

Introduction

**Government Administration and Elections Committee
Testimony – March 11, 2011**

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Chairs and members of the Committee, my name is Luther Weeks, Executive Director of CTVotersCount.

As Executive Director of the Connecticut Citizen Election Audit Coalition I have organized observations of seven (7) post-election audits, personally observed thirty-five (35) audit counting sessions around the State, observed several recanvasses, and most recently organized the Bridgeport Recount. Today, I am speaking for CTVotersCount.

I live in Glastonbury. I am a retired computer scientist and software engineer active in voting integrity in Connecticut and nationally since 2004. I am also a certified election moderator.

I have testimony and supporting information for several bills on today's agenda:

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Chairs and members of the Committee, my name is Luther Weeks, Executive Director of CTVotersCount. I live in Glastonbury.

I oppose the National Popular Vote Compact. I understand the theoretical advantages of the national popular vote, yet there are extreme risks in its mismatch with our existing state by state voting system.

Three minutes is far too short to change anyone's opinion. Today, my goal is to open minds to consider a more comprehensive analysis.

What often appears simple is not. The Compact would cobble the national popular vote onto a flawed system designed for the Electoral College, with no means to change that system. It would result in unanticipated, yet predictable consequences that are overlooked and glossed over by advocates for the national popular vote

There is no official national popular vote number compiled in time, such that it could be used to officially and accurately determine the winner in any close election.

Even if there were such a number, it would aggravate the flaws in the system. The Electoral College limits the risk and the damage to a few swing states in each election. With a national popular vote, errors, voter suppression, and fraud in all states would count against the national totals.

There is no national recount available for close elections, to establish an accurate number. Only in some individual states, if close numbers happened to occur in those states, would there be even a fraction of a national recount.

For Example: The inaccuracies in Bridgeport did not change the winner here in the race for governor and would not have been enough to change the Electoral College. If it was closer we would have had a recanvass and presumably those errors corrected. However, with the Compact the errors would have counted in a national popular vote number reported by the media or any other number calculated nationwide.

With the Compact there is every reason to believe that any close election would be decided by partisan action of the Congress or the Supreme Court - the same Court that ruled in Gore v. Bush, that not having a uniform recount law in Florida was grounds to stop the recount to avoid harm to the apparent winner. Would that same Court rule differently, faced with a close national popular vote and, even less uniformity between states than existed between Florida counties in 2000? Citizens and candidates can be expected to bring court challenges of Governors and Secretaries of State for relying on and providing inaccurate results in awarding Electoral College votes. As in Gore v. Bush, since the founding, close election controversies have all been decided in seemingly partisan decisions by Congress, special commissions, or the Supreme Court.

This is not a partisan issue. It is opposed by prominent members of both major parties. Those who have publicly spoken against the Compact include former Secretary of the State Susan Bysiewicz (D), Connecticut College Political Scientist Dorothy B. James, Governor Arnold Schwarzenegger (R), and Minnesota Secretary of State and current President of the National Association of Secretaries of State Mark Ritchie (D).

I urge you to consider the risks and chaos made possible if Connecticut were to endorse the National Popular Vote Compact.

Fact or Myth?

There is no official national popular vote number compiled in time, such that it could be used to officially and accurately determine the winner in any close election.

According to NationalPopularVote.org:

20.1 MYTH: There is no official count of the national popular vote.

It is sometimes asserted that there is no official national vote count for President and, therefore, the National Popular Vote bill would be impossible to implement. Contrary to this assertion, existing federal law (section 6 of Title 3 of the United States Code) requires that an official count of the popular vote from each state be certified and sent to various federal officials in the form of a "certificate of ascertainment..."

Reality:

Yes: There is an official, unaudited, national popular vote number which can be determined by examining data posted by the federal government at: <http://www.archives.gov/federal-register/electoral-college>

Reality: The number is not compiled and available in time, such that states could use the number to determine, under the Compact, how to allocate their electoral votes. Looking at the details for 2008, http://www.archives.gov/federal-register/electoral-college/state_responsibilities.html#vote2

We find:

- States must prepare a Certificate of Ascertainment listing electors and the votes that they received: *"The original Certificate and two certified copies (or duplicate originals) should be sent to the Archivist as soon as possible after the November 4 election results are finalized. At the very latest, they must be received by the electors on the statutory deadline of December 15, 2008 and submitted to the Archivist no later than December 16, 2008."*
- *"On the first Monday after the second Wednesday in December (December 15, 2008), the electors meet in their respective States. Federal law does not permit the States to choose an alternate date for the meeting of electors - it must be held on December 15, 2008... At this meeting, the electors cast their votes for President and Vice President."*
- Since states are not required to submit electors and their official unaudited vote totals to the Archivist until December 16th, the national popular vote number obviously could not be guaranteed to be available on December 15th. And since the Certificate cannot be created until after the electors of a state have voted, the final official unaudited national popular number could not be official until all states electors have already voted. But wait...
- *"Any controversy or contest concerning the appointment of electors must be decided under State law at least six days prior to the meeting of the electors."*
- **So, each state must actually appoint its electors six (6) days before they must meet and vote which is seven (7) days before each state is required to send the state's official unaudited popular vote numbers to Washington. But wait...**
- *"The statutory deadline for the designated Federal and State officials to receive the electoral votes is December 24, 2008. Because of the very short time between the meetings of the electors in the States on December 15 and the December 24 statutory deadline, followed closely by the counting of electoral votes in Congress on January 6, 2009, it is imperative that the Certificates be mailed as soon as possible."*
- **So, the real deadline for each state's popular vote number arriving in Washington, would be nine (9) days after the vote for electors, and fifteen (15) days after electors have to be determined. Presumably some time is also needed to accurately post that information so that the official, unaudited numbers would be available for state officials to review.**

Fact or Myth?

There is no national recount available for close elections, to establish an accurate number.

