

Clean, Fair, Transparent Elections Issue Organizing Team conference call
Tuesday, March 24, 2009

Agenda:

We will be discussing the current version of the Election Reform Bill [A BILL To amend the Help America Vote Act of 2002 to require a voter-verified permanent paper ballot under title III of such Act, and for other purposes] being proposed in the U.S house by Rep. Rush Holt (D-NJ) [<http://www.bbvdocs.org/2009holt.pdf>]

1) Introductions—10 Mins

2) John Bonifaz* from Voter Action [<http://www.voteraction.org/>, jbonifaz@voteraction.org] and PDA Advisory Board [<http://pdamerica.org/about/board.php>] member on reasons to support the current bill—10 Mins

3) Brad Friedman† from the Brad Blog [<http://www.bradblog.com/>, brad@bradblog.com] on reasons to oppose the current bill—10 Mins

4) Q & A—Rest of the hour

A vote to whether we endorse this Bill or not will be on our PDA Blog. Details of this will be sent out tomorrow.

On the call:

Tim Carpenter, MA02, National Director, tim@pdamerica.org

Conor Boylan, WA07, National Field Director, conor@pdamerica.org, 206-965-0802

CA: Cindy Asner, CA28; Dr. Bill Honigman, CA48 CDPP, State Coordinator, drbill@pdamerica.org; Robin Gibson, PDA-LA; Dorothy Reik, PD-LA; Linda Sutton, PA-LA; Dale Axelrod, Sonoma County Democratic Central Committee, Alternate District 2; Anna Givens PD's of Sonoma County; Dan Ashby, Election Defense Alliance; Kim Kaufmann PD-LA

CO: Shari Malloy, CO04

FL: Doug Hickman, FL11 DCP

MI: Leona McIlvine MI12, Roger long MI12,

NY: Allegra Dengler, NY18

PA: Mary

TX: Wendy Kalthoff, TX25

UT: Kathy Dopp

WA: Kitty; John; Roberta McNair, WA06 CDPP

Velvet Revolution: Steve Heller, Emily Levy

VotersUnite.org: John Gideon <http://www.votersunite.org/>, contactVU@votersunite.org

Paul Lehto, Independent Elections Scholar, MI

Tim: The PDA Blog will be open for anyone to post during the call.

This is an issue-organizing team call. He asked Boniface and Friedman to go over this issue. This group is the who's who of elections issue-organizing.

We will not be giving an endorsement on the bill tonight. There will be a chance for everyone to listen to this call (Emily is recording) and read the minutes, and then there will be voting on the blog about the position we will take. We'll send out notices about the meeting and directions to the blog for voting.

After Brad and John get 10 minutes each to state their positions on the bill, there will be questions open to the group. We'll take stacks for questions. If anyone doesn't get their question in during the call, email conor@pdamerica.org with your question.

John Bonifaz has been working hard on elections and ending the occupation. He will speak in the affirmative.

Brad Friedman is known for his investigative journalism. Brad has been with PDA from the beginning. He's worked inside and outside the DNC.

John: We all care for the democracy that we're fighting for in this country. He's in support of the bill, and he's here as an individual as well as a PDA board member. He is the legal director of Voter Action, and they have come out strongly for this bill. Many of his reasons mirror Voter Action's reasons.

This bill will create a voter mandate for paper ballots, election audits, and, where there are contested results, greater access to underlying software and hardware in voting systems, counteracting trade secrets arguments. It doesn't ban all secret software as much as he'd like someday, but it moves us forward.

The bill moves us forward to ensure an auditable and recountable voting system, and this was not on Holt's previous bill, HR 811. PDA and he worked for an amendment to HR 811 (Holt's previous bill) to have DREs [direct-recording electronic voting machines^s] banned. DREs are an insecure and unreliable way of counting our votes. Holt has now done this, because there's been a shift in this direction from the states and away from DREs. So FL, IA, NM, and CA have moved toward voter-marked paper ballots, which has shifted Holt's thinking and is effectively banning DRE systems. For states with paperless systems, this will take effect in 2010, and for states having DREs with printers in 2016. It's a move to have ballots hand marked or with non-tabulating devices. Some voters with disabilities cannot mark ballots by hand, and HAVA [Help America Vote Act, www.fec.gov/hava/hava.htm] requires access to voting with non-tabulating marking devices. Starting in 2010, they will replace the paperless DRE machines with non-tabulating voter-marked paper ballot systems and by 2016 all DRE-VVPAT^{ss} systems will be replaced with non-tabulating voter-marked paper ballot systems.

