



## Will House Leaders Duck Debate on Electronic Voting Compromise?

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Posted on September 17, 2007, Printed on October 23, 2007

<http://www.alternet.org/story/62737/>

The House is expected to vote on a bill regulating electronic voting machines for the first time this week. However, it is unclear if the Democratic leadership will allow debate on a key amendment to limit the controversial touch-screen voting equipment to one machine per precinct.

"I don't have an answer for you," Nadeam Elshami, deputy communications director for House Speaker Nancy Pelosi, said late Friday, when asked whether Democratic leaders will allow the amendment proposed by Rep. Susan Davis, D-Calif., to come before the House. "I have no way of knowing. This is a comprehensive bill. This is a process that is moving."

The bill, H.R. 811, or the Voter Confidence and Increased Accessibility Act of 2007, would regulate electronic voting systems for the first time by imposing new security, vote verification and audit requirements for their use. The bill would not ban paperless voting machines as many election integrity activists have wanted, but require a paper printout of each vote cast to be reviewed by voters before being electronically counted.

Whether the "direct recording electronic" (DRE) voting systems and that paper trail can be trusted has been a focus of debate surrounding the bill since it was introduced last winter. However as H.R. 811 has moved through committees, there have been recent developments outside Washington that bolster critics who say DRE systems are too insecure and unreliable for use in elections.

Most notably, California Secretary of State Debra Bowen commissioned a study by University of California computer security experts who found DREs had major design and security flaws that could not stop people from potentially accessing and tampering with vote counts. While many California county election directors dismiss that scenario, Bowen's comprehensive review reached the same conclusion as more limited academic and government studies elsewhere in the country. Just last week, North Carolina's *News and Observer* reported that hackers unsuccessfully tried to access voter registration data in Johnston County.

In August, Bowen decertified all DREs machines for use in California and then conditionally recertified differing makes and models if they implemented varying security standards. Part of that ruling was allowing only one DRE per precinct for people with disabilities, to satisfy accessibility laws and because

some disability lobbyists have praised their ease of use. Bowen also allowed DREs for early voting before Election Day. She said isolating the machines would not fully preclude their use but prevent corrupting overall vote counts.

Rep. Davis' amendment would similarly restrict the use of the machines to one per precinct across the country, although DRE machines could also be used for early voting. Like Bowen's directive, the impact of the amendment, if adopted, would shift most precinct-based voting to paper ballots marked by people and counted by optical scanner computers. Some states, notably New Mexico, Florida and Connecticut have already made this transition, while others, like California, are now doing so.

However, on Friday, Rep. Davis and her co-sponsors were not confident that the House Democratic leadership -- notably Speaker Pelosi and Majority Leader Steny Hoyer, would allow the amendment to be debated when the bill emerges from the Rules Committee this week. In the House, the Rules Committee sets parameters for floor debate, including whether amendments can be offered.

"The Davis amendment strikes a fair balance between putting an end to widespread use of DREs in federal elections and ensuring that, if no better alternative is truly available, that such machines will only have a very limited use for people with disabilities," said Rep. Maurice Hinchey, D-NY, a co-sponsor, in an email received Friday.

"The potential for manipulation of national elections with the use of touch-screen machines is much too serious for this Congress to allow their continued use -- let alone to encourage additional states to convert to DREs," he said. "Regrettably, the Democratic leadership was still unwilling to allow the Davis amendment to be considered before the full House."

"That's a shame, because this is an important issue about which many voters are justifiably concerned," he said. "I'm deeply disappointed that we won't even have the opportunity to have an open debate about the merit of these very dangerous touch-screen devices."

Critics of DREs say without the Davis amendment, H.R. 811 would allow the continued use of problematic DRE voting systems, instead of helping election officials transition to a better alternative. However, local election administrators have been the bill's most effective critics in Congress, saying they have worked for years to make DRE systems work after the Help America Vote Act of 2002, or HAVA, encouraged them to replace computer punch-card systems.

Two of their leading trade associations, the Election Center and the National Association of Counties, launched media campaigns in Beltway publications that other lobbyists say have delayed the bill's consideration in the House. Meanwhile outside Washington, there have been numerous political developments and news reports that continue to highlight problems with DRE voting systems.

