

July 8, 2003

The Honorable Glenda E. Hood
HAVA Public Comment
Division of Elections
Room 100, Collins Building
107 W. Gaines St.
Tallahassee, FL 32399

Re: HAVA plan recommendations

Dear Secretary Hood:

I am pleased to have reviewed the Florida Help America Vote Act (HAVA) Planning Committee's preliminary draft of the Florida HAVA plan. As you may know, I was a strong proponent of the enactment of HAVA (Public Law 107-252), and I am pleased that the federal government is now providing help for states to modernize their voting equipment. During this public comment period for the HAVA plan, I would like to bring to your attention the necessity for ballot printers to be affixed to touch-screen voting machines to produce individual voter-verifiable ballots, and I am respectfully offering my recommendations on the proper course of action.

Two of the most important statements in the HAVA plan are two of the "Enduring Principles of Freedom" listed in the introduction section, which are as follows:

Voting systems should be designed to determine voter intent, to the extent that is humanly possible.

While voting should be individual and private, procedures for counting and challenging votes should be open, transparent, and easily documented to ensure public confidence in the results.

These vital ideals must be remembered as Florida continues to revolutionize election procedures through the use of electronic touch-screen voting machines. While the significant investment made in modernizing our voting technology better ensures smooth elections, I am distressed that we are overlooking a significant problem that leaves us vulnerable to another election debacle and that violates the above-stated two critical principles.

Since the 2000 election, all Americans better recognize the importance of being able to conduct fair, accurate and timely recounts. With optical-scan voting machines, a meaningful recount is possible because the final ballot is tangible and verified by the individual voter. Even though touch-screen machines allow voters to review their ballot choices electronically, without a final, tangible ballot verified by individual voters, no meaningful recount is possible. While touch-

screen machines are programmed to record each ballot in a random order, we place unfounded trust in these machines to properly record each ballot correctly. In a recount without voter-verified paper ballots, the machines will only reprint the same results they recorded the first time. This simply means there is no way to confirm that the original results are correct, which is the essence of a recount.

In passing the Florida Election Reform Act of 2001, the Florida Legislature created more specific provisions for machine (electronic) and manual recounts. According to this law, a machine recount will automatically be conducted when the margin of victory in the first set of unofficial returns is one-half a percent or less (F.S. 102.166). A manual recount of the overvotes and undervotes will automatically take place when the margin of victory in the second set of unofficial returns is one-fourth of a percent or less (F.S. 102.141). (If the margin in the second set is between one-fourth and one-half, a manual recount may be requested.) In the HAVA plan, the following question and answer are given:

Section 301(a)(2)(B): Do the voting systems produce a permanent paper record with a manual audit capacity?

...Florida voting systems require DRE machines to maintain a random sorted file of ballot images for every vote cast, and they also have to maintain detailed logs for each election from the time they are started, when they are first programmed for an election, until the results are copied to archival media. Certified voting systems in Florida are required to print out a paper tape of summary totals in each precinct. The paper record is produced to reconcile the consolidated totals for the county in the event of a recount.

The answer for this section continues as follows:

...In addition, the Florida Legislature may authorize the Department of State to promulgate rules which would require the supervisors to check those paper totals against electronic totals during machine recounts.

In practical terms, this is impossible because a reprint of electronic data is not a recount; as a result, there is no means of accomplishing the above goal because, by design, there is no difference between the paper and electronic totals.

Many computer experts and academics, as well as the U.S. Justice Department, have expressed concerns about the inability of electronic voting machines to provide a means for a true recount. As a result, another close election could again cause costly and extensive litigation, further embarrassing our state.

Using touch-screen machines, once a person electronically submits his or her ballot, there is no way for either the voter or election officials to know if the ballot was properly recorded. While the Section 301(a)(2)(B) answer may conform to

laws and regulations regarding electronic recounts, it does not allow for manual recounts. Without individual paper ballots being verified by each respective voter, a meaningful and legal manual recount is impossible. Again, a reprint is not a recount.

A solution to this conundrum is to outfit a ballot printer to each touch-screen machine. Voters could then use the easy voting methods of the touch-screen machines and have the machine print out a verifiable ballot. Voters would then check their ballots and place them in a traditional ballot box. The machines could provide a quick tally for election night, and the paper ballots would be available for any necessary manual recount.

Florida has \$11.74 million of federal funds to reimburse itself and counties from the purchase of modern voting equipment. I recommend that the HAVA Planning Committee dedicate the state's share of money to purchase printers for those counties that have or will purchase touch-screen machines. I also recommend that the HAVA Planning Committee encourage those counties that will be reimbursed for purchasing touch-screen machines to use these funds for the purchase of printers.

Florida cannot afford the notoriety of another election fiasco. I am hopeful that the HAVA Planning Committee will recognize the vulnerability to which we are now exposed and take my recommended action. Thank you for your attention to this matter.

With warm regards,

Robert Wexler

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