

Why The Ensign Bill is Critical

By

Robert Kibrick, VerifiedVoting.org

Passing a meaningful federal paper ballot requirement ASAP (e.g., a re-introduced version of Ensign's S. 2437 from last session) is the most urgent priority, as dozens of States are poised to spend at least \$1 billion in HAVA funds in the next few months on voting systems upgrades to meet that HAVA requirements that become effective in 2006. Less than a dozen states have enacted a state-level paper trail requirement (either by legislation or by executive action of their Secretary of State).

In the absence of a federal paper trail requirement, we may see States purchase and deploy in the next few months hundreds of thousands of new, paperless DRE voting machines. Once those machines are deployed, it will be that much harder to get VVPB printers installed after the fact. In fact, we would rather not see any more DREs deployed, period. With a paper trail requirement in place, most States that are able to do the math are likely to follow Ohio's lead and switch to precinct-based optical scan systems, which are inherently voter-verified.

A number of States, like Connecticut and Louisiana already have RFPs in progress for new voting systems. In Connecticut, they are only accepting vendor bids for DRE voting systems and are excluding other options like precinct-based optical scan; the deadline there for vendors to submit bids is in February. Other States are not far behind Connecticut, and are poised to fast-track the deployment of DREs once bids are accepted and contracts are let. VerifiedVoting.org is hard at work with TrueVoteCT to try to put the brakes on Connecticut's RFP, but whether we succeed in that effort remains to be seen. We are also pushing for a paper trail bill in Connecticut (SB 55), but its prospects for passage remain unclear.

Given the urgency of this situation, we should push for a federal bill that can be passed as rapidly as possible, i.e., one like the Ensign bill:

<http://thomas.loc.gov/cgi-bin/query/z?c108:S.2437>:

The Ensign bill establishes a clearly-defined requirement for VVPBs in Federal elections and establishes that in cases where the electronic record and the VVPB conflict, the VVPB wins. That is the extent of what it does, and for that reason, it provides fewer provisions for Congresspersons to disagree with. Of the various bills that were introduced in the Senate in the last session, it was the only bill to attract bipartisan support (it had 4 Republican cosponsors and 4 Democratic cosponsors, including Harry Reid (D-NV), who is now the Democratic minority leader and Dick Durbin (D-IL), who is now the Democratic minority whip).

My recommendation would be to make rapid passage of the Ensign bill in the Senate the top priority for federal legislation, and to push to find a Congressperson to introduce a companion bill in the House. We should try to get this legislation enacted in the new month or two, while there is still momentum on this issue and before dozens more states commit themselves irrevocably to the widespread deployment of paperless DREs.

2. Once a federal paper trail requirement is in place, focus on more comprehensive election reform legislation

While getting a federal paper trail requirement in place is the most urgent priority (because of the imminent purchasing decisions that are about to be made by many States), it is only a small part of the problem. Without some provisions to require mandatory, manual audits of those paper-trails, they won't do anything to provide greater verifiability of election results.

More comprehensive legislation is clearly needed to make paper trails an effective tool for auditing elections, and additional voting rights legislation is needed to correct the problems of voter intimidation and vote suppression that were all too apparent in States like Ohio.

However, such comprehensive legislation is going to be extremely difficult to get passed in this Congress, and it will likely take many, many months to get such legislation hammered out and passed. It is quite possible that such comprehensive legislation might not get passed until 2006. So if we entangle a basic paper trail requirement with this more comprehensive legislative effort, that basic requirement will likely be put in place too late to stop the deployment of thousands more paperless DREs.

Although we would prefer to see more rapid passage of comprehensive legislation, the key thing is to make sure that this comprehensive legislation is in place no later than late Spring of 2006, so there is time for States and counties to implement its provisions in time for the Nov. 2006 elections. So we do have a little more breathing room to get this comprehensive legislation passed, which means we can spend a bit more time to make sure that we get the very best legislation possible.