There's a provision in the bill that will require an independent and private ability for those with disabilities to vote, which means the ballots will go directly into an optical scanning device. This has been pushed by disability groups but not all agree. Noel Runyon, who has authored reports on voter access for the disabled, says that this kind of access is not required.

But this provision is in there to garner support for it and to counter what will be a strong effort by the election industry to stop this bill. They make enormous profits off these DRE systems. If we see this bill passed, the majority of people will be able to cast ballots marking by hand and those who can't will use non-tabulating devices. We will have a more secure, transparent, accountable, and auditable system with this bill. We will still have to fight against secrecy, but we will have gone farther in accessing hardware and software in contests. If we'd had this language in Sarasota with 18k missing votes, we could have accessed what the ES&S refused access to.

He feels it will be a strategic mistake not to support the bill by moving the goal posts. The bill and Holt need our support. This is what we fought for in Amendment H.R. 811 [Voter Confidence and Increased Accessibility Act of 2007].

Brad: He wants to more than convince people to go one way or the other on this bill. The devil is in the details on this bill, as with others on elections processes. He doesn't want to argue against John and his advocacy for the bill, but he has points to counter his argument.

He's the cofounder of Velvet Revolution (VR) [www.velvetrevolution.us/], and his colleagues on the call know the dangers of allowing people to operate in secret, which this bill does—it will federally institutionalize trade secret software and NDAs in federal law. Election law should be 100 percent transparent.

John is right when he says that for attorneys trying cases, this will make things easier to get at hardware and software and source code. But it leaves no opportunity for the average citizen to get at the hardware and software in the system. VR has determined that rather than oppose or endorse the bill, they can best advocate for knowledge about what's in the bill and what's not. Their advocacy in the 2007 version of the bill, because they were told it was impossible to ban DREs. But Holt didn't move on his position, VR and others moved Holt because they didn't settle for anything less than a total ban.

In a recent version (the final version), they've moved the ban on DREs back to 2016. We will therefore be looking at another presidential election using touch-screen devices all over the country. Because they held tight to what they believed in, before this last version, it was required that there be a hand-marked paper ballot cast, but this version does not require hand marking; it requires either hand ballot OR done with a device to mark the ballot, usually a touch screen, and is counted later. This very kind of touch screen is one of the devices that printed out four of his own 12 votes incorrectly in the June 2008 primary.

The clause says people will get either a hand-marked paper ballot or use a ballot marking device onto a paper ballot, saying "so long as the voter has the option to mark ballot by hand." This makes him feel better, but this still allows some to say that they'll have the option to hand-mark a ballot by absentee. He hopes this clause can be changed and say that people will be given this option at the polling place, during early voting, and on election day. If you give away the negotiating leverage by endorsing early, you undermine yourself and don't have the opportunity to make it better, and there are many things that need to be better. As far as PDA is concerned, Michael Jay said that it's not the progressive stance to endorse a bill that allows for secret software in public elections. Brad agrees with Jay and he's not suggesting opposition, but he would like it to be better, educate about what's in the bill, and see what can be

improved.

He's been talking with his colleagues at VotersUnite and VR about creating bullet points on what should be changed in the bill. He wants to point out that in the 2007 version, the bill wasn't good to begin with, but then it became terrible in committee. So if we endorse Holt's bill and it gets changed in committee, it might go through because Holt has touted PDA's endorsement. He advocates for advocacy.

