

**VOTING BY MAIL:  
DEMOCRACY THROUGH THE PONY EXPRESS**

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Dear Mr. Lancaster:

This is my report on the feasibility of implementing a VBM (vote-by-mail) election system in Louisiana. It contains an analysis of the current national status of election reforms, including the effects of the Help America Vote Act of 2002 and the Carter-Baker Commission Report.

Through my research and analysis I have demonstrated that there have been unforeseen problems with the election reforms mandated by HAVA, not the least of which is the widespread adoption of possibly unreliable DRE machines, which lack no innate function to create paper-trails to ensure the possibility of a recount in the event of an election mishap. Louisiana is among the states that have adopted these machines, and I strongly urge you to consider the facts regarding these machines in forming legislative electoral agendas.

Moreover, our state's widespread adoption of these machines, while made possible by HAVA, was not mandated by HAVA. Specifically, a growing number of western states are following Oregon's lead in establishing a VBM system. This system provides paper ballots for all voters, allows for unprecedented levels of election security, does away with cumbersome requirements for polling stations across the state – all while making elections more convenient for the voters! Here I also strongly urge you to consider the facts and possibilities of such a system.

Your position as chairman of the House and Governmental Affairs Committee in the House of Louisiana's legislature and as an elder statesman has given you a unique position in this period of our state's history. In these times of international intrigue, war, and intense domestic partisan conflict, it is especially important that our election systems be world-class. It is my sincere hope that you will take the information provided to you in this report to craft legislation that will allow the citizens of our state the clearest chance they have ever had to direct the workings of their government.

Sincerely,

John Doe

## ABSTRACT

The 2000 election fiasco resulted in the 2002 HAVA law, which placed new requirements upon states' election systems. The Commission on Federal Election Reform in 2005 found that some of these new requirements did not go far enough and provided its own recommendations. Oregon's VBM emerged independently of these controversies, a fully-functioning and locally popular alternative to expensive voting machines and extensive regulations. The reforms attempted by HAVA and Carter-Baker have met with varying levels of success; states are having particular trouble with "state-of-the-art" DRE equipment which does not function up to its self-described task or to emergent necessities such as VVPAT.

Additionally, partisan bickering is endangering the election reforms themselves. Oregonians, for their part, have an extremely secure system with little bickering, despite being a "swing-state" in the two previous presidential elections. It is unfortunate that Louisiana has already gone through many of the motions required to implement DRE state-wide, especially lacking the VVPAT requirement; this does not doom VBM here, only demands that its implementation be concurrent with the DRE infrastructure to allow voter choice. A VBM system would have been of especial help in the recent New Orleans mayoral primaries, though the state's civic culture may find holes in the setup that Oregonians have not. Louisiana should liberalize its absentee voting laws to allow the choice between the better systems to be made, to allow the best possible voting experience and to allow room for eventual failures and successes in either system.

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## INTRODUCTION

### Purpose

The purpose of this report is to demonstrate the suitability of a VBM election system for Louisiana because of its low cost, efficiency, and relative safety against fraud compared to other election systems. Using HAVA funds, Louisiana recently made a large investment in DRE machines (see Figure 1) – an ill-advised move considering the unproven nature of the technology. However, as the election infrastructure to support these is already being erected, the state should keep a close eye on possible malfunctions with the technology, while liberalizing absentee voting laws to pave the way for a VBM system should security concerns prove DRE equipment unworkable.

Figure 1. Voter using DRE machine. (USEAC, *Voluntary Voting System Guidelines* 8).



## **History**

VBM came into being as an official election system in 1998, when voters in Oregon approved its implementation in a state-wide initiative. This followed 17 years of gradual implementation in the state, beginning with local experiments in 1981 (Gronke 2). Recently, other states have begun taking the same steps that Oregon had; California allowed no-excuse absentee balloting in 2001 (Rosenfeld 4). Passed in 2002, HAVA has had many states implementing election reform. With the help of federal funds, many states purchased state-of-the-art DRE machines that have had varying records of success; glitches in the machines botched an election in North Carolina (Rosenfeld 17) and the lack of a paper trail compelled Maryland to return \$90 million worth of Diebold DRE machines (Rosenfeld 18). With its solid paper trail and boasts of efficiency and security, VBM is increasingly being considered by states having trouble with HAVA compliance (Rosenfeld 3).

