

Michigan Election Reform Alliance Testimony

To: Senator Michelle McManus, Chairperson, Senate Committee on Campaigns and Elections

From: Philip T. Shepard, Professor Emeritus, Michigan State University, and Legislative Coordinator for the Michigan Election Reform Alliance (MERA)
(<http://MichiganElectionReformAlliance.Org>)

Date: June 18, 2007

Re: Hearing at Plainfield Twp Hall, Belmont.

Thank you for the opportunity to present testimony today on some problems concerning Michigan elections. I speak today on behalf of the Michigan Election Reform Alliance, a non-profit and non-partisan affiliate of VoteTrustUSA, dedicated to fair, democratic elections.¹ There are two other MERA members present today who will also testify. To save time and avoid repetition, I will frame all of our remarks and include our other testimony as part of this presentation.

We come before you with the gravest of concerns about the future of our democracy. To have a viable democracy, we believe three crucial conditions must be met:

1. Elections are conducted fairly and transparently – every vote counts, and the vote tally is publicly confirmable.
2. Election laws are implemented and enforced reliably and without partisan bias.
3. Every citizen eligible to vote has full and equal access to voting.

Our remarks today will address these conditions in order.

Part I

Does Every Vote Count?

Unfortunately, large numbers of citizens seriously doubt that every vote counts. Nationally, the last four elections (2000 – 2006) have manifested extensive irregularities.² By responding to problems in Florida in 2000 with the Help America Vote Act (HAVA), Congress has induced widespread implementation of systems for counting votes electronically.³ This response gained much of its appeal from the popular, but incorrect idea that computers are infallible. Computers are by no means infallible. Their output is no better than the input (data) they are given and the instructions they are told to follow (program). Even with perfect programs (which may not exist!), *if you put garbage into a computer, you get garbage out.*

In implementing HAVA, the Election Assistance Commission (EAC) neglected to address machine security. None of the voting machines that the EAC initially approved were tested for even minimal security,³ and none would pass if tested.⁴ But this is a crucial matter. Any serious system for voting with electronic tabulators must protect against machine tampering as well as inadvertent flaws. There is, quite simply, no basis

for public confidence that electronic vote tallies are accurate unless the public knows that neither the data input nor the program actually used have been tampered with. Yet both are quite possible, and, apparently, have been done during recent elections in several states.⁵

Many wrongly believe that because Michigan requires a voter verified paper ballot, our system is immune to the problems of electronic voting machine security. In fact, our current practice has discouraged the use of the paper ballots for anything other than machine counting, even in a recount situation. We vote on paper ballots, but neither election officials nor the general public actually count them. Instead, we have changed our language so that the “official vote count” now refers to a machine tally where no official has actually counted the votes and no one else has actually observed any counting of votes, other than, at best, to watch ballots being fed into a machine. The result is that we have no way whatsoever to know that electronic vote tallies are accurate. The effect of HAVA in Michigan, as elsewhere, has been to move what was formerly a publicly observable process of vote counting to a position inside the computer’s “black box,” where no one can see what is happening. It is this displacement of normal democratic process (black boxing) that is at the heart of today’s problem of citizen distrust of electronic vote tallies.⁶

MERA has devised a plan for Michigan⁷ that we believe would resolve the problem of electronic voting machine security and restore public confidence that every vote counts. The MERA plan would:

- A. Require random hand-count audits⁸ by independent auditors in every county, with automatic expansion of the scope of audits that encounter discrepancies, anomalies, or irregularities, including statistical analysis of anomalies and clear authority to investigate pursuant to enforcement of election law.
- B. Mandate a revote if any audit finds a reasonable doubt that the outcome correctly reflects the intention of the voters.
- C. Impose substantial penalties on vendors whose equipment fails an audit.
- D. Allow civic groups and political parties to register and train “challenger election auditors” to conduct their own hand-count audits.
- E. Require a full recount by hand if the margin of victory is 2% or less.
- F. Mandate a revote if *for any reason* a recount or audit cannot conclusively determine the outcome.
- G. Revamp election security protocols to reassert the decentralized authority of County Election Officials, extend and refine the chain of custody for machines and ballots, track blank ballots, prevent programming access by any one person to voting equipment in more than one county, and require programmers to swear to the same oath as election officials.
- H. Make electronic election tampering a felony.
- I. Enhance the physical security of equipment

J. Make it unlawful to vend, certify or use any election equipment or program amenable to the covert alteration of equipment functions.

For a full version of these provisions, please consult the MERA Legislative Plan.⁷

Part II

Are Election Laws Enforced?

Resolving the security problems of electronic voting and restoring transparency will require substantial changes in Michigan's election law. But even exemplary improvements in the law, will not be sufficient to restore citizen confidence in elections unless the law is actually followed and enforced.