In recent months, a number of states -- notably California, Indiana, Kentucky, Pennsylvania -- have been experiencing trouble certifying DRE machines for use, leaving some counties unclear on what voting systems will be used in fall elections or upcoming presidential primaries. Indiana fined one manufacturer \$350,000 for installing uncertified software for an election last year. In Kentucky, the attorney general found Louisville had been using uncertified software for the past three election cycles. A Florida report confirmed many known problems, a finding that California also reached. And the U.S. Election Assistance Commission, created by HAVA to oversee elections, found software problems that lead to machines being decertified in Pennsylvania. These are just some examples cited by lobbyists who support the Davis amendment.

In the media, now-independent television journalist Dan Rather documented shoddy overseas assembly of one manufacturer's voting machines, suggesting one reason why the machines have performed poorly in recent elections -- from losing 18,000 votes in a 2006 Florida House race to assigning votes to candidates not chosen by the voter. A *New York Times* editorial said, "electronic voting has been an abysmal failure" and called for a full ban on DRE voting systems in H.R. 811.

Meanwhile, the political fight over whether to use or replace DREs continues in key battleground states. In Ohio, where Democratic Secretary of State Jennifer Brunner has been seeking to undertake a California-style review, Republicans have delayed appropriating funds and have accused academic computer security experts of being biased. This comes against a recent scandal where hackers accessed personal data of 137,000 people for more than a year on an Ohio University server.

Brunner's opponents suggest voting systems would never experience that kind of problem, even though litigation in Franklin County from a contested 2006 judicial election yielded testimony that 86 percent of the county's new DREs recorded different vote totals than the number of people who signed signature books and voted electronically last November.

Moreover, the voting machine industry seems to be ahead of Congress in recognizing that local governments are no longer interested in buying DREs, but are gravitating toward optical-scan systems, according to industry watchers.

"The DRE is dead... Consider the evidence. How many new DREs have been sold by vendors," said Christopher Wilson, founder of VotingIndustry.com and a longtime voting technology professional, in an Aug. 30 post. "The truth is that no one recently has come out with a new DRE device. Third-tier vendors have had little success, and many of them are now folding up shop."

While these events and trends are unfolding, in Washington the House Democratic leadership has been accommodating interest groups that want to see continued use of the very voting systems that are being discredited

across the country.

This summer, House Majority Leader Hoyer, a sponsor of the Americans with Disabilities Act and longtime advocate for the disability community, intervened on behalf of a handful of their lobbyists to revise major sections of the bill. Lobbyists for the National Disability Rights Network and Consortium for Citizens with Disabilities do not consider computer security issues to be serious and sought increased federal funding to enhance the machine's accessibility features.

Additionally, software industry lobbyists convinced lawmakers to keep a tight reign on who could access the machine's computer code, which frustrated open-government advocates who said the most public of democratic processes -- voting -- was increasingly being privatized under the banner of protecting proprietary software.

With the bill scheduled for a vote after the August recess, many representatives began responding to the bill's impact in their districts. New York, with no certified equipment ready to replace the state's mechanical-lever voting machines, asked for an exemption through 2010. Other states are seeking funds to reimburse the purchase of DREs after HAVA, prompting conservative Democrats to fret about unfunded mandates and whether the Appropriations Committee will fund the \$1 billion in the bill. Meanwhile, House Republicans seem to be enjoying the rancor in Democratic ranks and have opposed the legislation, saying they want to tie "voter fraud" remedies, such as photo identification requirements, to the bill.

Davis said her amendment would balance the competing Democratic concerns while addressing the fundamental, underlying issue with the machines -- they have not performed as advertised by their manufacturers.

"I proposed an amendment to H.R. 811 allowing every polling place to have one DRE with a paper trail for those who want or need to use it -- sort of a paper or plastic option," Rep. Davis said, in a Sept. 5 statement. "Problems of the past such as long lines from broken machines or elections with no record like we saw in Florida's 13th Congressional District could not happen. There would be fewer problems that lead to long lines and disenfranchisement, people with disabilities could vote privately, a true paper record would be available for recounts and costs would shrink."

"We are still ignoring the 800-pound gorilla in the room," she said.

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