According to NationalPopularVote.org:

3.4 MYTH: Conducting a recount would be a logistical impossibility under a national popular vote.

A recount is not an unimaginable horror or a logistical impossibility. All states routinely make arrangements for a recount in advance of every election. A recount is a recognized contingency that is occasionally required in the course of conducting elections, and recounts do indeed occur about once in every 332 elections. The personnel and resources necessary to conduct a recount are indigenous to each state. A state's ability to conduct a recount inside its own borders is unrelated to whether a recount is occurring in another state.

Reality: Most states, but not all have some type of recount law.

- According to the CEIMN Searchable Recount Database, only 21 states have laws which provide for recounts on close votes: <http://ceimn.org/ceimn-state-recount-laws-searchable-database/>

Reality: A national recount would be a legal and technical impossibility. NationalPopularVote.org claims to refute six Myths about Recounts, yet none address the central issue that there would be no recounts of a close national popular vote:

- But state recount laws are based on close votes within a state, none would be triggered by a close national popular vote.
- As covered previously, there is no official national popular vote number compiled in time for states to determine their Electoral College votes – thus there would be no number available in time to trigger a national recount, even if it were possible to have a national recount.
- There is no provision for a recount within the Compact, even if there was such a provision, it could only apply to states signing the Compact.
- There would be no reason for states controlled by the party of the apparent winner to voluntarily agree to a recount.

Reality: Even if somehow states agreed to a national state by state recount, the Supreme Court can be expected to rule as it did in Gore v. Bush that it would be unfair since it would not be uniform:

- *“Upon due consideration of the difficulties identified to this point, it is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work. It would require not only the adoption (after opportunity for argument) of adequate statewide standards for determining what is a legal vote, and practicable procedures to implement them ...there is no recount procedure in place under the State Supreme Court’s order that comports with minimal constitutional standards. Because it is evident that any recount seeking to meet the December 12 date will be unconstitutional for the reasons we have discussed, we reverse the judgment of the Supreme Court of Florida ordering a recount to proceed.”*
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=000&invol=00-949>
- Even though the Court claimed the decision was not to be used as a precedent, on what basis would they rule differently when faced with a challenge to a far from uniform state by state recount? See Moritz School of Law Professor Edward B. Foley’s comments on Gore v. Bush and equality:
<http://moritzlaw.osu.edu/electionlaw/comments/index.php?ID=8099>

Fact or Myth?

Currently the Electoral College limits the risk and the damage to a few swing states in each election. With a national popular vote, errors, voter suppression, and fraud in all states would count against the national totals.

According to NationalPopularVote.org:

3.6 MYTH: Political fraud and mischief would be encouraged under a national popular vote.

The potential for political fraud and mischief is not uniquely associated with either the current system or a national popular vote. In fact, the current state-by-state winner-take-all system magnifies the incentive for fraud and mischief because all of a state's electoral votes are awarded to the candidate who receives a bare plurality of the votes in each state.

Under the current system, the national outcome can be affected by mischief in one of the closely divided battleground states (e.g., by placing insufficient or defective voting equipment into the other party's precincts, by selectively and overzealously purging voter rolls). The accidental use of the butterfly ballot by a Democratic election official in one county in Florida cost Gore an estimated 6,000 votes—far more than the 537 popular votes that he needed to carry Florida and win the White House in 2000. However, an incident involving 6,000 votes would have been a mere footnote if the nationwide count had governed the presidential election (where Gore's margin was 537,179).

Senator Birch Bayh (D-Indiana) summed up the concerns about possible fraud in a 1979 Senate speech by saying:

"One of the things we can do to limit fraud is to limit the benefits to be gained by fraud. Under a direct popular vote system, one fraudulent vote wins one vote in the return. In the electoral college system, one fraudulent vote could mean 45 electoral votes."

....

Yes: *"The potential for political fraud and mischief is not uniquely associated with either the current system or a national popular vote"*

Reality: *"the current state-by-state winner-take-all system magnifies limits to swing states the incentive for fraud and mischief because all of a state's electoral votes are awarded to the candidate who receives a bare plurality of the votes in each state."*

Reality: Because, under the national popular vote, all of the nation's electoral votes would be awarded to the candidate who receives a bare plurality of the votes in all states, **the national popular vote would magnify the opportunity and magnify the incentive.** It would magnify the opportunity to all 50 states and the District of Columbia. It would magnify the incentive since fraud and mischief in one or all of those states could change the national popular vote plurality and take all 538 electoral votes.

Yes: *"Under the current system, the national outcome can be affected by mischief in one of the closely divided battleground states... In the electoral college system, one fraudulent vote could mean 45 electoral votes."*

Reality: Using the same logic, under the national popular vote, the national outcome can be affected by mischief in one or all of the 50 states and the District of Columbia, including in one or more of the closely divided battleground states.

Reality: Senator Bayh is incorrect. If one vote *"could mean 45 electoral votes"* under the Electoral College, then under the National Popular Vote one vote could mean all 538 electoral votes, **not** as claimed by Senator Bayh: *"one vote in the return"*.

Fact or Myth?

With the Compact there is every reason to believe that any close election would be decided by partisan action of the Congress or the Supreme Court. As in *Gore v. Bush*, since the founding, close election controversies have all been decided in seemingly partisan decisions by Congress, special commissions, or the Supreme Court.

