

U.S. Senate Committee on Rules and Administration Hearing on S.1487 “The Ballot Integrity Act of 2007”

Wednesday, July 25, 2007 (10:00 AM)

Testimony of Hon. Deb Markowitz, Vermont Secretary of State Past President, National Association of Secretaries of State (NASS)

Good morning. Thank you for the opportunity to offer some insights on S.1487, the Ballot Integrity Act of 2007, introduced by Sen. Dianne Feinstein.

I am Vermont Secretary of State Deb Markowitz, also Immediate Past President of the National Association of Secretaries of State (NASS). NASS represents the majority of our nation’s chief state election officials, 35 of whom are Secretaries of State. While our members represent a diverse array of constituencies, they are united in the belief that federal, state, and local government must work in partnership to effectively serve our citizens.

It is important to remember that every state faces different challenges as it seeks to improve the administration of elections and meet the mandates of existing federal and state laws. As Secretary of State of Vermont I have not had to grapple with many of the challenges faced by my colleagues across the country who have had to replace outdated voting equipment. Vermont is a small and rural state with fewer than 450,000 registered voters. We run our elections using paper and pen; and in all but 80 of our jurisdictions we count those votes by hand. The rest of our communities use optical scan tabulators. We have a vote-by-phone ballot marking system available in every polling place to ensure that our elections are accessible to people with disabilities.

While we are proud of our tradition of smooth-running elections, we know in Vermont that the success of an election is as much about the people who administer the election as the equipment that is used for counting the votes. Indeed, this past November we found that even hand-counting paper ballots has its risks. A statewide recount in our race for Auditor brought to light clerical errors in hand-tabulated vote totals. The result was a change in the outcome of the race.

My colleagues and I understand that you are committed to studying election reforms here in the Senate and we know of several major proposals in the House. The most important question is whether now is the time for Congress to be amending the Help America Vote Act of 2002, especially considering the fact that voting in the presidential primaries will begin in just six months.

As most of you probably know, the 2008 presidential nominating schedule is the most front-loaded in U.S. history. Twenty-nine states are already on track to vote in January or February—more than three times the number that did so in 2000—and that number could grow by at least seven more. Because of this front loading, in about a dozen states, a separate primary election for state and federal offices will need to be administered. This is all in addition to preparing for the presidential, congressional and state elections that are to be held on November 4, 2008.

As we are getting ready for the 2008 election cycle, most states are still dealing with outstanding legal and procedural issues related to the implementation of HAVA. High-profile legal cases have included challenges to new photo ID laws in Georgia, Indiana, and Missouri; challenges to voter registration laws in Florida and Ohio; and a challenge in California regarding the accessibility of voting equipment for disabled voters. Most of the lawsuits name Secretaries of State as defendants and require considerable time and resources to deal with them.

I could go on, but suffice to say, election officials are facing some major challenges in 2008. Therefore, as you consider new federal legislation that will impact state and local governments, we urge you to keep the following principles in mind:

- 1. Provide reasonable timeframes for implementation.** For all the reasons mentioned a moment ago, Secretaries of State feel strongly that we should not be making dramatic changes to our election systems and processes for 2008. S.1487 includes implementation deadlines that are more reasonable than those offered in other bills that we have seen, but the paper trail equipment described in this bill does not exist for all types of voting systems. My colleagues and I do not want to wind up trying to meet federal deadlines only to find ourselves forced to purchase equipment that has not gone through the rigors of testing and certification.
- 2. Guarantee full funding for mandates.** To date, the states have still not received the full amount allocated under HAVA. While Secretaries of State appreciate recent congressional efforts to appropriate \$300 million of the approximately \$800 million still owed for that bill, the shortfall has forced many states to make painful decisions about how to fund costly new programs and equipment. We realize it is a challenge to place a price tag on election reforms that will have long-term impacts, especially when equipment is not yet available, but funding for the changes that you seek is critical to the success of any new law.
- 3. Gather essential input from state and local officials impacted by legislation.** We commend you and the committee staff for working hard to reach out to state and local election officials. We encourage you to continue this practice. Secretaries of State have valuable input regarding election administration and we hope to be viewed as a resource when Congress is considering changes to our system.
- 4. Allow for maximum flexibility and avoid preemptions of state authority.** Federal legislation should not curtail state innovation and authority solely for the sake of creating uniform methods among the states. The legal and historical authority for administering elections exists primarily with states and localities and consequently, all legislation should grant states maximum flexibility in determining how to properly and effectively carry out the law and satisfy federally-dictated outcomes.

