

**UNITED STATES CONGRESS
HOUSE OF REPRESENTATIVES
Committee on House Administration
Elections Subcommittee**

Tuesday, March 20, 2007

Good afternoon Madame Chairman and Members of the Committee. I am Matthew Damschroder, Director of the Franklin County Board of Elections in Columbus, Ohio and President of the Ohio Association of Elections Officials.

Franklin is the majority county of Ohio's 15th Congressional District. During the 2006 Congressional election cycle, incumbent Republican Deborah Pryce faced Democrat County Commissioner Mary Jo Kilroy in a contest that resulted in an official margin of victory for Congresswoman Pryce of less than ½ of 1% or 1,055 votes out of more than 222,000 ballots cast thus requiring an automatic recount.

The Franklin County election was administered using the ES&S iVotronic direct recording electronic voting machine, or DRE, with a voter verifiable paper audit trail, or VVPAT. There were 45,684 ballots cast on optically scanned paper absentee ballots and 150,186 ballots cast on 2,341 VVPAT DREs. To my knowledge, it was the closest Congressional election in the Country that used VVPAT DREs.

The use of DRE technology is not new for Franklin County: from 1992 to 2005 elections in Franklin County have been run on paperless DREs. Prior to 2006, both candidates had been elected and re-elected on this technology multiple times.

In 2004, the Ohio General Assembly enacted legislation requiring VVPAT technology to be included with all DREs beginning with the first federal election of 2006. I provided testimony in favor of VVPAT technology. But I offered two strong cautions that were left unaddressed in Ohio's legislation. I have the same concerns with HR 811.

First: the VVPAT should not be the ballot of record; it should be used only as an audit device to prove the electronic record. With the VVPAT as the official ballot it is possible – and this was shown to be true during the 15th Congressional District recount – that a ballot having been otherwise properly cast and accurately recorded by the DRE might not be re-counted in a close election – such as the 15th Congressional District – due to paper jams or poll worker error loading the paper backwards. The question “what constitutes a vote” having long been determined in Ohio for punch cards and optically scanned paper ballots, it seemed wrong to me that we would introduce a new voter intent question that could cause a voter's properly cast and accurately recorded vote to go uncounted.

Second, the VVPAT requirement should go into affect only after the Election Assistance Commission (EAC) has developed standards for the function and operation of the technology. At the time Ohio passed its VVPAT legislation, the EAC had only just recently convened the first meeting of the Technical Guidelines Development Committee (TDGC). It seemed backwards to me that Ohio would spend millions of taxpayer dollars to implement a technology that had not yet been developed nor tested and had no federal standards regulating its operation and function. I am concerned that by enacting portions of HR 811, Congress will be making precisely the same mistake that Ohio made by mandating changes to technology by a date certain before operational standards are established and the technology is fully developed and properly tested prior to deployment.

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In absence of clear guidance in law or from the Secretary of State on the manner and standards by which a VVPAT recount should be conducted in Ohio in preparation for the mandatory recount of the 15th Congressional District, I met with attorneys for each of the campaigns to define the terms of the recount.

We agreed that, due to the narrow margin of victory in the Congressional contest, it was necessary to exceed the minimum percentage of votes to be hand-recounted. The Secretary of State's administrative guidelines require 3%. Our agreement required 10%.

Additionally, we agreed that if the VVPAT was illegible or blank that the Board, in the presence of observers from each of the campaigns, would rely upon the electronic Ballot Image Log and Event Log to determine the indecipherable ballot or ballots at the point of the jam or blank tape.

Precincts containing 10% of the total votes were randomly selected by a representative of each campaign prior to the start of the recount. 49 precincts were selected containing 14,723 total ballots cast on 271 machines.

The hand tally of the VVPAT took five teams of four Board employees, each with two Republicans and two Democrats, five days to accomplish the hand tally phase of the recount.

I would like to bring one specific instance to the Committee's attention that demonstrates the veracity of the electronic voting devices and the success of policies and procedures agreed to by the two campaigns, which protected the integrity of the process.

On one particular paper tape, a recount team encountered a printer jam. The voter had clearly begun a voting session and had cast a vote for candidates for various offices when a printer jam appeared to have occurred after the voter had cast a vote for a candidate in the 15th Congressional District contest. There was no indication on the VVPAT that this voter's voting session had ended in the ballot being properly cast.

Recount staff did not count that vote at that time, waiting instead to see if the total ballots counted, less the jammed ballot, equaled the public count, or total votes, on the machine thus indicating that the ballot was indeed not electronically cast. At the conclusion of the recount of that tape, the number of total hand-tallied votes, excluding the so-called jammed vote on the VVPAT, equaled the total number of votes cast on the machine.

To further verify whether or not the "jammed vote" should be counted, the recount team hand-counted the votes electronically recorded in the machine's ballot image log. The ballot image log matched exactly with the VVPAT.

Additionally, the machine's electronic Event Log was examined. The Event Log showed that the voting session in question had begun at the exact time printed on the paper tape and further showed that a printer error had occurred and that the password-protected service menu had been accessed by a poll worker and the ballot in question cancelled.

Finally, the recount team examined the poll workers' Election Day records for the precinct. As instructed, the poll workers had notated that at the time printed on the VVPAT and recorded in the Event Log, a printer error had occurred on the machine in question and that the poll worker had rightly cancelled the voter's ballot and moved the voter to a different voting machine to begin a new voting session. They also noted that at a later time, a machine technician had arrived and fixed the jam so that voting could continue on the previously jammed voting machine.

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At the conclusion of the recount, not one vote that had been electronically recorded as a normal ballot changed as a result of the hand tally of the VVPAT. The only votes that truly changed – a total of 8 – were on the optically scanned paper absentee ballots. In every instance, the VVPAT record precisely matched the electronic record of the DRE. Not one vote that had been recorded electronically changed as a result of the inspection of the VVPAT.

The recount of the Franklin County portion of the 15th Congressional District – just one of the three Congressional Districts that overlap into our county – consumed nearly 2,000 person hours over the course of seven days.

One important outcome of this recount – beyond officially re-counted and certified election results – was the knowledge of the impact of Ohio's recount provisions using VVPAT DREs in a close federal election.

When using VVPAT technology, which introduces new questions of voter intent as I have already described, vague and subjective language, such as 811's phrase "preponderance of the evidence" is an open invitation to litigation. "Preponderance of the evidence" to one observer or election official of a properly cast electronic vote that does not legibly appear on the VVPAT due to a printer jam or backwards-loaded paper tape will not likely be a preponderance of the evidence" to another in a politically-charged, narrow-margin recount.

I believe that the question of voter intent on a VVPAT is better left to the individual States to decide in precisely the same manner that the Federal Government has left to them the same question for optically scanned and punch card paper ballots.

Franklin County's recount was only concluded as efficiently as it was because of the local agreement reached by the Board and the two campaigns that defined voter intent questions on the VVPAT before the recount commenced. Had these questions gone unanswered, litigation would have almost certainly resulted, and it is possible that Congress would have been unable to seat a representative from the 15th Congressional District at the time it convened this past January. Federally codifying subjective language on such an important issue as voter intent is an invitation for further eroding of voter confidence in our Country's exceptional system of elections administration in 2008.

Franklin County's experience in 15th Ohio Congressional District recount, as well as the three other recounts conducted of the 2006 General Election and the three subsequent voluntary audits of the paper tapes to the electronic record conducted by the Board and the local newspaper, demonstrates the accuracy of electronic voting systems and the benefit of State and local control over election, audit, and recount definitions and procedures.