Reality:

Quoting Professor Edward B. Foley and Nathan L. Colvin, of the Moritz School of Law, in their recent paper, "*The Twelfth Amendment: A Constitutional Ticking Time Bomb*":

Although the Supreme Court's decision in Bush v. Gore averted congressional confrontation over electoral votes pursuant to the deficient framework of the Twelfth Amendment, the episode signals the possibility that a similar dispute might arise again—but this time without the saving intervention of the Supreme Court. Although the events of 2000 produced passing interest in the mechanism established by the Twelfth Amendment, since then there has been no sustained plan to prepare the nation if a dispute over electoral votes goes all the way to Congress. Nevertheless, the history of the Twelfth Amendment and the commentary on it during the nineteenth century show that the nation needs a contingency plan of this sort...like putting off preparations to defend against a once-a-century category five hurricane, it is easy to postpone consideration of a constitutional amendment designed to protect against another debacle of the kind that occurred in 1876... it is also worth proposing a second-best legislative solution that would modify the Electoral Count Act... either of the two major political parties will want to block any measure it perceives as disadvantageous to its interest ...our country has embarked on a meandering journey of ad hoc approaches to resolving electoral disputes. The decision of the Supreme Court in 2000 marked only the most recent stop on this journey but was met with as much dissatisfaction as previous historic stops such as the Electoral Commission and the Twenty-second Joint Rule. Instead of waiting for the next electoral dispute and hoping that the Court or a bipartisan split in Congress might save our country, Congress should address this historic problem with an amendment to the Constitution that clearly addresses the electoral count procedures... The starting issue for an analysis of electoral vote determination under the Constitution is ascertaining where the Constitution vests the power to count and/or determine the validity of votes, and this is where the first ambiguity comes from. There are four possible actors: (1) the Vice President of the United States acting as the President of the Senate, (2) the two houses of Congress acting together, (3) the two houses of Congress acting separately, and (4) the states.¹³ The text of the Twelfth Amendment is unclear on this subject, and, throughout our history, various theories have prevailed.

They also quote Justice Joseph Story:

In the original plan, as well as in the amendment, no provision is made for the discussion or decision of any questions, which may arise, as to the regularity and authenticity of the returns of the electoral votes It seems to have been taken for granted, that no question could ever arise on the subject; and that nothing more was necessary, than to open the certificates, which were produced, in the presence of both houses, and to count the names and numbers, as returned.

References:

The Twelfth Amendment: A Constitutional Ticking Time Bomb

http://www.law.miami.edu/studentorg/miami_law_review/issue_archive/pdf/vol64no2/MIA204.pdf

The Founders' Bush V. Gore: The 1792 Election Dispute and Its Continuing Relevance

<http://indylaw.indiana.edu/ilr/pdf/vol44p23.pdf>

More on the National Popular Vote Movement

A Few Obstacles to Consider

By Rosanne Smyle

Special to The [Mystic] Times

Were you one of those voters disgusted with the Electoral College system after the 2000 Presidential election debacle? Were you angry that, despite Al Gore having garnered hundreds of thousands of votes over George W. Bush, Gore ultimately lost the election? Did you find yourself asking, "What happened to the concept of one person, one vote? Is it time to get rid of the Electoral College system?"

You might also have found yourself behind the National Popular Vote movement. Four states have voted for the NPV compact, and another 15, including Connecticut, have legislation in the works to try to pass the concept that elects the candidate with the highest number of votes nationally.

Before scrapping a system that has been in place for more than 200 years, however, **Political Scientist Dorothy B. James cautioned that the NVP has more than a few obstacles to overcome before becoming reality.**

James, professor of government at Connecticut College, offered historical perspective and a dose of political reality in a recent talk sponsored by the League of Women Voters of Southeastern Connecticut at the Waterford Public Library.

While some people felt passionate about the outcome of the 2000 election, James, whose specialization includes presidential politics, elections and Constitutional law, noted that the election marked one of only five times since 1789 that the electoral vote has not agreed with the popular vote.

The first two, in 1800 and 1824, happened before the country established a strong political party system, she said. The third, in 1876, occurred in an election genuinely in doubt, James said, while the fourth, in 1888, happened in an election marred by fraud and corruption.

The circumstances surrounding the 2000 election culminated in what some have called a political perfect storm, borrowing the term from the maritime tragedy detailed in the book "The Perfect Storm," in which everything that could go wrong did go wrong, James said.

"This is not something that's the wave of the future," she said. "And this is not going to be a frequent event."

The National Popular Vote Compact proposal offers a way to elect the president by popular vote and circumvent the U.S. Constitution, in which the Electoral College system is specified. It does, however, use the Electoral College, as it would take effect nationally only after identical legislation was passed by enough states to equal the required majority of 270 electoral votes.

Maryland, New Jersey, Illinois and Hawaii – representing 50 electoral votes – have passed legislation to enact the NVP.

Going this route has its obstacles, but amending the Constitution would present even more difficult challenges. Changing the Constitution is a rare feat, James said, given the history of proposing and ratifying 27 amendments in more than 200 years, 10 comprising the Bill of Rights and three enacted during the Civil War, when half the country wasn't included in the vote.

Another issue for thought, James said, is if the NVP system is enacted, what would prevent another matter from circumventing the amendment route and being implemented, another matter that might not be as benign as electing a president.

Under the NVP system, if the majority of the nation voted for the Republican candidate, while Connecticut voted for the Democrat, our state would have to go along with the majority.

The Electoral College also gives rural states a chance to vote for their candidate, rather than be swallowed up in a larger geographical area with a different candidate choice under the NVP compact. The critical number of 270 electoral votes would be reached if the country's 11 largest states adopted the NVP compact.

James also noted that the United States is a nation with an overabundance of lawyers who would dissect the wording of any NPV proposal and ultimately tie up the issue in litigation. She reminded her audience of a former president's question on language that depended on the definition of what "is" is.

Also, she said, the NPV has no provision for recounts, which, given the current state of the contested Minnesota senate race, would seem necessary.

Even more problematic, she said, is that we have 51 different electoral systems across the nation and a general sloppiness in vote counts. Keeping track of voters is an issue.

"People are losing their homes. They are not living where they vote."

Absentee ballots failing to arrive on time, inaccurate voter registrations and flawed software are just a few of the basic problems sorely needing attention in an inadequately funded and staffed system.

Then there is the problem of unannounced polling places. James noted that she, a political scientist, didn't know until she went to vote that the location changed because of construction. She said she scrambled to call people and let them know.

Driving home her point, she cited a recent New York Times article on an academic study, in which it was reported that in 2008, four million to five million voters had problems with registration or absentee ballots and did not vote. The story also said another two million to four million voters were discouraged from voting after encountering problems such as long lines and identification requirements.

Also, while some are calling for more and more technology, James said, "Technology gets in the way of accuracy."

