



Michigan Election Reform Alliance

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[HTTP://WWW.LAPN.NET/MERA/](http://www.lapn.net/mera/)

October 6, 2006

Affiliate

Dear County Election Commission member,

The Michigan Election Reform Alliance¹ was formed because of widespread concerns about computerized vote tabulating equipment and its vulnerability to tampering. We agree with the majority of Americans who don't trust machines to count our votes accurately.² While certifying vote-tabulating devices under HAVA, the State of Michigan did not assess if the devices were secure from tampering.³

As an Election Commissioner, you are one of three individuals who determine if the equipment in your County will accurately count our votes on November 7th.⁴ The test specified in Michigan law⁵ only assesses how the equipment functions before Election Day, but cannot determine if the equipment will accurately count votes on Election Day.

There are many ways the equipment can be changed. A special ballot, similar to a tabulator "ender card," could be used to change the tabulator's program. At the close of tabulation on Election Day, the ender card initiates a new program that produces the tabulation tapes and "locks" the memory card.

The tabulator could also be controlled remotely using a device similar to a TV remote control or a cell phone. Even after looking inside the tabulator's case, poll workers could not determine if a remote control module were present. A built-in clock could also activate an alternative program and many tabulators already have such a clock installed.

There is no simple or single solution to these election integrity challenges. However, there are four things we believe you can do as a County Election Commission:

- A. Gather survey information on the current security of the tabulators and the programs that operate them.
- B. Monitor election problems this November 7th.
- C. Conduct random audit counts after 8 p.m. on November 7th.
- D. Conduct hand counts during the official canvass.

¹The Michigan Election Reform Alliance (MERA) is a nonprofit, pro-democracy grassroots organization dedicated to election processes that consistently uphold the principles of democracy, to ensure the confidence of voters and maximize representation of all citizens of the United States of America. [HTTP://WWW.LAPN.NET/MERA/](http://www.lapn.net/mera/)
To make this letter easier to read the remaining footnotes are listed as endnotes at the end of this letter.

We are asking for your support and leadership in fully exercising your constitutional responsibility as an Election Commissioner to restore voters' rapidly disappearing confidence.

A. Gather Information on the Security of the Tabulators and Programs

We are enclosing a sample pre-election security questionnaire containing a security assessment questions for local jurisdictions. The questionnaire will provide empirical information that will enable all of us to make better security choices in future elections.

B. Monitor November 7th Election Problems by Collecting Data

In order for all of us to understand the problems we face in using unsecured technology to count votes, we need to gather information about specific issues that develop in each of Michigan's 83 counties during and following the election. A sample post-election survey is enclosed.

We will compile all of the information shared with us by County Election Commissions and prepare a report.

C. Promote and Implement Random Audit Counts in the Precincts after 8 p.m. on November 7th

You can ensure that the election is counted fairly and honestly by helping local clerks to conduct vote count audits. According to current Michigan law, local clerks "*may conduct an unofficial count in order to provide early unofficial returns to the public.*" They have the authority to hand count the ballots before the ballots are sealed at the end of Election Day⁶. Only a hand count audit can prove or disprove that the electronic tabulation was correct.

If local clerks decide that using the electronic tabulating equipment may not or will not result in an accurate, fair and honest tabulation, they have the responsibility to make the decision that it is "*impracticable.*" The law states: "*If it becomes impracticable to count all or a part of the ballots with tabulating equipment, the clerk may direct that they be counted manually, following as far as practicable the provisions governing the counting of paper ballots.*"⁷

D. Conduct Hand Counts During the Official Canvass

Finally, we suggest that you coordinate with your Board of Canvassers to conduct additional hand count audits to verify that the tabulators counted the vote accurately. The Canvassers are authorized by law to conduct additional hand count audits before they canvass the votes: "*for any other reason it is found necessary...*"⁸

We believe the actions outlined above will begin to restore the confidence of Michigan citizens that their votes can be counted fairly and accurately. However, as an Election Commissioner, if you are not certain that the

equipment will count accurately and/or that your equipment is safe from tampering, we ask you to decide against using it. You can decide in favor of using paper ballots counted by hand on November 7th.

Thank you for your consideration of our proposal.

We would appreciate receiving your personal feedback through the enclosed response form and return envelope.