Since MERA's inception last June, we have encountered overwhelming evidence that our election laws in Michigan are widely ignored and rarely enforced, except for partisan purposes such as a recount to overturn an election result. One of our members, and the current MERA treasurer, Mr. Pat Foster, has personally observed several cases that illustrate the failure to allow public oversight of vote counting. This right to observe vote counting is provided by Michigan law.⁹ Mr. Foster, on two other occasions, did conduct a hand-count audit of one race in a few precincts, with disturbing results. He will now describe his findings.

**Testimony of Pat Foster
State Senate Committee Hearing on Elections
Plainfield Township Hall
Belmont, Michigan
June 18, 2007**

I am Pat Foster, a Certified Public Accountant in the State of Michigan and resident of Ganges Township in Allegan County. I also serve as treasurer of the Michigan Election Reform Alliance and as a member, I offer the following from my direct observations of election related events during the primary and general elections in Allegan Co. in 2006.

Case 1

During the August 8th primary, I was involved with a group of citizens that sought to recall the Township Board in Lee Township. The initial election results indicated that a Supervisor and Trustee were both recalled and three Board members were not. There was a recount requested and I was part of the recount group. During the recount process, the Board of Election Canvassers of Allegan County indicated their intention to use one of the electronic tallying machines to total the ballots, one of the same machines that had been used to count the ballots originally at the precinct level. One of the recall group, Neva Tice, read to the Board of Canvassers a portion of Michigan law¹ which states quite clearly: "**Examine without handling each ballot as it is being counted**". The Board of

¹ [MCL 168.801, MCL 168.804, and MCL 168.733 (1)(g)]

Canvassers denied this right and prevented the recall group from observing the ballots as they were fed into the electronic tally machine. The episode was recorded on video tape.

Case 2

After the November 7th General Election, a group consisting of two candidates (myself and Karen Wellman), election challengers Roy Hebert (attorney), Al Weener, and Bonnie Wilkens, met at the Casco Township Hall and made a request to the Township Clerk, Julie Cowie to physically count the ballots as provided for under Michigan Law² under the law. The Clerk called the Bureau of Elections in Lansing and had Roy Hebert read the Code Sections of the law to Peter Allegrenie of the Bureau the sections of the law allowing viewing and counting the ballots. Nevertheless, we were still denied the right to look at the ballots. The episode was recorded on video tape.

Two criminal complaints were filed by myself and Ira Deemar with the State police Department in Wayland regarding these incidents. The complaints cited the election laws that we believe were violated and referred to the video tape evidence available. To date, we have received no answer to those complaints.

Case 3

On December 7, 2006, I was part of a group involved in recounting the State Representative's race in Kalamazoo. With the group's permission, I recounted at that time the Secretary of State's race in three Precincts. These were my recorded results:

Precinct 4

Hand count 1: 162 for incumbent

Hand count 2: 161 for incumbent

Actual votes to the incumbent by the machine tally was 168

Difference 6 or 3.6%

Precinct 15

Hand count: 97 for incumbent

Machine count: 100 for incumbent

Difference 3 or 3%

Precinct 5

Hand count: 254 for incumbent

Machine count: 268 for incumbent

Difference 14 or 5.2%

Case 4

On December 8th I was a member of a recount group in Allegan County on behalf of Neva Tice, candidate for Lee Township Trustee. Again I recounted the Secretary of State's Race in this precinct. The result of the hand count of the paper ballots was 435 for the incumbent. The machine totaled 450 votes for the incumbent, a difference of 15 votes or 3.3% of the total.

² MCL 168.733 (1)(g)

I also observed and noted at the time that at least 50 ballots had been voted by using a printer of some sort to mark the vote on the paper ballot. When I inquired about the AutoMark machine in that precinct, I was told by Linda Reynolds, the Democratic challenger in that precinct and others that voted that day, that the AutoMark voting machine in that precinct had broken down early on Election Day and was never used. Both I and Ira Deemar brought these facts to the state police. There has been no indication since of any action taken on this complaint.

This concludes my testimony. Thank you!

* MCL 168.801, MCL 168.804, and MCL 168.733 (1)(g)

** MCL 168.733 (1)(g)

Part III

Do All Eligible Voters Have Full and Equal Access to Voting?

In our examination of issues of access to voting, MERA has found numerous ways in which current law and administrative practices create barriers to voting.¹⁰ Some of the changes in law that would favor equal access include:

- Allow absentee voting without requiring a reason.
- Allow registration on election day.
- Allow a registered voting address that is different from the registered drivers' address.