It's one more step and one more chance, she said, for something to go wrong.

"Voters do obscenely stupid things," she said. What is needed in an election is accuracy, simplicity, verifiability, speed, transparency and anonymity for the voter.

"Until you can take care of these technical issues, then you're not going to get closer to one person one vote."

Rosanne Smyle is a member of the board of the League of Women Voters of Southeastern Connecticut. The League, open to men and women, is a non-partisan group that encourages informed and active participation in government.

ELECTORAL COLLEGE
There Is A Better Way To Pick A President
By SUSAN BYSIEWICZ
December 14, 2008

Tomorrow, I will preside over a special meeting of Connecticut's seven electors at the state Capitol in the Senate chambers. There, they will officially cast votes for president and vice president of the United States. Hundreds of students from local schools and members of the public are expected to watch this 200-year-old exercise in democracy after one of our most historic presidential elections.

Although this special ceremony connects us to our great history and the Founders of our republic, the Electoral College serves little practical value and has outlived its usefulness. I believe it divides Americans across state lines and should be abolished. We need only look back at the 2000 presidential campaign to see how flawed and troubling it is that the candidate who won the popular vote still lost the election.

As President-elect Barack Obama has often said, we are one people. We are not just a loose confederation of states with profoundly different languages or cultures. A working mother in Idaho is just as concerned as a working mother in Connecticut about keeping health care for her children if she or her spouse loses a job.

Many important issues are largely ignored in our national conversation, due in part to the way we elect the president. For instance, when was the last time you heard a Republican or a Democratic presidential nominee make a serious proposal to tackle urban poverty or campaign for votes in some of our most destitute and densely populated areas?

The reality is that the needs of the urban poor are largely ignored because many millions of city dwellers don't vote. They don't feel they have a stake in the presidency. In cities including New York, Chicago, Los Angeles, Oklahoma City, Houston, Atlanta, Buffalo and right here in Hartford and Bridgeport — in solid "blue" and "red" states — the outcome of the presidential election is a foregone conclusion. We can't continue to disregard our cities because the "real" votes are in the suburbs and then be shocked when these areas are plagued by blight and violence.

It doesn't have to be this way. Our Constitution was written to accommodate change, and this is one of those rare historic moments.

Let's remember why the Electoral College was originally put into the Constitution: It was a significant concession to the slave-holding South. Because slaves were not eligible to vote, the South would be at an electoral disadvantage compared with Northern states with higher populations of eligible voters (white, adult property-owning males). With the number of electoral votes allotted to each state based on congressional representation, every state was guaranteed at least three electors. This checked the voting power of the North and preserved significant electoral influence for the South. The Electoral College was put in place to protect the institution of slavery. It is long past time for this last vestige of that shameful era to go.

The most direct way to eliminate the Electoral College is to amend the Constitution to mandate that the president be elected by a majority of voters, with provisions to deal with plurality elections such as in 1992.

There is a movement in several states to circumvent the Electoral College by changing state laws to mandate that electors vote for the national winner of the popular vote. I oppose this idea because electoral votes would not necessarily be awarded to the candidate who won the most votes in a given state.

To abolish the Electoral College, a constitutional amendment must pass with the support of at least two-thirds of the Congress and be ratified by three-quarters of the states. It has happened before. Slavery was abolished in 1865. Women were granted the right to vote nationally in 1920. The minimum voting age was lowered to 18 in 1971.

Many detractors say it's never going to happen. The smaller states that are given disproportionate electoral power under our current system will never agree to the change, they say, and it will only take 13 states voting no to scuttle the proposed amendment.

But to all those who say it's never going to happen — before 2008 nearly everyone would have said the same thing about electing an African American president.

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Minnesota Secretary of State Mark Ritchie's comments in a speech to the National Association of Secretaries of the State (NASS), winter conference, February 7, 2009 in Washington, D. C.: *"I'd love to discuss the Electoral College and the importance of that institution, when you imagine a national recount"*

Also verified by Luther Weeks in conversations with Mark Ritchie, Seattle, WA, Spring 2009: He expressed opposition to the national popular vote in any form because of the lack of uniform laws, especially the absence of and the difficult logistics of a national recount.

S.B. No. 753 – Oppose

Government Administration and Elections Committee
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We oppose online voting, internet voting, email voting, and fax voting in general, for several reasons:

- **Internet Voting Is Technically Risky:** The Computer Technologists Statement on Internet Voting details five technical challenges to such voting that have never been resolved and concludes: *“The internet has the potential to transform democracy in many ways, but permitting it to be used for public elections without assurance that the results are verifiably accurate is an extraordinary and unnecessary risk to democracy.”*
- **Internet Voting Has Proven Risky In Practice:** In September 2010, Washington D.C. opened their proposed internet voting system to ethical hackers. With very short notice, the system was compromised, changing all past and future votes. Separately, the municipal network was entered, passwords to municipal systems obtained, and the list of codes for Internet voting for all voters in the November election were obtained. Internet voting for the election was cancelled. Washington D.C. should be applauded for allowing the test, since other jurisdictions have not subjected their systems to such testing.
<http://www.ctvoterscount.org/video-cure-for-internet-voting-warning-viewing-may-case-severe-permanent-insecurity/>
- **Internet voting can be expensive:** West Virginia, about half the size of Connecticut, spent about \$75,000 for 54 electronic votes.
<http://votingnews.blogspot.com/2010/05/wv-overseas-internet-election-54-votes.html>

I oppose this bill in particular because:

- It contains no controls, specifications, or requirements for online voting. Would there be any public testing of such systems? Would there be any attempt to address the Techologists’s concerns or prevent problems similar to those in Washington, D.C.?
- It does not specify if such voting would be the responsibility of individual municipalities or the Secretary of the State.
- It provides no funds either for the State or Municipalities to implement.
- Could Connecticut accomplish centrally what Washington D.C. has not? Would it be constitutional?
- Would each of Connecticut’s 169 municipalities be able to afford such systems and accomplish what Washington D.C. has not?
- Would the system be optional by municipality? Different in each municipality? If implemented in only some, would it be unfair, violating Federal civil rights and voting laws?

Please join me and other technologists nationwide in opposing Internet voting.

Computer Technologists' Statement on Internet Voting

Election results must be *verifiably accurate* -- that is, auditable with a permanent, voter-verified record that is independent of hardware or software. Several serious, potentially insurmountable, technical challenges must be met if elections conducted by transmitting votes over the internet are to be verifiable. There are also many less technical questions about internet voting, including whether voters have equal access to internet technology and whether ballot secrecy can be adequately preserved.

Internet voting should only be adopted after these technical challenges have been overcome, and after extensive and fully informed public discussion of the technical and non-technical issues has established that the people of the U.S. are comfortable embracing this radically new form of voting.

A partial list of technical challenges includes:

- **The voting system as a whole must be verifiably accurate in spite of the fact that client systems can never be guaranteed** to be free of malicious logic. Malicious software, firmware, or hardware could change, fabricate, or delete votes, deceive the user in myriad ways including modifying the ballot presentation, leak information about votes to enable voter coercion, prevent or discourage voting, or perform online electioneering. Existing methods to "lock-down" systems have often been flawed; even if perfect, there is no guaranteed method for preventing or detecting attacks by insiders such as the designers of the system.
- **There must be a satisfactory way to prevent large-scale or selective disruption** of vote transmission over the internet. Threats include "denial of service" attacks from networks of compromised computers (called "botnets"), causing messages to be mis-routed, and many other kinds of attacks, some of which are still being discovered. Such attacks could disrupt an entire election or selectively disenfranchise a segment of the voting population.
- **There must be strong mechanisms to prevent undetected changes to votes**, not only by outsiders but also by insiders such as equipment manufacturers, technicians, system administrators, and election officials who have legitimate access to election software and/or data.
- **There must be reliable, unforgeable, unchangeable voter-verified records** of votes that are at least as effective for auditing as paper ballots, without compromising ballot secrecy. Achieving such auditability with a secret ballot transmitted over the internet but without paper is an unsolved problem.
- **The entire system must be reliable and verifiable** even though internet-based attacks can be mounted by anyone, anywhere in the world. Potential attackers could include individual hackers, political parties, international criminal organizations, hostile foreign governments, or even terrorists. The current internet architecture makes such attacks difficult or impossible to trace back to their sources.

Given this list of problems, there is ample reason to be skeptical of internet voting proposals. Therefore, the principles of operation of any internet voting scheme should be publicly disclosed in sufficient detail so that anyone with the necessary qualifications and skills can verify that election results from that system can reasonably be trusted. Before these conditions are met, "pilot studies" of internet voting in government elections should be avoided, because the apparent "success" of such a study absolutely cannot show the absence of problems that, by their nature, may go undetected. Furthermore, potential attackers may choose only to attack full-scale elections, not pilot projects.

The internet has the potential to transform democracy in many ways, but permitting it to be used for public elections without assurance that the results are verifiably accurate is an extraordinary and unnecessary risk to democracy.

<http://www.verifiedvotingfoundation.org/article.php?id=6611>

Endorsements [Computer Technologists' Statement on Internet Voting]

The computer technology experts below endorse this statement. Affiliations are for identification only, and do not imply that employers have a position on the statement.

Alex Aiken
Professor of Computer Science, Stanford University

Andrew W. Appel
Professor of Computer Science, Princeton University

Ben Bederson
Associate Professor, Computer Science Department,
University of Maryland

L. Jean Camp
Associate Professor, School of Informatics, Indiana
University

David L. Dill
Professor of Computer Science, Stanford University and
Founder of VerifiedVoting.org

Jeremy Epstein
Software AG and Co-Founder, Verifiable Voting Coalition of
Virginia

David J. Farber
Distinguished Career Professor of Computer Science and
Public Policy Carnegie Mellon University

Edward W. Felten
Professor of Computer Science and Public Affairs, Princeton
University

Michael J. Fischer
Professor of Computer Science, Yale University, and
President, TrueVoteCT.org

Don Gotterbarn
Director, Software Engineering Ethics Research Institute,
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David Jefferson
Lawrence Livermore National Laboratory

Bo Lipari
Retired Software Engineer, Executive Director New Yorkers
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Douglas W. Jones
Professor of Computer Science, University of Iowa

Robert Kibrick
Director of Scientific Computing, University of California
Observatories / Lick Observatory

Scott Klemmer
Assistant Professor of Computer Science, Stanford
University

Vincent J. Lipsio

Peter Neumann
Principal Scientist, SRI International

Eric S. Roberts
Professor of Computer Science, Stanford University

Avi Rubin
Professor, Computer Science, Johns Hopkins University

Bruce Schneier
Chief Security Technology Officer, BT Global Services

John Sebes
Co-Director, Open Source Digital Voting Foundation
Chief Technology Officer, TrustTheVote Project

Yoav Shoham
Professor of Computer Science, Stanford University

Barbara Simons
IBM Research (retired)

Eugene H. Spafford
Professor and Executive Director of CERIAS, Purdue
University

Michael Walfish
Assistant Professor of Computer Science, University of
Texas, Austin

Dan S. Wallach
Associate Professor, Department of Computer Science, Rice
University

Luther Weeks
Retired Software Engineer and Computer Scientist

Jennifer Widom
Professor of Computer Science, Stanford University

David S. Wise
Computer Science Dept., Indiana University

S.B. No. 804 – Oppose – with suggested alternatives

**Government Administration and Elections Committee
Testimony – March 11, 2011**

**Luther Weeks
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334 Hollister Way West, Glastonbury, CT 06033**

We oppose the current Senate Bill 804 which would eliminate the value of the current post-election audit law.

Instead, CTVotersCount recommended alternatives in our testimony on February 14th, on S.B. 940, which would clarify the ballot chain of custody, make audit procedures enforceable, and increase the efficiency and integrity of the audit – without increasing costs – and also alternative legislation to move toward electronic auditing.