Sincerely,

Michael-David BenDor
MERA statewide coordinator
Certified election inspector

Jan BenDor
MERA statewide coordinator
State-accredited elections administrator

Enclosures:

Election Commission response form and return envelope
Sample pre-election survey of local jurisdiction security practices
Sample post-election survey of tabulator performance problems

²*“Most of those surveyed— 80%—said they want votes to be counted in front of observers representing the public, and that elections officials should not rely solely on the proprietary software that operates electronic voting machines that are presently being installed all over the United States.”* Zogby International 3/23/2006 <http://www.zogby.com/news/ReadNews.dbm?ID=1163>

³Telephone conversation between Jan BenDor and Laura Gyorkos (Michigan Department of Management and Budget purchasing agent for the HAVA funded tabulators) memorialized in an email February 10, 2004: *“Thank you for taking the time to update me on the status of qualifying vendors for Michigan's purchase of voting equipment under HAVA. You had indicated that electronic security would be considered but is not presently a bid criterion for vendors of optical scan voting devices...”*

⁴MCL 168.798 Testing of electronic tabulating equipment; notice; method; sealing programs, test materials, and ballots; rules; sealing memory device. (1) *“Before beginning the count of ballots, the board of election commissioners shall test the electronic tabulating equipment to determine if the electronic tabulating equipment will accurately count the votes cast for all offices and on all questions....”* [http://www.legislature.mi.gov/\(dsoow5jocligcy5523knyh45\)/mileg.aspx?page=getObject&objectName=mcl-168-797c&relation=next](http://www.legislature.mi.gov/(dsoow5jocligcy5523knyh45)/mileg.aspx?page=getObject&objectName=mcl-168-797c&relation=next)

⁵ibid. *“...The test shall be conducted in the manner prescribed by rules promulgated by the secretary of state pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws. In the test, a different number of valid votes shall be assigned to each candidate for an office, and for and against each question. If an error is detected, the board of election commissioners shall determine the cause of the error and correct the error. The board of election commissioners shall make an errorless count and shall certify the errorless count before the count is started. The electronic tabulating equipment that can be used for a purpose other than examining and counting votes shall pass the same test at the conclusion of the count before the election returns are approved as official.”*

⁶MCL 168.798b Electronic tabulating equipment; unofficial and official returns; manual count.: *“Before the conduct of the official count, the clerk may conduct an unofficial count in order to provide early unofficial returns to the public. Upon completion of the count, the official returns shall be open to the public. The return of the electronic tabulating equipment, to which have been added the write-in and absentee votes if necessary, shall constitute, after being duly certified, the official return of each precinct or election district...”* [http://www.legislature.mi.gov/\(dsoow5jocligcy5523knyh45\)/mileg.aspx?page=getObject&objectName=mcl-168-798b](http://www.legislature.mi.gov/(dsoow5jocligcy5523knyh45)/mileg.aspx?page=getObject&objectName=mcl-168-798b)

⁷ibid. MCL 168.798b Electronic tabulating equipment; unofficial and official returns; manual count.

⁸168.823 Board of county canvassers; power to summon and open ballot boxes; correction of errors; summoning of election inspectors. *“If it is found, upon the convening of the board of canvassers, that the returns from any of the boards of election inspectors of the several election precincts are missing, incomplete or incorrect, or for any other reason it is found necessary, then the board of county canvassers shall have power to adjourn from day to day until the returns shall have been procured or corrected. The board of canvassers are empowered to summon the persons having the boxes containing the ballots cast at the election and the keys and seals of the boxes, or having the returns or the poll lists or tally sheets used and made at the elections, to bring the boxes, keys, seals, returns, poll lists and tally sheets before the board, and the board of canvassers are authorized to open the boxes and take therefrom any books or papers bearing upon the count and return of the election inspectors of the election precincts, but they shall not remove or mark the ballots therein. The board of canvassers shall correct obvious mathematical errors in the tallies and returns and, when deemed necessary for a proper determination, may summon the election inspectors before them, and require them to count any ballots which they failed to count, to make correct returns in case, in the judgment of the board of canvassers after examining the returns, poll lists or tally sheets, the returns already made are incorrect or incomplete, and the board of canvassers shall canvass the votes from the corrected returns. When the examination of the papers is completed, or the ballots have been counted, they shall be returned to the ballot boxes or delivered to the*

persons entitled by law to their custody, and the boxes shall be locked and sealed and delivered to the legal custodians thereof.”

[http://www.legislature.mi.gov/\(dsoow5jocligny5523knyh45\)/mileg.aspx?page=getObject&objectName=mcl-168-823](http://www.legislature.mi.gov/(dsoow5jocligny5523knyh45)/mileg.aspx?page=getObject&objectName=mcl-168-823)