If Ellen Theisen and John Gideon are here from VotersUnite, they can tell us that they supported the bill until there were changes for disabled people allowing voting with ballot marking not only to vote privately and independently but to cast the ballots privately and independently, meaning that the voter might not even touching the ballot. If this bill passes as is, there are no certified voting devices that do this. Therefore, every jurisdiction in the nation will be forced to move to an ES&S AutoMARK^β system, presuming they actually create it, and go to it really fast. John Gideon has called this "The ES&S Stimulus Bill." It's a boon to ES&S and would outlaw any other system that doesn't use computers to assist the disabled, such as the Vote Pad and other tactile devices.

He advocates for helping to improve the bill. He thinks there's no reason for PDA to endorse this bill, and PDA's position will be stronger if we work to make the bill as strong as it could be. There are still too many things that need to be corrected and added.

Tim: Q&A for John and Brad.

If you haven't introduced yourself, please email conor@pdamerica.org. Conor will move this discussion to the blog and there will be a poll on the blog, which will be open until April 3 for voting.

John Gideon may speak first, out of respect.

Stack: John Gideon, Paul Lehdl, Emily Levy, Allegra Engler, Dale Axelrod

If you haven't asked your question, email Conor at conor@pdamerica.org.

John Gideon: He wants to ensure that the timeline they sent to Tim getting onto the blog. He wants to make clear that there's no requirement that the ballot marking devices actually deposit the ballot without touching into an optical scan machine. In the future it could be ballot with optical scan or a ballot box. For states that have no paper ballots or Vote Pad, they'd have to have a ballot-marking device that could slip the ballot into an autosleeve, or an autocast feature. There is no autocast yet (still in development), and the only company with an autocast or autosleeve is ES&S's AutoMARK^β, but other companies might come up with something.

John: He appreciates John Gideon's comments, but he tends to disagree that the added provision in the draft has diluted the bill. He understands why VotersUnite has withdrawn support, but there are advocates within the disability community who have long needed and wanted a way to vote without physical connection—with accessibility. The vast majority of voters will be casting ballots marked by hand.

Brad: Did you concur that the only solutions will be computer solutions for disabled? In CA they paid millions for systems that the disabled do not like.

John: The bill prefers a voter-marked paper ballot. You might use a non-tabulating way of voting without a paper ballot, but it's not computerized nor electronic. In New Mexico, they won the ability to have both paper and non-tabulating methods. This is the system that's the model for the Holt bill. He thinks we're moving the goal post when Holt needs our support.

Brad: The new idea is that the vote has to be "cast," which requires physical connection, and this is not good for the disabled.

Paul: He says we're not talking about voting systems, but the right to have the vote openly, transparently counted. This is what the German supreme court ruled—that computerized elections are not public elections [<http://www.bundesverfassungsgericht.de/en/press/bvg09-019en.html>]. He has litigated about elections. When can we hear from voices that have actually litigated this and can say why this is not workable?

John: He has been lead counsel and co-counsel, and when it comes to legislation in this bill, there are new expansive opportunities to get at hardware and software. The goal is open-source transparency, and we will move there. He does not think this institutionalizes secret software. It moves toward federal guarantees, unlike the loss in Sarasota. Ultimately, if you're not behind any bill, you're not allowing a follow-up to this bill. The voter-marked paper ballot is what we've fighting for.

Brad: We moved Holt to hand-marked paper ballots, and we can move him to open software.

Emily: [There are problems with the audio that will make the recording difficult to listen to.]

She sees that it has to do with strategy: What is Tim's feeling with dealing with bills that have good in them but are not perfect? How does PDA exert influence to make bills better, if not endorsing the bill? If we wouldn't be comfortable in calling the bill "PDA's plan," is there a position in between support and not supporting?

Tim: The IOTs meet and advocate for consensus. If we get a majority, we have decided with people who've done the work. We'll engage with all the options other than Holt's bill, to see if it's the best. The work is done on calls like this. Holt's bill is a controversial one, the only one greeted with this much opposition. Everyone can vote on PDA's site.

Allegra: Been talking with Andie Novick in NY, and she's convinced Allegra that it's all computerized, no matter how you look at it. Will this outlaw NY's lever machines? Will it outlaw computerized secret vote counting?

Brad: Yes, he suspects it will. And no, they will continue to count in secret, but it will require a hand-marked paper ballot or a computer-marked paper ballot (which is good), but they can still be counted in secret by optical-scan machines.

