

SENATOR HERRING INTRODUCES VERIFIED VOTING BILL

Last November, voters in Ashland, Virginia went to the polls to choose their county supervisor. Unfortunately, due to the limitations in Virginia's election laws, we will never know with certainty which candidate the voters actually selected. The voting machines rejected nineteen paper ballots. The margin between the candidates was only fifteen votes. Nonetheless, the court overseeing the recount declared that officials could not even examine the rejected nineteen ballots. Rather than verifying the accuracy of the election, the recount simply restated the original results.

Now Senator Mark Herring (D-Loudoun) has introduced legislation into the General Assembly that would prevent a replay of the Ashland case. SB 292 would safeguard the integrity of Virginia's voting systems by requiring meaningful, well-controlled recounts. The bill directs election officials to compare the electronic counts of a sample set of machines with the results of hand counts of paper ballots. This ensures that the machines were properly programmed and calibrated, rather than simply assuming no errors occurred. Secondly, the bill provides a clear rule specifying that uncounted ballots must be examined in those cases where the machine-rejected ballots could change the election outcome (as in the Ashland election). In the absence of such a rule from the General Assembly, courts have been reluctant to use their discretion to allow those ballots to be examined. Finally, the bill would also give election officials a means to investigate tabulating machines they have reason to believe may have malfunctioned on election day, an option not available under current law.

"It is critically important in a democracy that voters have confidence in the outcome of an election," said Senator Herring. "They need to know their votes have been counted correctly. In a tight race, even a small computer error could lead to a false outcome—and you won't know it if no one's checking. That's not fair to the candidates, and it's not fair to the voters."

The legislation would only apply to voting systems that use paper ballots fed into optical scan tabulators. The electronic touchscreen machines known as DREs that are still in use in many parts of Virginia do not produce a paper record, making recounts and audits impossible. Last year the legislature banned future purchases of the touchscreen machines in response to serious security and reliability concerns. Jurisdictions that use them are expected to transition to paper ballots and optical scanners over the next several years.

Senator Herring worked with computer experts, lawyers, and voter advocates from the Verifiable Voting Coalition of Virginia (VVCV) to develop the recount and audit procedures. The group was instrumental in lobbying for last year's DRE ban, and the passage of SB 292 is their top priority this year.

"Optical scanning is the most reliable and secure technology being used in the U.S. today," said Alex Blakemore, a computer scientist who is one of the coalition's leaders. "Besides its simplicity and low-cost, it lets you compare the machine results against the

paper ballots filled out by the voters. But a paper trail guarantees the accuracy of the count only if someone's checking the paper. Right now, there's no provision in Virginia law to look at the paper ballots, even in those jurisdictions that use them."

Sharon Henderson, a lawyer who works with the coalition, agreed. "It's almost impossible to detect any errors that occurred during the administration of an election as the result of a recount conducted under current law. For the most part what is called a recount consists of having a computer spit out the same results it gave you the first time."

Dr. Blakemore cited a number of incidents where election machines have malfunctioned in recent years to produce suspect results, including documented cases in North Carolina, Indiana, Ohio and other states. He said one telling case occurred in Wayne County, North Carolina in a 2002 state election. As in the Ashland case, it was a close election using optical scan tabulators. But unlike the Virginia recount, North Carolina officials checked the paper ballots and found that a programming error in the tabulator had altered the outcome of the election. That case had a happy ending: the error was caught and fixed, and the candidate the voters had chosen was sent to the state capital. If a similar mistake were to occur in Virginia – and perhaps it has, notes Blakemore – there would be no way to detect it despite the appearance of a recount. In that case, voters might continue to use the machine in future elections, not knowing a problem existed. Senator Herring's bill, SB 292, is designed to make sure this doesn't happen.

The Verifiable Voting Coalition of VA includes Virginia Verified Voting, the New Electoral Reform Alliance for Virginia (New Era), the Virginia Libertarian Party, the League of Women Voters of Virginia, Common Cause, the Southern Coalition for Secured Voting, and the Virginia Organizing Project.

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