## **Review of Recent Literature**

While Oregonians are proud of their system and it appears to be spreading, a report issued for the 2005 Commission for Federal Election Reform (also called the Carter-Baker Commission) cautiously advised further study of the system, as Oregon has not historically had an election fraud problem and political climates with this malaise may find holes not even considered in Oregon (Gronke 6). Views on the desirability of mass DRE usage are mixed. A 2003 CRS report touched on the security concerns endemic in DRE machines, noting the difficulty of detecting malicious code the machines depend on and the proprietary nature of the code itself, keeping it from the thorough review of code that open source software enjoys (Fischer 5). Another report by the Pacific Research Institute dismissed these claims, noting a vast improvement because of HAVA implementation (which greatly increased DRE use) in the

quality of the 2004 elections over the 2000 election (Fischer 1) and finding comfort in the large numbers of workers of every political affiliation involved in the production and implementation of DRE machines (Fischer 11).

### **Research Procedure**

My information for this report was supplied exclusively from the Internet through electronically available reports and newspaper articles, available from Lexis-Nexis and the Internet at large. The reports I have gathered include critiques of both VBM and DRE systems, as well as documents from the HAVA created Election Assistance Commission. The newspaper articles I have gathered include views and controversies on the systems discussed, as well as local voting difficulties in New Orleans.



## **VOTING BY MAIL: DEMOCRACY THROUGH THE PONY EXPRESS**

### **Recent Sources of Electoral Reform**

In response to the breakdown of the 2000 Presidential elections, in 2002 Congress passed the Help America Vote Act. With that experience fresh in the collective memory, one of the primary aims of the act was to “replace antiquated election systems that have proved disastrous in post-election recounts,” for which it provided billions of dollars in aid to the states (Arrison 1). Additionally, it required states to have computerized state-wide databases of registered voters completed by New Years 2005 (“Oregon” 1) and that voting systems be accessible by “individuals with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters” (USEAC, *Voluntary Voting System Guidelines* 6).

While HAVA was dramatically successful in replacing the voting machines it banned with more modern technologies, including DRE machines and optical scan ballots (Election Data Services 2), observers found new concerns in both the new machines used and overall election management. In response, a Commission on Federal Election Reform was formed to review the performance of the election, whereupon it found that “the 2004 election was marred by many of the same errors as the 200 election” (Balz 3) and that “[h]ad the margin of victory for the [2004] presidential election contest been narrower, the lengthy dispute that followed the 2000 election could have been repeated” (CFER Report, quoted in Balz 3). Among its recommendations for further improving elections were requiring presentation of photo ID, interoperability of the

HAVA-established state databases, and requiring electronic voting machines to have VVPATs to allow a recount and to improve voter confidence (Balz 7, 12-13).

Independent of any of these recent developments is the emergence of the VBM election system in Oregon. State election officials characterize their system as not a mail-in alternative to the voting booth, but as a better choice than the “hybrid” election systems currently in place – where Oregon runs one election where all ballots are turned in by mail, other states must run concurrent elections with voting stations and absentee ballots (Gronke 3). While Oregon was a swing state in both previous presidential elections, what amounts to a full absentee-ballot system has remained free of the problems other states have faced with their absentee ball (2); the Commission on Federal Election Reform report cited absentee ballots as “the largest source of potential voter fraud” (CFER report, quoted in Judd 2). Nevertheless, many states are following Oregon’s example through liberalization of absentee-voting laws, providing their voters with more choice on Election Day (Rosenfeld 1).

### **Problematic Implementation of Reforms**

Implementation of the reforms mandated by HAVA and the recommendations of the Carter-Baker commission has met with a combination of success and failure. The state furthest behind is New York, whose banned lever-machines accounted for more than half the nation’s total use of them in the 2004 elections (*69 Million Voters* 2) and whose state database, legally required to be done by New Years 2005, is not expected to be completed until 2007 (Abrams 2). Nevada, on the other hand, has reviewed election results with its VVPAT-enabled DRE machines and found them in perfect working operation (Arrison 13).