MERA strongly supports these changes. The last is especially important since the present requirement creates “an unnecessary burden on citizens who reside for long periods away from home, who move frequently, who depend on family members for driver’s insurance, or who must retain a certain state driver’s license for their employment.”¹¹

MERA members have testified previously on this issue in support of HB 4447 and HB 4448.¹²

Today, MERA member Nancy Bedell, will address two ways that administrative practices can seriously depress participation in voting.

Testimony to the Senate Committee on Campaign and Election Oversight

Tuesday, June 18, 2007

Belmont, Michigan

Nancy Bedell - member, Michigan Election Reform Alliance, Coalition for Voting Reform (Grand Rapids Area), and League of Women Voters of Michigan and Grand Rapids Area

Thank you for allowing the public to have input into the voting process. Although I will not address issues of presidential primaries today, I appreciate the opportunity to speak to the committee based on my experience and study.

As member of the Michigan Election Reform Alliance, I come to you today to encourage action on election reform in Michigan. I wish to emphasize again that MERA is a non-partisan, grass roots organization less than a year old, which has studied and received input from members across the state to devise its legislative agenda. We are attempting to increase knowledge and understanding of the voting process and election administration as well as improve the process in our state. Participating in elections is so complex that many citizens are understandably discouraged from participation. In my testimony I draw on my experience in registering voters before the 2004 election as a Deputy Registrar for Kent County, as well as in working with the Coalition for Voting Reform, a local Grand Rapids organization also a year old, which is currently promoting college student voting participation.

In 2004 I was involved in registering several hundred voters at outdoor sites in the county. I also trained some of the other registration workers. In registering voters we found that half of our contacts required answering questions about voting. One particular question arose regularly from college students: whether one could have a different address on the voter card than the driver's license. In Michigan Rogers' Law mandates that the two be the same. This is one of the issues about which I wish to speak today.

The dilemma for students arises, as you may know, because students often find it necessary to make their primary residence or driver's license address the same as their parents' home address for purposes of auto insurance, health insurance with their parents, or scholarship requirements. However, students often wish to be involved in political activity on campus and so may prefer to vote there. According to CIRCLE (Center for Information and Research on Civic Learning and Engagement) students who responded to their 2004 General Election survey were 10% more likely to vote if registered on campus than at their home address.* But students cannot vote on campus in Michigan if they use their parents' home address as their primary address or the address on their driver's license.

In addition, students have a problem with voting absentee the first time they vote, if they have not registered in person at home or at a Secretary of State's office. Many 18 year

olds arrive on campus without registering first at home. Only as election day gets closer do they understand their dilemma: if they register on campus they may jeopardize their insurance or scholarship; if they do not they cannot vote, because they will not be returning home to register there at a time when the local clerk's office is open. Students may go home on week-ends, but at these times clerk's offices are closed. The other places where they could register in person, Secretary of State offices, are not usually accessible to college campuses and even the Secretary of State mobile unit registration does not assure a person can vote absentee. If the signature card signed during registration is not delivered timely to the local clerk, the student may be denied an absentee ballot. This system is far too cumbersome for students to be expected to understand much less navigate. In order to avoid this awkward and discouraging situation, MERA recommends HB 4447 and 4448 be passed without amendment by the full legislature. In effect this would repeal Rogers' Law and allow students to vote on campus while keeping their parents' home residence as the address on their driver's license.

MERA also supports no-reason absentee voting and election day registration as innovations that will improve access to voting in Michigan. Although college students have no need for no-reason absentee voting (they already have a reason to be absent on election day), it is clear that many persons are uncertain whether they will be available to vote in person on election day and would elect to vote absentee given the opportunity. Many citizens have difficulty with babysitting and job schedules, which change at the last minute and may not leave them a time to vote when the polls are open. Voting in the privacy of one's home can be less stressful and less open to error because it allows as much time as necessary. No-Reason absentee voting would clearly increase access to voting and the number of people who vote.

Another modification to state election law, which MERA supports, is election-day registration. People get most interested in elections in the last month before an election. But by this time, the deadline for registering in Michigan is past. The change undoubtedly would greatly raise the percentage of registrants and voters. College students would only benefit if they prefer to vote at their college address. But, if in addition Roger's Law were abandoned, students could establish an address on election day for voting on campus different than that on their driver's license, and they could do this without jeopardizing insurance or the like.

MERA and the Coalition for Voting Reform ask that, after you have studied the issues, please report these proposals to the floor for final passage: repeal of Roger's Law, no-reason absentee voting, and election-day registration. Because of the anomalies of the past two Presidential Elections, we hope that before 2008 we can have a system sufficiently improved that many more citizens will vote and participate in the democratic process.

Thank you for allowing MERA members to testify today.