The problems with this bill and the underlying incorrect assumptions are:

- 1. Exempting any municipalities and any ballots from the post-election audit would be at the expense of election integrity, defeating the purpose of a *random* audit.** Any gap in the random selection, known in advance, provides the opportunity for fraud, and for the cover up of error. It would be known in advance that no audit would occur, skulduggery with scanners, memory cards or accounting would not be subject to detection in an audit.
- 2. The audits DO NOT cost too much.** Based on municipal requests for reimbursement to the State and citizen observations, the costs of the 2008 audit are estimated at \$89,000 and the cost of the 2009 audit at less than \$41,000. (Under our proposal, the 2008 audit would have likely have cost 20% to 30% less than it did.)
- 3. This bill would eliminate post-election audits for approximately seven (7) years in each ten (10) years starting within one year after its enactment.**

Outlining some approximate math:

- Connecticut has 169 municipalities.
- In most audited elections we have about 800 districts.
- Of those, about 80 districts are randomly selected for audit.
- Resulting in 40-50 municipalities selected for audit.
- According to our records, since 2007 we have had about 130 of our 169 municipalities audited, including all of the medium to large municipalities.
- So, the post-election audit of one more election or statewide primary would exempt all of the remaining municipalities not yet selected since audits began in 2007.

Going forward, if this law were enacted:

- **After the November 2011 Election all municipalities would be exempt from the audit until 2017**
- **And starting in 2017, essentially the same municipalities would be predictably selected again as each of their ten (10) year exemptions completed.**

In Summary: Saving money is an important goal, yet the value delivered for expenditures and the value lost in the name of savings should be recognized. Should we stop inspecting highways, bridges, school buses, and election systems based on cost alone? Or shall this State safeguard the value of our infrastructure, save lives, and preserve democracy?

Referece: Our testimony of February 14, showing that post-elections audits cost in the range of \$40,000 - \$90,000 for November elections.

H.B. No. 5454 – Support – with strong reservations

Government Administration and Elections Committee

Testimony – March 11, 2011

Luther Weeks

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I support the goal of making it easier for overseas citizens and military members to vote as envisioned by the existing Federal MOVE Act. H.B. 5454 provides some useful additions beyond that act, such as extending Federal requirements to state and local elections.

However, I find it difficult and risky to enthusiastically endorse the current “placeholder” text that does not specify specific choices, options, additions, and deletions from the uniform law. Specific concerns include:

- The uniform law text has options that each state may or may not include primaries, run-offs, and referendums in the “uniform law”. For any of these included, absentee ballots must be available 45 days in advance, just as they are in Federal elections. Currently under Sec. 9-369c of the statutes, absentee ballots must be made available three weeks in advance of a referendum and in some circumstances, less. This may pose even more difficult timing challenges if run-offs are included.
- Absentee ballot provisions of the current law and procedures must be changed to accommodate the act’s requirement that ballots postmarked by 12:01am on the day of the election be counted if received up until one day before latest deadline for reporting final election results. Presumably moderators, head moderators, and counters will have to be available to count such ballots late on that day or the next day. My reading of the statutes is that such dates are often up to thirty days after elections.
- The uniform act, unnecessarily expands these risky voting options to include military and military dependents that are not stationed overseas. I recommend that only overseas voters and overseas military be included in its provisions. Other voters can easily use existing, less risky, absentee ballot provisions.
- A great concern is that the actual text of this bill, not include authorization for any form of Internet, online, email, or fax return of votes or voted ballots. The uniform act specifically takes no stand on this matter. My understanding is the drafters could not agree on offering such a choice to states or specifically excluding such voting. See my testimony on S.B. 753 for the risks of Internet, online, email, or fax voting.

In Summary, I caution against passing this bill without public hearings, providing for review and comment on the actual text of a proposed bill – especially, giving election officials an opportunity to point out implementation challenges and conflicts with current statutory deadlines.

H.B. No. 5727 – Oppose – with suggested alternatives

**Government Administration and Elections Committee
Testimony – March 11, 2011**

**Luther Weeks
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We oppose the current H.B. 5727 which would drastically reduce the value of the current post-election audit law, shift costs from small towns to all other municipalities, and set a very dangerous ethics precedent.

Instead, CTVotersCount recommended alternatives in our testimony on February 14th, on S.B. 940, which would clarify the ballot chain of custody, make audit procedures enforceable, and increase the efficiency and integrity of the audit – without increasing costs – and also alternative legislation to move toward electronic auditing.

The problems with this bill and underlying incorrect assumptions are:

- 1. Exempting any municipalities and any ballots from the post-election audit would be at the expense of election integrity, defeating the purpose of a *random* audit.** Any gap in the random selection, known in advance, provides the opportunity for fraud, and for the cover up of error. It would be known in advance that for four (4) years no audit would occur in any selected small town, and that skulduggery with scanners, memory cards or accounting would not be subject to detection in an audit.
- 2. The audits DO NOT cost too much.** Based on municipal requests for reimbursement to the State and citizen observations, the costs of the 2008 audit are estimated at \$89,000 and the cost of the 2009 audit at less than \$41,000. (Under our proposal, the 2008 audit would have likely have cost 20% to 30% less than it did.)
- 3. Small towns are not subject to a larger relative cost or effort for audits.** All size towns share equally based on the number of voters who actually cast ballots.
- 4. Officials have not been and cannot be fined for violating current audit procedures.** Currently, according to the State Elections Enforcement Commission, audit procedures in Connecticut are not enforceable. (Our understanding is that the SEEC has reversed its earlier position and now believes that regulations are enforceable). We believe procedures and regulations should be enforceable.
- 5. There should be no exception for any official, especially an elected official, to avoid paying fines for violating any law or procedure, while transferring those fines to the victims, the taxpayers.** That would be a poor precedent, especially if passed by the committee charged with ethics laws.

In Summary: Saving money is an important goal, yet the value delivered for expenditures and the value lost in the name of savings should be recognized. Should we stop inspecting highways, bridges, school buses, and election systems based on cost alone? Or shall this State safeguard the value of our infrastructure, save lives, and preserve democracy?

