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Congressman Rush Holt has authored a new version of the "Voter Confidence and Increased Accessibility Act" which will be introduced soon. A copy of the final draft is attached.

VotersUnite! commends the Congressman for the many improvements included in this year's version, and we supported it in its initial form. However, during the finalization process, a provision was added that has caused us to withdraw our support.

Assuming the final draft does not change before introduction, the bill would require a non-tabulating ballot-marking device (BMD) in each polling place that "allows the voter to privately and independently verify and cast the permanent paper ballot without requiring the voter to manually handle the paper ballot." (Page 9, lines 11 through 14.)

According to Noel Runyan, accessibility expert and advocate for accessible voting, independence in casting (depositing) the ballot is unnecessary for the privacy of the vote. In his report on "Improving Access to Voting" he writes:

"Independence is not essential to guaranteeing privacy before a voter starts marking their ballot. Independence is required to assure privacy during the process of marking the ballot but is not essential for guaranteeing privacy after the ballot has been deposited into, and protected by, a privacy sleeve."

[http://voteraction.org/files/Improving\\_Access\\_to\\_Voting.pdf](http://voteraction.org/files/Improving_Access_to_Voting.pdf)

The ramifications of this added accessibility requirement are significant for every jurisdiction in the country. **Every jurisdiction would have to replace its accessible equipment by 2016.**

The only vendor that advertises a system with the "autocast" feature is ES&S, though the machine is not yet in use and has not yet been submitted to the EAC for certification. With a federal mandate for equipment currently developed by only one vendor, it is hard to predict how much the vendor will charge for the machine, the software, the support, and the licensing. The bill simply allocates "such sums as may be necessary."

On the following two pages is 1) a summary of the timeline of equipment replacement and the funding provided for each phase, developed through conversations with Congressman Holt's office, and 2) a diagram showing the same information in abbreviated form.

Please feel free to contact us with any questions.

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VotersUnite! is a national non-partisan organization dedicated to fair and accurate elections. It focuses on distributing well-researched information to elections officials, elected officials, the media, and the public; as well as providing citizens with information they need to work toward transparent elections in their communities.

# Voter Confidence and Increased Accessibility Act of 2009

## TIMELINE

### 2010

Paperless DREs must be replaced by paper ballots and BMDs with accessible verifiability AND either of the following features:

- 1) "autosleeve." The machine automatically deposits the marked and verified ballot into a privacy sleeve. This feature does not fulfill the 2016 mandate since it requires manual handling to deposit the ballot, but it is allowed for new purchases until 2016.
- 2) "autocast." The machine automatically deposits the marked and verified ballot into a ballot box or optical-scan machine for tallying.

BMDs already in use as of the national election in 2008 may continue to be used until 2016. \$1,000,000,000 (Billion) is allocated.

### 2010 to 2016

Jurisdictions needing to replace existing DREs or BMDs or add accessible equipment for any reason may only purchase BMDs with accessible verifiability and either autosleeve or autocast. No funds have been allocated to support these purchases.

### 2016

DREs with VVPAT must be replaced by paper ballots and BMDs with accessible verifiability and the autocast feature, and all non-autocast BMDs must be replaced by BMDs (or retrofitted) with accessible verifiability and autocast. Such funds as are needed are allocated.

Other potential ramifications:

- ◆ The AutoMark is presently the only device with the autosleeve feature. If no other device with autosleeve or autocast is available before 2010, all jurisdictions currently using paperless DREs will have to purchase autosleeve BMDs from ES&S. This includes six entire states and jurisdictions in nine other states.
- ◆ ES&S advertises an AutoMark AutoCast device that would meet the new federal accessibility requirement and claims that no other vendor has such a device. No system using the ES&S AutoCast has yet been submitted to the EAC for certification.
- ◆ If no other autocast BMD is available by 2016, all jurisdictions in the country will have to purchase the ES&S device. Further, if the ES&S AutoCast is not compatible with a jurisdiction's ballot scanner, the jurisdiction will have to purchase new scanners as well.
- ◆ If no system with an autocast BMD is EAC-certified before 2016, states requiring EAC certification will have to break their own laws in order to purchase the BMDs necessary to fulfill the federal mandate.

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