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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 109<sup>th</sup> 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 109<sup>th</sup> 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: