



## Is America in Danger of a Federal Takeover of Our Elections?

The Obama administration has appointed a bipartisan presidential commission with the stated purpose of recommending changes in election procedures supposedly to streamline our elections. No fewer than five bills to increase federal control over American elections have been filed in the 113th Congress. Even a cursory review of the five bills already proposed reveals an unconstitutional federal power grab over American elections. If these measures are passed, they would also result in a drastic reduction in the remaining electoral safeguards left in at least some of the states.



The bills submitted so far:

- HR 50 — Streamlined and Improved Methods at Polling Locations and Early Voting Act of 2013 (SIMPLE) submitted by George Miller (D-Calif.).

This bill would force the states to implement early voting.

- HR 280 — Same Day Registration Act of 2013 submitted by Keith Ellison (D-Minn.).

This bill would force the states to implement same-day voter registration.

- HR 281 — Voter Access Protection Act of 2013 submitted by Keith Ellison (D-Minn.).

This bill would repeal all state laws that require photo ID for voting.

- HR 289 — Value Our Time Elections Act of 2013 (VOTE) submitted by James Moran (D-Va.).

This 50-page bill would expand the already unconstitutional Election Assistance Commission (EAC) gradually making it the federal bureaucracy that runs America's elections.

It would force the states to implement Internet voter registration and even allow digital signatures in voter registrations. It would also mandate that the states implement automatic voter registration, which is dangerously on the path to universal voter registration.

This bill has a list of information to be gathered for these automated voter registrations. One major omission is the source of the voter registration. While it doesn't prohibit the states from recording voter registration source information, federal standards have a way of becoming de facto state standards. Voter registration source information, whether it be a computer source or the name of the registrar, can be a key part of an evidence trail that can help investigators get from one suspect voter registration to others that came from the same origin.

Under the guise of such innocent-sounding descriptions as "prevention of unauthorized access" and "confidentiality," this bill could easily stifle efforts by concerned citizens to verify voter registration and have fraudulent voter registrations deleted. American elections depend on openness and transparency



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of all aspects including voter registration information to safeguard elections from fraud.

This bill would also prohibit the use of these voter registrations for determining citizenship.

- S 9 — Clean and Fair Elections Act submitted by Harry Reid (D-Nev.).

This bill, while short on specifics, generally endorses all of the above and could easily be modified to include the specifics in the House legislation listed above. Like all the bills above, it calls for unconstitutional increases in federal regulations of our elections.

## Constitutionality of Federal Election Laws

When the U.S. Constitution was submitted to the states for ratification in 1787, one of the objections was the wording in Article I, Section 4:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing [sic] Senators.

This specific grant of power was not listed amongst those in Article I, Section 8 and the verb used is “may” rather than “shall.” Alexander Hamilton wrote in *The Federalist*, No. 59 that the intent was that Article I, Section 4 be used only to address specific situations and was not authorization for widespread or permanent federal regulations of elections:

They have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

Suppose an article had been introduced into the Constitution, empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments?

The Anti-Federalists proposed the following amendment to ensure Article I, Section 4 wouldn't allow for federalizing elections:

That Congress shall not modify, alter, or interfere in the times, places, or manner of holding elections for senators and representatives, or either of them, except when the legislature of any state shall neglect, refuse, or be disabled, by invasion or rebellion, to prescribe the same.

Hamilton's explanation of Article I, Section 4 became the generally accepted understanding of its intent. The amendment proposed by the Anti-Federalists was never ratified because the states felt it was unnecessary.

## Already Inflated Voter Registration Lists

The National Voter Registration Act of 1993, aka Motor Voter, ordered the states to implement automatic voter registration. Automatic voter registration, whether it be by postcard or direct computer-to-computer transfer, has already shown itself to be a source of over-registration.

- The Heritage Foundation released a report in 2008 saying: “In 2005, the U.S. Government Accountability Office found that up to 3 percent of the 30,000 individuals called for jury duty from voter registration rolls over a two-year period in just one U.S. district court were not U.S. citizens.”
- John Fund wrote in his book *Stealing Elections* that in 2004 Sandberg Hall on the campus of Marquette University had just over 2,600 students living there. An amazing total of 5,217



registered voters listed that as their address.

- There are numerous counties in America where the total number of registered voters in 2012 exceeded the total numbers of people eligible to vote as indicated in the 2010 Census.

### **Inherent Dangers of Early Voting**

Any time a ballot box spends time behind closed doors is a temptation for tampering. Former Chicago alderman and city clerk James Laski explained in his book *My Fall From Grace — From City Hall to Prison Walls* how some of the people with access to absentee ballots altered them while he was in office. Laski wrote:

There was an art to opening absentee ballots. In most cases, steam would be the way to go, because nobody could tell that the envelope had been tampered with after it had been resealed. Another method was to carefully use a letter opener, which required patience and skill to separate the flap from the glue and the rest of the envelope.

Other beneficiaries of early voting would have to include repeaters. Repeater is the nickname given to the people who vote multiple times in elections using other people names. They're where the rubber meets the road when fraudulent voter registrations need to be turned into votes. The more days the repeaters have for voting, the more opportunity repeaters have to vote early and vote often. This security weakness becomes even greater in states that don't have voter ID requirements.

### **Long Waits for Voters at the Polls**

The chief argument for implementing early voting is long lines at the polls. However, most advocates fail to note how heavy-handed federal requirements are at least partly to blame for the long lines.

The Help America Vote Act of 2002 (HAVA) has contributed to bottlenecks for voters because many states have purchased HAVA-compliant equipment that must be tied up by each voter as he makes his selections. Paper ballots and optical scan ballots are incredibly more efficient in this regard because voters can take the ballots to voting booths, make their choices there, and tie up the electronic equipment for only a few seconds while they insert their ballots. Paper ballots and optical scan ballots also have the obvious security advantage of being part of a paper trail to ensure the electronic equipment isn't malfunctioning or hasn't been fraudulently tampered with.

HAVA should be repealed for many other reasons, not the least of which is it's unconstitutional. HAVA was the law that forced the states to buy electronic voting equipment, much of which has no voter-verified paper trail for recounting ballots. Reducing the long waits at the polls is yet another reason to repeal HAVA.

Another bottleneck for voters is caused by inefficient voter check-in. Such delays are inexcusable. While it is heartening to see reports that the Obama administration's task force will include experts in customer service from the private sector, the Constitution requires this problem should be a matter of state law, not federal. It also raises the question of why these customer service experts are being consulted now rather than earlier when there was time to prevent having the public led by the nose into accepting early voting.

While it is not known how many of the long waits at the polls are caused by the repeater voters, any action taken to clean up voter registration lists and limit the number of votes per person to one will also help reduce the wait times and the long lines.

### **Confidentiality — a New Threat to Electoral Integrity**



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Some states already allow confidential voter registrations. They usually cite witness protection or battered women as the justification. The dangers of allowing confidential voter registrations are obvious. It's an invitation to pack the voter rolls with registrations that can't be vetted by volunteer groups opposed to vote fraud.

The wording in HR 289 sounds as if it would make only certain information on voter registrations forms confidential, but in practice that would mean access to the whole voter registration document would be denied. The only way to have honest voter registrations lists is to have no confidential voter registrations and all information on all voter registrations be unrestricted public information available for public inspection for the purposes of assuring electoral integrity.

Confidentiality is a nice-sounding word. But what it really means is "behind closed doors." One of the means employed by Adolf Hitler to wrest power from the people and gain control over them was the behind-closed-doors vote-counting in Nazi elections. The rules by which ballots were either counted or discarded were not made public. The reporting of election results came under the authority of the Reich Ministry of Enlightenment and Propaganda, and vote totals were kept behind closed doors until the government decided to announce them.

Hitler wasn't the only scoundrel to hide his electoral frauds behind closed doors. Josef Stalin was equally skilled, if not better. U.S. Ambassador Arthur Bliss Lane wrote in his book *I Saw Poland Betrayed* that unbiased observers estimated the Polish Peasant Party received about 60 percent of the vote in the election of January 19, 1947. Yet the communists claimed a landslide victory and then simply ignored the massive protests. Massive protests after a dishonest election accomplish very little.

It is incredible to note how many facets of American elections are no longer observable by the public. Whether it is called "confidentiality" or "behind closed doors," elections that cannot be monitored by the public and the press inevitably lead to electoral fraud. Even if the elections are run honestly at first, at some point the behind-closed-doors operations will be too much temptation for someone to resist.

### **Chances of Passage**

These bills have the full support of the Obama administration, and there is currently little or no opposition amongst Republicans. The *New York Times'* online publication nytimes.com reported on February 14 that Robert Bauer and Ben Ginsberg, lawyers for the Obama and Romney campaigns, will be working together on a commission to streamline our voting. That kind of bipartisan coalition building usually results in the establishment leaders of both parties working together to ensure passage.

Another danger is the possibility these bills may appear to have stalled, but their provisions could be surreptitiously placed into other legislation as riders. The National Defense Authorization Act (NDAA) for 2012 is an example. A defense authorization bill is supposed to be an appropriations bill, but sections 1021 and 1022, allowing for indefinite detention of Americans, were added.

Lesser known is that a similar rider, this one authorizing Internet voting for the military and overseas voters, was attached to the NDAA for 2010. On July 8, 2009, Senator Charles Schumer (D-N.Y.) submitted S 1415, The Military and Overseas Voter Empowerment Act. Section 15 of that bill, entitled Technology Pilot Program, had a provision for allowing a presidential designee to implement voting using:

The transmission of electronic voting material across military networks ... Virtual private networks, cryptographic voting systems, centrally controlled voting stations, and other information security techniques ... The transmission of ballot representations and scanned pictures in a secure manner.



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In other words, Internet voting under the direction of someone appointed by the president — way too much power to be given to any president.

S 1415 was never passed into law, but most of it became law after being attached as a rider to the NDAA for 2010 (HR 2647). For example, Section 15 of Schumer's bill became Section 596 of the NDAA for 2010. *The New American* contacted Senator John Cornyn (R-Texas) asking how this bill got amended in committee without stirring up opposition by Republicans. John Wood of Senator Cornyn's staff responded via e-mail:

The provision was initially introduce [sic] by Senator Cornyn and then was later driven by another Republican, Senator Saxby Chambliss (R-GA). Senator Chambliss fully understands the importance of the military vote having just had a closely contested election in 2008. To this end, he helped champion the Technology Pilot Program which is a very good provision and was bi-partisan as you noted to include Senator Schumer (D-NY). The final result was a very positive step to ensuring that overseas military voters are able to fully participate in the United States elections despite being stationed throughout the world.

And that's how Schumer's bill for Internet voting became part of the NDAA for 2010. Bills such as the NDAA are considered "must-pass" legislation. And any must-pass bill in Congress is a favorite target for riders.

Another danger could be S 9 by Harry Reid. It looks innocent and might pass both houses with similar but not identical wording. When a bill is passed by both houses with any differences in the wording, it is sent to a committee to resolve the differences. The resultant bill is usually passed without debate under the assumption that the changes were minor. If the committee makes major modifications to the bill, it would require an alert congressman or senator to point that out and require debate on the bill.

### **What Should Congress Do?**

Congress needs to repeal the National Voter Registration Act of 1993 (Motor Voter), the so-called Help America Vote Act of 2002 (HAVA), and any other forms of automatic voter registration, especially those with direct computer-to-computer transfers with no paper trail and no record of who the registrar was and no record of what form of identification was used to vet the person registering.

These five unconstitutional bills should not be passed. The weaknesses they would put into our electoral security makes them unwise even if they were constitutional. The best things the federal government can do are 1) Stop making matters worse and 2) Undo the damage they've already done.

### **What Should the States Do?**

The states need to restore the ability to delete inaccurate or fraudulent voter registrations. They should start now to improve the efficiency procedures for voter check-in without waiting for the presidential commission. They should cooperate with volunteer groups of citizens who are trying to clean up the voting rolls. They need to restore laws that made polling places public and election observers needed not apply in advance to be at the polls on election day. They must re-open the other electoral processes that have been slowly removed from public access, such as counting absentee ballot counting, and restore that access to the public. Finally, they should make precinct totals public information immediately after the vote counts.

Openness is the best disinfectant, and our elections need it.





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