Reference: Our testimony of February 14, showing that post-elections audits cost in the range of \$40,000 - \$90,000 for November elections.

H.B. No. 5732 – Oppose

Government Administration and Elections Committee
Testimony – March 11, 2011

Luther Weeks
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We are opposed to the current H.B. 5732 which would eliminate the secret ballot in Connecticut by providing ballot receipts.

The secret ballot was implemented in the United States to prevent the selling and coercion of votes. Subjecting the secret ballot to each voter's choice would negate its purpose and value. Each voter's vote being secret, preserves the value of everyone's vote. Your vote's value depends on mine not being sold or coerced.

Let me spell it out:

1. A critical “or” in the bill gives any voter going to a polling place the option to get a receipt for their ballot, simply by filling it out with a pencil.
2. Even if that were corrected, any voter can choose to use “a station designed for physically disabled voters” and demand a receipt. Thus any polling place voter could choose the option of obtaining a receipt for their ballot.
3. There are no mechanisms, costs, or safeguards for copying specified. How are the copies made? How much would it cost? How can the voter be sure the copy matches their ballot? How is disclosure to any poll workers prevented in a way that the voter can be confident their vote is not compromised?
4. The disabled have pursued such machines to provide the opportunity to vote independently and secretly. The IVS system does not meet the needs of disabled voters other than the visually impaired. Presumably such visually impaired voters would have difficulty reading a paper receipt.
5. So, ironically, those visually impaired would lose the secrecy and independence they fought for, if they attempted to verify their vote with the receipt provided by this bill.

Instead, election officials and the Secretary of the State's Office should work to replace the current IVS system, or at least address the problems noted by registrars in the recent post-election audit observation: That the system regularly takes hours to respond to the morning setup test, and hours to print a ballot for a voter using the system – a wait required in order to complete the voting process. To more fully serve such voters with disabilities, the use of such machines should be mandated for all elections in Connecticut, not just Federal elections.

In Summary: This bill eliminates a longstanding requirement for the secret ballot. But provides risk to us all, along with no meaningful benefit to anyone in return.

**S.J. No. 16 – Oppose – with suggested alternative
Government Administration and Elections Committee
Testimony – March 11, 2011**

**Luther Weeks
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I am opposed to S.J. 16 declaring that the Electoral College is the best way to elect the President based on the questionable claim that it gives Connecticut an advantage as a small state. Today, I also testified against the National Popular Vote Compact. Not based on theoretical opposition to the popular vote, but because of the increased risks created by cobbling it on to our existing state by state presidential election system, which is seriously flawed as it is.

There are three possible ways we could elect a president: The Popular Vote, the Electoral College, or like a prime minister elected by the national legislature. Each of these ways was considered by the Founding Fathers before compromising on the Electoral College.

There is no perfect answer. We have seen each of these systems elect outstanding leaders, yet also disastrous leaders both weak and strong.

Instead, this body could encourage Congress toward two positive goals:

First, to enact voting integrity legislation like that championed by Representative Rush Holt: Legislation that would provide voting integrity to each state, with mandated paper ballots, independent post-election audits, and close vote recounts. Perhaps someday the United States could meet the standards required by the Carter Center that would qualify our elections for international monitoring.

Second, to initiate fixes to the ambiguities in the Federal system for determining the president by the Electoral College - paving the way for a future change to the popular vote. Quoting Professor Edward B. Foley and Nathan L. Colvin, of the Moritz School of Law, in their recent paper, "*The Twelfth Amendment: A Constitutional Ticking Time Bomb*":

like putting off preparations to defend against a once-a-century category five hurricane, it is easy to postpone consideration of a constitutional amendment designed to protect against another debacle of the kind that occurred in 1876... it is also worth proposing a second-best legislative solution that would modify the Electoral Count Act... The flaws of the Twelfth Amendment are so fundamental that constitutional change is necessary. We recognize the exceedingly difficult nature of attaining a constitutional amendment, especially on a topic where either of the two major political parties will want to block any measure it perceives as disadvantageous to its interests..., ...our country has embarked on a meandering journey of ad hoc approaches to resolving electoral disputes. The decision of the Supreme Court in 2000 marked only the most recent stop on this journey but was met with as much dissatisfaction as previous historic stops such as the Electoral Commission and the Twenty-second Joint Rule. Instead of waiting for the next electoral dispute and hoping that the Court or a bipartisan split in Congress might save our country, Congress should address this historic problem with an amendment to the Constitution that clearly addresses the electoral count procedures.

References:

The Twelfth Amendment: A Constitutional Ticking Time Bomb

http://www.law.miami.edu/studentorg/miami_law_review/issue_archive/pdf/vol64no2/MIA204.pdf

The Founders' Bush V. Gore: The 1792 Election Dispute and Its Continuing Relevance

<http://indylaw.indiana.edu/ilr/pdf/vol44p23.pdf>

The Holt Bill

<http://www.ctvoterscount.org/action-ask-your-representative-to/>

We oppose expanded mail-in voting in any form, including no-excuse absentee voting.

As I testified on February 14th we have no objection to a Constitutional amendment authorizing the General Assembly to legislate early voting. This amendment would mandate no-excuse absentee voting, with no safeguards, making repeal difficult, and precluding early voting in any other form.

The primary reason to avoid expanded mail-in or no-excuse absentee voting is the opportunity for and documented record of fraud – it seems that after every national election we find stories of fraud, prosecution, and conviction based on mail-in voting. We provide links to recent reports in OH, FL, AZ, CA, and TX.

OH: <http://ctvoterscount.org/absentee-ballot-fraud-in-ohio/>

FL: <http://ctvoterscount.org/no-excuse-absentee-voting-unintended-consequences/>

AZ, CA, FL: <http://ctvoterscount.org/absenteeearly-voting-raise-questions-and-risks/>

TX: <http://ctvoterscount.org/how-not-to-increase-voter-participation/>

Not so long ago candidates and party workers in large cities in Connecticut were convicted and penalized for absentee ballot fraud.