I share this committee's goals in ensuring that the nation's elections are transparent and accurate and that there is accountability in the system. With this in mind, I have reviewed S.1487 and

make the following specific comments and suggestions based on my nine years of experience overseeing the elections in Vermont:

- **Independent verification of elections.** While I personally agree with the goal of having elections that can be independently verified, I am concerned that the voter verified paper audit trail (VVPAT) sections of the bill mandates the purchase of new technology that has not yet been developed, tested or approved for use in any state. This puts elections administrators in an untenable situation. In addition, I am concerned that the VVPAT will stifle the development of innovative approaches to ensuring verifiable votes.
- **Ballot-marking devices should not be subjected to unnecessary bureaucracy.** Insofar as we are interested in encouraging the development of paper ballot marking devices that are accessible to people with disabilities, it makes sense to avoid creating unnecessary bureaucracy that will discourage innovation. The mandatory software certification and disclosure requirements of the bill would apply both to voting machines as well as to ballot marking devices. Because a ballot marking device can simply be tested to ensure that it is marking a ballot correctly, and because the voter is able to verify that their paper ballot was correctly marked before voting the ballot, there is no reason to require the developers of such equipment to go through the time and expense of certification and disclosure. We don't require the pens we use to mark a ballot to be certified or placed in escrow (although we test them to make sure they work before giving them to voters to use on Election Day); it is similarly unnecessary to certify and escrow electronic ballot marking devices.
- **Mandatory poll worker training requirements should be focused on workers who play critical roles.** In Vermont we require that the chief election official in every polling place complete a mandatory training before every general election. I would suggest that it is not realistic to require that every poll worker complete a training prior to Election Day. Indeed, there are many instances when election workers are unable to show up on Election Day and a replacement must be found in the hours before the polls open. That being said, it is reasonable to require states to include provisions in their HAVA implementation plans to ensure that all critical poll worker positions are filled with trained poll workers.
- **Wait time standards should take into account unforeseen events.** Any standards about fair and equitable wait times for voters should take into account unique events that are out of the control of the elections administrators that can result in long lines such as snowstorms and power outages.
- **Voter registration standards should clarify rules when there is a failure to match data.** The standards for voter registration should provide guidance about whether a voter will still have the right to vote even if the number he or she provided on his or her voter registration form fails to match with any number listed in the social security administration or department of motor vehicle data bases.
- **Voter registration standards should criminalize intentional destruction of registration forms.** The standards for voter registration should also make it criminal to intentionally destroy completed voter registration applications prior to their submission to the proper authority

- **Voter registration standards should permit removal of voter from checklist when the voter provides written notification that they have changed address.** Any change in the law should make it clear that when a voter notifies the appropriate authority in writing, that he or she has moved, then no other communication should be required to remove that voter from the checklist. (For example, a checkbox on a motor vehicle department change of address form indicating that the voter has changed his or her address for the purpose of voting should be sufficient written authority to remove a voter from the checklist.)

One thing we have learned in Vermont is that no election system is perfect. However, with careful planning and with a commitment to transparency and accountability throughout the process, we can ensure that our elections run smoothly, and that the people in our state trust the integrity of the process and the legitimacy of the results. I know you share that goal.

I would like to thank Senator Feinstein and the rest of the Committee for allowing me to testify before you today. I appreciate your willingness to hear testimony from a Secretary of State, and I know that my colleagues around the country would thank you as well.