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* Richard Niemi and Michael Hanmer, "College Students in the 2004 Election", Fact Sheet of the Center for Information and Research on Civic Learning and Engagement, November, 2004, p. 2, available on line at:
www.civicyouth.org/PopUps/FactSheets/FS_College_Voting.pdf

Thank you again. This concludes our testimony. We will be happy to address any questions.

Footnotes (to Shepard testimony)

1. The MERA Vision Statement reads in part: MERA envisions a democracy where:
 - votes are accurately counted and election outcomes are quickly determined because we have voting systems with unquestionable integrity;
 - all citizens feel they have a fair and equal opportunity to partake in the election process;
 - the vast majority of citizens vote because they have faith in our democratic process and truly believe that their votes count and their voices are heard;
2. Documentation of U.S. election irregularities since 2000 is abundant. Two useful overviews of the situation as of 2006 are:
E-Voting Failures in the 2006 Mid-Term Elections: A Sampling of Problems Across the Nation. A report prepared by VotersUnite.Org, VoteTrustUSA, Voter Action, and Pollworkers for Democracy. January, 2007.
<http://www.votetrustusa.org/pdfs/E-VotingIn2006Mid-Term.pdf>
Our Election System Is Broken. Can the New Congress Fix It?
Warren Stewart. January 15, 2007.
http://www.washingtonspectator.com/articles/20070115unverifiable_1.cfm
3. Federal Efforts to Improve Security and Reliability of Electronic Voting Systems Are Under Way, but Key Activities Need to be Completed. U.S. Government Accountability Office. September, 2005. GAO-05-956
<http://www.gao.gov/new.items/d05956.pdf>
4. Perhaps the most widely viewed account was "Hacking Democracy," the documentary by Simon Ardizzone, Russell Michaels and Robert Carrillo Cohen, which aired on HBO in November and December, 2006. <http://www.hackingdemocracy.com/>
Other demonstration hacks are documented here:
Photo Demonstration Hack: Bypassing the seal on a Diebold AV-OS in Michigan
<http://michiganelectionreformalliance.org/photos.html>
15 minute demonstration hack of a Diebold voting system ("GEM" software). Jim March, BlackBox Voting, June 23, 2006.
<http://video.google.com/videoplay?docid=-7262269533321066760&hl=en>

Demonstration Diebold Hack. Sept 14, 2006 by Princeton Computer Scientist, Edward Felten, and two graduate students. <http://itpolicy.princeton.edu/voting/>

5. The Gun is Smoking: 2004 Ohio Precinct-level Exit Poll Data Show Virtually Irrefutable Evidence of Vote Miscount. Ron Baiman, Kathy Dopp. U.S. Counts Votes. January 17, 2006 (Revised January 23, 2006).

<http://uscountvotes.org/ucvAnalysis/OH/Ohio-Exit-Polls-2004.pdf>

Landslide Denied: Exit Polls Vs. Vote Count 2006. Jonathan Simon, JD, and Bruce O'Dell. Election Defense Alliance

http://electiondefensealliance.org/landslide_denied_exit_polls_vs_vote_count_2006

6. Perhaps the most systematic analysis of security vulnerabilities in electronic voting is the Brennan Center report: The Machinery of Democracy: Protecting Elections in an Electronic World. Brennan Center Task Force On Voting System Security, Lawrence Norden, Chair. 2006

http://www.brennancenter.org/stack_detail.asp?key=97&subkey=36343&proj_key=76

7. The Michigan Election Reform Alliance Legislative Plan. March, 2007.

[http://michiganelectionreformalliance.org/MERA_Legislative_Plan-3-04-07\(4\)endnotes.pdf](http://michiganelectionreformalliance.org/MERA_Legislative_Plan-3-04-07(4)endnotes.pdf)

8. *ibid.* pp. 3-5. The MERA proposal calls for two different kinds of hand count audit – whole precinct audits and audits of single races. (These are sometimes termed “precinct sampling” vs “ballot sampling.”) The former type of audit is necessary to detect computer fraud; the latter is necessary to detect tabulator or software malfunction. We believe an adequate audit approach will require both types of audit.

9. MCL 168.801, MCL 168.804, and MCL 168.733 (1)(g)

10. The Michigan Election Reform Alliance Legislative Plan. pp. 7-10.

11. *ibid.* p. 8.

12. MERA testimony on HB4447 and HB 4448 can be found at:

[http://www.house.michigan.gov/committeeinfo.asp?](http://www.house.michigan.gov/committeeinfo.asp?lstcommittees=ethics+and+elections&submit=Go#CommitteeTestimony)

[lstcommittees=ethics+and+elections&submit=Go#CommitteeTestimony](http://www.house.michigan.gov/committeeinfo.asp?lstcommittees=ethics+and+elections&submit=Go#CommitteeTestimony)

and also on the MERA website:

<http://www.michiganelectionreformalliance.org/legis.html>