I agree with MIT Professor and security expert Ron Rivest who recommends that:

“Unsupervised remote voting [including absentee voting is] vulnerable to vote-selling, bribery, and coercion. Communication with voter[s], and transmission of ballots, may be unreliable/manipulable”. Rivest concludes that: *“Remote voting should be allowed only as needed, for at most 5% of voters”.*

<http://www.ctvoterscount.org/ron-rivest-militaryoverseas-internet-voting-risks-and-rewards/>

There is another reason to oppose early voting including no-excuse absentee voting – it does not accomplish its intended purpose – it DECREASES election turnout - A recent academic report showed that early voting, including mail-in voting, decreases turnout by 3%, while an earlier report showed a reduction of 2.6% to 2.9%.

The recent report is a PEW supported University of Wisconsin study. The earlier report from, 2007, is by researchers at the University of San Diego and Temple University.

We provide links to both reports and the text of a New York Times Op-Ed by the authors of the recent report report.

<http://www.pewtrusts.org/uploadedFiles/wwwpewcenteronthestatesorg/Initiatives/MVW/UWisconsin.pdf>

<http://weber.ucsd.edu/~tkousser/votebymail.htm>

And an article covering concerns with mail-in voting:

<http://californiawatch.org/dailyreport/cheaper-popular-mail-ballots-worry-critics-7479>

The Opinion Pages

Voting Early, but Not So Often

By **BARRY C. BURDEN** and **KENNETH R. MAYER**

Published: October 24, 2010

ELECTION Day is nearly upon us, but for many voters it has already come and gone. States have aggressively expanded the use of early voting, allowing people to submit their ballots before Election Day in person, by mail and in voting centers set up in shopping malls and other public places. More than 30 percent of votes cast in the 2008 presidential race arrived before Election Day itself, double the amount in 2000. In 10 states, more than half of all votes were cast early, with some coming in more than a month before the election. Election Day as we know it is quickly becoming an endangered species.

Early voting offers convenience and additional opportunities to cast a ballot. Common sense tells us that this should mean higher turnout. But a thorough look at the data shows that the opposite is true: early voting depresses turnout by several percentage points.

Our research, conducted with our colleagues David Canon and Donald Moynihan at the University of Wisconsin, is based on a three-part statistical analysis of the 2008 presidential election. First, we analyzed voting patterns in each of the nation's 3,100 counties to estimate the effect of early voting laws on turnout. We controlled for a wide range of demographic, geographic and political variables, like whether a county was in a battleground state.

Controlling for all of the other factors thought to shape voter participation, our model showed that the availability of early voting reduced turnout in the typical county by three percentage points. Consider, as an example, a county in Kentucky, which lacks early voting. If we compared this to a similar county in neighboring Tennessee, which permits early voting, we would observe, other things being equal, turnout that was 3 points lower.

Next, we studied the data on more than 70,000 voters and nonvoters from the Census Bureau's Current Population Survey, which asks respondents whether they voted. Once again, we employed a statistical model to control for demographic variables like education and race as well as geographic and political factors. The model showed that an individual living in a state with early voting had a probability of voting that was four points lower than a comparable voter in a state without early voting.

Third, we took advantage of a useful feature of the census survey, which asks individuals whether they voted early or on Election Day. We examined the characteristics of voters and nonvoters, and found that the profiles of early voters and election day voters were mostly similar.

With one big exception: our model forecast that early voters had profiles that made them two percentage points more likely to vote than Election Day voters, whether there was an early option or not. Early voters were more educated and older and had higher incomes, all traits associated with a higher probability of voting. A probability difference of 2 percentage points may seem like a trivial figure, but when applied to populations of millions, it can shift national and state elections.

Even with all of the added convenience and easier opportunities to cast ballots, turnout not only doesn't increase with early voting, it actually falls. How can this be? The answer lies in the nature of voter registration laws, and the impact of early voting on mobilization efforts conducted by parties and other groups on Election Day.

In most states, registration and voting take place in two separate steps. A voter must first register, sometimes a month before the election, and then return another time to cast a ballot. Early voting by itself

does not eliminate this two-step requirement. For voters who missed their registration deadline, the convenience of early voting is irrelevant.

Early voting also dilutes the intensity of Election Day. When a large share of votes is cast well in advance of the first Tuesday in November, campaigns begin to scale back their late efforts. The parties run fewer ads and shift workers to more competitive states. Get-out-the-vote efforts in particular become much less efficient when so many people have already voted.

When Election Day is merely the end of a long voting period, it lacks the sort of civic stimulation that used to be provided by local news media coverage and discussion around the water cooler. Fewer co-workers will be sporting "I voted" stickers on their lapels on Election Day. Studies have shown that these informal interactions have a strong effect on turnout, as they generate social pressure. With significant early voting, Election Day can become a kind of afterthought, simply the last day of a drawn-out slog.

Fortunately, there is a way to improve turnout and keep the convenience of early voting. Our research shows that when early voting is combined with same-day registration — that is, you can register to vote and cast an early ballot on the same day — the depressive effect of early voting disappears. North Carolina and Vermont, two otherwise very different states that combined early voting with same-day registration, had turnout levels in 2008 that were much higher than the overall national figure of 58 percent of the voting-age population. Turnouts in Vermont and North Carolina were, respectively, 63 percent and 64 percent. Allowing Election-Day registration, in which voters can register at the polling place, has the same effect. Our models show that the simple presence of Election-Day registration in states like Minnesota and New Hampshire increases turnout by more than six points.

By removing barriers that require potential voters to register weeks before a campaign reaches its height, less-engaged citizens can enter the voting process late — and political campaigns can respond by maintaining the intensity of their efforts through Election Day.

The implications for policymakers are obvious. Adopting a form of "one-stop shopping" facilitates a larger and more representative set of voters. Early voting may be the most popular reform sweeping across the states, but it alone is not the key to raising voter turnout.

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