John: The Norm Coleman/Al Franken election has used an optical system. The difference between DRE and optical scan is that you have a paper ballot from which you can derive voter intent with optical scan, though it may have flaws. Had we had an optical-scan system in Ohio, we would have been able to have a recount, instead of the systems in which DREs were used. He knows Andie Novick's position on this and respects her work, but he disagrees with her that we need an hand-counted system all across this country. He believes that when it comes to this or other bills, this is not going to be an opportunity for other sessions. It will be hard to get this

passed in 2010. This bill needs to be passed now. But if it is amended and DREs are put back into the mix, PDA and Voter Action can and should vocally withdraw. So we should speak strategically, and be in support of it and fight for changes. He thinks it's a mistake not to support this bill now. We should stand and support the bill so it can move forward with momentum against the industry that's going to fight it.

Brad: He agrees that optical scan with paper ballots is superior to DREs, but as the bill has been amended since Voter Action's endorsement, we will still be using DREs in elections until 2016. The opportunity for changes for the worse to the bill are great. Tennessee passed a bill last year for paper ballots, but there's a new session and they are trying to reverse that bill. We don't have to wait for the next session; we can advocate to make this bill better now and not wait until it changes. We don't need scare tactics that say, "It's now or never."

Dale: He wouldn't characterize disclosed source as "secret software." Has Brad read David Wagner's analysis of disclosed source? Here's the link from the Verifygra [www.verifygra.com]: David Wagner (pro disclosed source) http://www.votetrustusa.org/index.php?option=com_content&task=view&id=2327&Itemid=26. He should not characterize closed source as secret software any more, it's disclosed.

Brad: It's not disclosed source code to us, because you have to get approval from a federal commission, sign an NDA, then promise not to disclose anything in it unless there's proof of a crime. It's onerous to get the information.

Stack: Robin Gibson; Cindy Asner; Doug Hickman.

Robin: She's concerned about the issue of paper ballots being counted by optical methods. It's definitely opaque. There's no way to know. You can contest it, ask the judge to let you count ballots, but the judge says no. If it's optical scan, you think the paper ballots have been counted, but you don't know. There are too many opportunities for changes.

Cindy: She believes we are progressive and have to think progressively. The members of Congress asked for help, but we cannot endorse this bill. We need paper and pencil.

Doug: He thinks it's a hard question, and he finds it's two steps forward and one step back. Maybe endorsing this bill is going forward. They have "paper" ballots in FL, but they're counted by optical scanner. That's not good enough.

Roberta: Make sure everyone emails Conor that they were on the call, so that if she has questions she can email you.

Conor: email him at conor@pdamerica.org. You can go to the blog now and make a simple vote on the bill.

Emily: She thought the question was if PDA should endorse the Bill?

Tim: We will look at it and change it.

Emily: She's worried about the wording and that it doesn't say the same thing as we've been discussing.

Tim: Rather than having it on tonight, we'll take it down.

Conor: The question asks if people support the bill. The poll asks if people want the bill, to measure the bill's support.

Tim: We don't want the kind of official language in the PDA poll that Emily wants. We're getting a reading of where the PDA base is.

He wants to know what would help Emily.

Emily: "Do you want PDA to endorse the Holt bill at this time?" is a better question.

Conor: The PDA site has: "As the Holt bill is currently written, should PDA support it?"

Emily: It should say "endorse."

Tim: We'll change it and send out a blast tomorrow.

John: He appreciates this opportunity. He supports the bill and hopes PDA will, because we need more voting systems like Minnesota, not Georgia. If MN's system were like GA, the Coleman/Franken recount could not be done. The MN system allows deriving a recount. He agrees that people with DRE systems must make the change by 2010, the other systems do not have to change until 2016. If the money is available, it's not certain everyone will wait until 2016. He thinks this one provides auditability.

Reach him at jbonifaz@voteraction.org

Brad: He thinks DREs with voter track are as bad. There will opportunities to endorse the bill later, after it's gone through committee. It hasn't even been introduced. PDA should advocate and educate to make the bill as good as it can possibly be. He knows that getting paper ballots is key, but we have to make this bill as good as possible. This bill will not outlaw hand counting, and we can make it as good as can be, but we should wait until it's out of committee. Reach him at brad@bradblog.com

Tim: This is a bill where it will be nirvana if we are unified on it.

The poll will read "endorse" rather than "support."

We'll get the minutes out to everyone. You'll have until April 3 to vote for the poll that's going up now.

Thanks to everyone on the call. Many couldn't speak, so email tim@pdamerica.org. He's proud of PDA for its work for democracy and transparency.

Robin: She doesn't think PDA people want to have only a casual poll.

Tim: All people in PDA can vote on the poll. The majority of the people on this call have been on the call for four years.

Robin: If the majority feels one way, PDA will move that way.

Tim: He knows that PDA will not be reaching a consensus now.

He urges her to join the call every month, and make her voice heard. The model PDA makes decisions through agreement.

Call ended: 19:14 PDT.

***John C. Bonifaz**, is a constitutional lawyer, voting rights advocate, and co-founder of AfterDowningStreet.org. In 2003 he served as lead counsel for a coalition of U.S. soldiers, parents of soldiers, and members of Congress in a federal lawsuit challenging President Bush's authority to wage war against Iraq absent a congressional declaration of war or equivalent action. He was also lead counsel for the Green/Libertarian Party-sponsored recount in Ohio in 2004, prompted by the close vote and voting irregularities. He is the author of "Warrior King: The Case for Impeaching George W. Bush." In 2006, he was a Democratic candidate for Massachusetts Secretary of State.

†**Brad Friedman** is an investigative citizen journalist/blogger, political commentator, broadcaster and Creator and Managing Editor of The BRAD BLOG (<http://www.Bradblog.com>). He has filed, literally, thousands of stories on issues of Election Integrity and Electile Dysfunction since at least November 3rd, 2004. His expertise in such matters has earned him invitations to address the U.S. Election Assistance Commission (EAC) in D.C., the Texas State Legislature, and many other governmental and non-governmental organizations. He is also co-founder of the non-partisan government corruption watchdog organization VelvetRevolution.us and its Election Protection Strike Force.

[§]A direct-recording electronic (DRE) voting machine records votes by means of a ballot display provided with mechanical or electro-optical components that can be activated by the voter (typically buttons or a touch screen); that processes data by means of a computer program; and that records voting data and ballot images in memory components. After the election it produces a tabulation of the voting data stored in a removable memory component and as printed copy. The system may also provide a means for transmitting individual ballots or vote totals to a central location for consolidating and reporting results from precincts at the central location. http://en.wikipedia.org/wiki/DRE_voting_machine

^{§§}Verified Voter Paper Audit Trail (VVPAT) or Verified Paper Record (VPR) is intended as an independent verification system for voting machines designed to allow voters to verify that their vote was cast correctly, to detect possible election fraud or malfunction, and to provide a means to audit the stored electronic results.

The VVPAT offers some fundamental differences as a paper, rather than computer memory, recording medium when storing votes. A paper VVPAT is readable by the human eye and voters can directly interpret their vote. Computer memory requires a device and software which potentially is proprietary. Insecure voting machine[1] records could potentially be changed quickly without detection by the voting machine itself. It would be more difficult for voting machines to corrupt records without human intervention. Corrupt or malfunctioning voting machines might store votes other than as intended by the voter unnoticed. A VVPAT allows voters the possibility to verify that their votes are cast as intended and can serve as an additional barrier to changing or destroying votes.

http://en.wikipedia.org/wiki/Voter_Verified_Paper_Audit_Trail

[§]ES&S's AutoMARK system described and critiqued: <http://www.votersunite.org/article.asp?id=1751>

Resources:

ES&S in the News — A Partial List of Documented Failures:

<http://www.votersunite.org/info/ES&Sinthenews.pdf>

3-19-09: Let's get off the hamster wheel, by Bev Harris, BlackBoxVoting.org: Why Germany banned computerized voting, <http://www.bbvforums.org/cgi-bin/forums/board-auth.cgi?file=/1954/79633.html>