proposals, are impractical, unrealistic and would unravel the advancements that have been made to ensure accessible and verifiable elections in our state.

Our concerns are as follows:

Voter Verified Paper Audit Trail as Official Ballot Record

California has a Voter Verified Paper Audit Trail requirement. Paper audit trails are used as the official record of vote for the 1 percent manual tally, an audit tool utilized to audit the votes cast in every election, and for recounts. However, California law provides that the electronic record is considered the official record of vote in all other circumstances. If the paper audit trail alone was the official ballot of record, voters would be disenfranchised in the event that the printers jam, or if the printer or paper was not installed correctly, or if some other malfunction caused the paper record to be unreadable. The electronic record provides a reliable recording of the voters' votes that should be relied upon in the event the paper record is unusable. In spite of all the testing, training, checks and balances that take place prior to deploying the printers, it is inevitable that malfunctions will occur, and voters should not lose their votes due to printer malfunction.

Voter Verified Paper Audit Trail Printed in Language of Voter

In Riverside County, California, ballots must be provided in an Indian language that has no written component. Mandating that the VVPAT be printed in the language of the voter would disenfranchise these voters. Any legislation considered in this area should clarify that the VVPAT will be printed in the language of the voter if there is a written component for the language.

Accessible Voter Verified Paper Audit Trail

California election officials certainly support the concept of an accessible, voter verifiable paper audit trail. However, since no federally certified equipment exists to provide this feature, it would be imprudent to mandate election jurisdictions to provide it. In discussions with the certified vendors in California, there currently is no such VVPAT unit that would allow counties to meet the requirement of an Accessible Voter Verified Paper Audit Trail that provides for the voter's choices to be read back from the VVPAT using a text-to-speech conversion. In order to securely deploy this new function, the software and hardware would have to be developed, tested, and certified. Since no such equipment exists at this time, it is infeasible to mandate this functionality next year.

Voter Verified Paper Audit Trail to Protect Voter Identity

Proposed language in H.R. 811 requires that *"The voting system shall not preserve the voter verifiable paper ballots in any manner that makes it possible, at any time after the ballot has been cast, to associate a voter with the record of the voter's vote."* California's certified systems all provide a reel-to-reel VVPAT. California counties have successfully administered elections using the reel-to-reel form of VVPAT by ensuring that administrative procedures are implemented to guarantee that a voter's ballot remains secret. If the current method of storing the VVPAT in California is not acceptable according to this proposed legislation, the impact to California counties would be significant, rendering the current VVPAT units obsolete.

Delivery of Voting Equipment

H.R. 811 proposes that voting system equipment be delivered directly to a polling place. The impact of this section is significant. It means election officials can no longer securely sign out equipment to their poll workers. This will result in equipment being delivered to unsecured polling places, in some cases, several days ahead of an election, leaving it unprotected over weekends. This will also add an additional burden on polling places, many of which already feel inconvenienced during the election cycle. If required to receive delivery of equipment and supplies in advance of the election, many polling places will either decline to be a polling place, or require delivery of the equipment the day of the election. This section will add a significant additional administrative overhead and expense to election jurisdictions in addition to the concerns raised about unsecured voting equipment.

Disclosure of Source Code

Current voting systems used in California undergo certification, inspection and review processes which provide authorized reviewers with access to software code and reports on system performance. Our California voting system vendors support the development, by the Election Assistance Commission, of a program designed to allow qualified reviewers an opportunity to review the source code of the manufacturer's proprietary software. This review should be conducted under an established set of rules and regulations designed to ensure security of voting systems while also protecting vendors from copyright infringement. Mandating that voting system software source code be available to the public without the support of the vendors could leave voting systems vulnerable to manipulation, and could result in leaving California with no voting system at all. Finding a workable solution in this area is tantamount to ensuring our democratic voting process in California.

Manual Audits

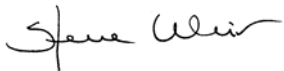
Election officials are dedicated to conducting auditing processes in a manner that is open to public observation prior to certification of official election results. The provisions of H.R. 811 would transfer authority and security of voted ballots from local election officials to a state board, prior to certifying elections. Such a process would break the chain of custody and jeopardize the security of ballots during ongoing vote tabulation and would significantly delay the release of final election results. California has very strict laws governing our auditing procedures, and our Association has developed guidelines in coordination with the Secretary of State to execute these procedures within the 28 days provided.

Urge Careful Review

The California Association of Clerks and Election Officials urge you to give this legislation careful thought and review before you take any further action. Please bear in mind that election officials are already in the midst of planning the February 2008 Presidential Primary Election. Mandating any sweeping changes that are insufficiently funded and are untested and certified would jeopardize elections in 2008. California election officials are committed to increasing voter confidence, ensuring accuracy, improving the ability to audit and sustaining reliability in elections. We urge careful review and attention to H.R. 811 and other similar pieces of legislation to ensure that Congress' focus on providing more confidence in elections does not result in unintended harmful consequences to our elections process.

California election officials would like to work with you and members of our California Congressional Delegation to find the right course to advance the goal we all share – to ensure the security and legitimacy of our electoral process. Should you or your staff have any questions, please do not hesitate to contact me by phone or fax at (925) 646-2955; fax (925) 646-2836 or by e-mail at sweir@cr.cccounty.us

Very truly yours,

A handwritten signature in black ink that reads "Steve Weir". The signature is written in a cursive style. To the right of the signature is a vertical red line.

Steve Weir, President
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County Clerk/Recorder of Contra Costa County
524 Main Street, Martinez, CA 94553