Most of the nation falls in between these two extremes. Many states heretofore successful efforts have been foiled by new HAVA requirements that have come into effect this year

requiring polling equipment be handicapped-accessible, invalidating much equipment heretofore cleared (Yamamura 1). In California, the company Diebold still seeks recertification for its DRE machines which publicly failed in a state primary (2). Interestingly, the Maryland disposal of its Diebold equipment demonstrates conflicting goals of election reform – while it certainly desires HAVA compliance, it cannot completely entrust Diebold with election results it cannot independently verify, as recommended by the Carter-Baker report. States struggling with implementation of federal HAVA requirements while balancing their own interests in election security have found little help from EAC, the commission formed to assist states in HAVA implementation. In 2005, it issued two “advisories” which were largely restatements of previously written law on handicapped-accessibility requirements (USEAC 2005 – 04) and differences between traditional and provisional ballots (USEAC 2005 – 05).

Implementing the Carter-Baker recommendation that voters show photo ID at the polls has become especially contentious. A Republican-controlled legislature in Georgia passed just such a requirement without the important provision that those without government ID be issued them free of charge; an outcry from minority groups and Democrats resulted in lawsuits which eventually had the law overturned as unconstitutional (Hansen 1). Attempts such as these blatantly ignore testimony from the report and members of the Carter-Baker commission that IDs must be provided free of charge for the recommendations to have any real positive effect (James 2), and have an effect of placing partisan politics inside urgently needed reform measures. Furthermore, public perception of a partisan taint to election reform would undermine those efforts to great effect.

Figure 2. Jimmy Carter and James Baker III at a press conference for the Commission on Federal Election Reform. (James 2).



The Democrats responded with angry charges of the insecurity of absentee ballots as an example of what their legislative counterparts should be focusing on (Hansen 2), which may lead one to question the wisdom of using a system of mass absentee ballots as the primary means of an election. However, by all accounts, Oregon’s VBM security is “superior not only to most absentee balloting systems but to most poll based elections as well” (Gronke 4). Voters are required to sign the outsides of their envelopes, with their ballot placed inside a second secrecy envelope (8); these signatures are then compared to “the signature [digitally] scanned from the voter’s registration card” by workers who have taken a “signature identification course” (4). These controls provided a remarkably low rate of duplicate voting for previous elections and completion of the HAVA mandated state database has promised to eradicate it entirely (“Oregon” 1-2). Additionally, if unscrupulous poll workers were to toss out certain ballots on the

basis of handwriting mismatch, the voter in question would be contacted to verify their identity (Rosenfield 29).

### **Special Considerations for Louisiana**

While VBM is certainly a concrete alternative for Oregon and an applicable theoretical framework, there are special considerations that Louisianans must face in deciding whether this system is right for them. Foremost of these is the fact that Louisiana has already acted to ensure its own HAVA compliance – it has spent nearly \$50 million in federal funds acquiring new DRE machines (Moller 1). It would take some time for the state to realize, through the elimination of its hybrid system with the simpler one-track VBM, cost savings; entire election infrastructures would require replacement. However, the state has not enacted the Carter-Baker Commission’s recommendation of VVPAT for the DRE machines – should there be issues with vote validity, it would be impossible for the electronically filed votes to be recounted (1). Here benefits of cost-saving would need to be balanced against the possibility for fraud.

The myriad evacuees of Hurricane Katrina are another concern. Having a VBM system in place before the disaster would have proved useful; requests for absentee ballots for the recent mayoral primary were far higher than before the storm (Thevenot 1). Additionally, the disproportionately African-American character of the displaced and lack of transportation to verify identities and voting opportunities have stoked racial tensions, with advocates making “heated references to massive disenfranchisement not seen since the days before the Voting Rights Act of 1965” (2). Indeed, threats of lawsuits and Jesse Jackson’s personal assurance of challenges to what he considered inequitable access to polling stations for that election erupted the Monday following the Saturday primary (Krupa 1). With global warming increasing the

incidence of hurricanes for the entire Atlantic, provisions for liberalized absentee voting are the least governments can do to ensure the voting rights of the criminally disaffected.

