



DRAFT Testimony of David J. Becker

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Good morning, and thank you for the opportunity to speak with you today regarding the important subject of election integrity and accessibility. I am the Director of People For the American Way's Democracy Campaign, responsible for our top domestic priority – voting rights and election reform. Prior to my current position, I served for seven years in both the current and previous administrations as a Senior Trial Attorney in the Voting Section of the Civil Rights Division of the Justice Department. In that capacity, I monitored dozens of elections in hundreds of polling places nationwide, and have observed thousands of voters casting ballots on all manner of equipment, in many of the most populated and diverse jurisdictions in the country. Today, I am speaking on behalf of both People For the American Way and our Foundation and our more than 1,000,000 members and activists.

The right to vote is a bedrock of our American democracy and People For the American Way and our sister Foundation are committed to ensuring that this right is guaranteed to all eligible voters and is secure. Since the debacle of the 2000 election, People For the American Way Foundation and its key allies, have led the Election Protection Coalition efforts to ensure that every citizen has a right to vote and to have that vote counted. This work, supplemented by litigation and People For the American Way's legislative efforts has provided our two organizations with a depth of expertise on how we must continue to reform our election process in order to protect this most fundamental right to vote.

It is for this reason, Madame Chair, that we are particularly grateful for your leadership on the issue of election reform, and in particular voting technology. Unauditable, paperless electronic voting machines have likely left a trail of disenfranchised voters throughout the country. Thanks to the leadership of Congressman Rush Holt, and a multitude of others, including over 200 co-sponsors on both sides of the aisle, H.R. 811 addresses many of the problems facing our voting technology, and is a giant step forward towards ensuring future elections are more secure than past elections.

First, this bill is notable for its efforts to accommodate not only the need for additional security in our elections, but also to demand appropriate accessibility for voters with disabilities and other special needs. It does not federally mandate only one type of technology, allowing jurisdictions to choose the election systems that best serve their citizens, so long as that system is also verifiable, auditable, and secure. It

acknowledges that the best system for Utah, for instance, might not be the best system for Los Angeles, and vice versa. H.R. 811's commitment to BOTH security and accessibility is to be commended, and has earned it endorsements from a diverse set of civil rights and election integrity groups from Common Cause to Lawyers' Committee for Civil Rights Under Law to SEIU. Furthermore, well respected experts in this field have similarly voiced their support, such as Avi Rubin and Ed Felten. While accessible systems that are not fully secure and auditable are unacceptable, secure election systems that are not fully accessible to ALL eligible voters likewise cannot be tolerated. American voters deserve, and expect, BOTH security and accessibility, and H.R. 811 is to be commended for refusing to compromise on either.

Importantly, this bill requires that all voting systems produce paper ballots. Currently, while some jurisdictions require some sort of paper ballot – either a paper ballot read by an optical scan tabulator, or a Voter Verifiable Paper Audit Trail (or VVPAT) – other jurisdictions use completely paperless, unauditable electronic voting machines (or DREs). H.R.811 fixes this problem, creating federal standards requiring all voting technology to produce a paper ballot that would be the official ballot for purposes of any recounts or audits. The paper ballots produced by any technology must be durable, of archival quality, such that ballots could be preserved and readable for at least 22 months, consistent with federal law, and due to other provisions, including the provision prohibiting the preservation of the paper in any way that makes it possible to associate a particular vote with a particular voter, we believe that this bill would ban the use of the confusing, difficult to recount, and likely to jam, reel-to-reel printing technologies used with many DREs.

Additionally, any technology used, whether optical scan paper ballots, or DREs with VVPATs, would be treated the same way – the first tabulations compiled electronically by the optical scan tabulators or the DREs would then be subject to audits which could lead to recounts of the paper ballots, which would trump any electronic tally, unless there was clear and convincing evidence that the paper ballots were compromised. While there are currently no mandatory federal standards for audits of election technology and ballots, H.R.811 sets up a comprehensive framework of mandatory manual audits, about which you've previously heard testimony. The audit framework contemplated in H.R.811 establishes an effective "floor" for required audits, and would not preclude states from adopting even more stringent audit standards.

Finally, while voting machine vendors have up until now fought tooth and nail to prevent examination of the source code and firmware in their machines, even when it appears that said technology failed to count votes properly, H.R.811 requires that all such source code, etc., be available for inspection and examination. As you've heard in earlier testimony, computer science and voting technology experts believe that such a requirement will improve the security of our elections.

Madame Chair, thank you again for your commitment to addressing this most pressing issue of voting technology. With the country facing an enormous voter turnout for the elections in 2008 which will decide control of Congress and the presidency, as well as thousands of down-ballot races, the need for election reform in this country is urgent. As has been the case in the past three federal elections, we expect that many of these races will be close. Americans deserve to know that they will cast a vote that will be counted – and, if necessary, recounted, by fair and independent observers. Time is of the essence – for election officials to have enough time to properly implement the important requirements of this bill in time for the 2008 elections, this bill needs to be passed as soon as possible.

Thank you.