Figure 3. A New Orleans election worker prepares equipment. (Thevenot 5).



A final consideration is the checkered nature of Louisiana's civic culture. It should be surprising to no one familiar with Louisiana politics that a former election commissioner was recently released from prison, having been convicted of taking millions of dollars in kickbacks ("Ex-Commissioner" 1). This is perhaps the most serious strike against the feasibility of VBM in Louisiana; Oregon's civic culture is comparatively clean, and it is difficult to determine whether or not their more ingenious counterparts in Louisianan government would not find holes to exploit (Gronke 6). Certainly, however, such a culture should not have voting machines, such as DREs, without a VVPAT.

### **A Plan for Louisiana**

Given its prior investment in DRE technology, Louisiana is in no position financially or legally as of spring 2006 to abandon its substantial responsibilities in favor of a

rush towards a full VBM system. Indeed, an attempt in Colorado to immediately implement such a system was met with voter antipathy; more recent gradualist attempts to move the state in that direction have met with more success (Rosenfeld 13-14). Many western states are following this approach; in Washington state, this process is culminating in its own VBM system (9).

Furthermore, these states have kept their “hybrid,” dual-track systems as they experimented with VBM, with the safety of knowing that if either became untenable, the consequences were not disastrous.

So too should Louisiana follow this pattern, through immediate liberalization of its absentee voter laws to allow permanent no-excuse absentee ballots – effectively allowing any citizen to vote from home. At the same time, a watchful eye should be kept on the progress of the DRE infrastructure, with an additional demand that, like Nevada and Maryland, the voter have the security of a VVPAT for their own peace of mind and a solid, paper artifact in the event of a recount. Costs and benefits of the systems can be compared into the future; should the future hold electronic or paper to be superior, Louisiana will be prepared.

## **CONCLUSION**

### **Summary of Findings**

VBM election systems are extremely secure and satisfactory to the constituents of Oregon that live under them. However, their security may depend on their uniquely clean civic culture. Many states are suffering under the burden of satisfying both federal statutory requirements and ensuring their elections are transparent, accessible, and fair. While Louisiana has taken steps provided for it by HAVA to ensure these goals, it would undoubtedly be better served by a VBM system in an ideal world.

### **Interpretation of Findings**

One cannot simply dump one system for another – especially in the contentious political climate that Louisiana faces post-Katrina. Louisiana should make the tentative steps towards VBM that other states have, but should also continue to improve and update its own DRE infrastructure. At the very least, this will provide voters a choice on Election Day – choice that will spur the systems to compete and become better. If either system becomes unquestionably superior, the other can be dropped and the voters will have won.



## **RECOMMENDATIONS**

These recommendations are for implementation by Representative Charles D. Lancaster:

1. Hold public hearings to educate and get feedback from the populace on VBM style reforms
2. Propose legislation that would allow no-excuse absentee balloting to provide VBM a chance.
3. Propose legislation requiring that Louisiana's DRE machines would have VVPATs to ensure accuracy and verifiability.
4. Form a legislative committee committed to the oversight and implementation of HAVA reforms as they affect the 2006 elections.
5. Continue use of this committee to keep abreast developments in election reform and equipment to ensure Louisiana is on the cutting edge.

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## APPENDIX

**Carter-Baker Commission:** a.k.a. Commission on Federal Election Reform, headed by former President Jimmy Carter and former Secretary of State James Baker III; produced the **Carter-Baker report or CFER report**

**CRS:** Congressional Research Service

**DRE:** direct recording electronic, voting machines that record votes electronically with no paper trail

**EAC:** Election Assistance Commission, created by HAVA to help states implement its standards

**HAVA:** Help America Vote Act of 2002, a set of federal election reforms and equipment requirements that come into full effect in the 2006 election cycle

**optical-scan ballots:** scan-tron ballots

**VBM:** Vote by Mail

**VVPAT:** Voter Verified Paper Audit Trails, a system by which paper ballots are printed out from DRE machines for purposes of voter verification of their vote and recount possibility in DREs