

2009 Election Study Group
Travis County, TX

Report
of
ALTERNATE
Findings and Recommendations

April 2, 2010
Revised July 1, 2010

**Prepared by VoteRescue,
Member of the 2009 Travis County Election Study Group**

and

**Supported by the following Election Study Group Members:
Gray Panthers of Austin
Travis County Green Party
League of United Latin American Citizens (LULAC), District 12**

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I. INTRODUCTION

This *Report of ALTERNATE Findings and Recommendations of the 2009 Election Study Group in Travis County, TX* is respectfully presented to not only the members of the Travis County Commissioners Court, but to the citizens and voters of Travis County. Our subgroup of the 2009 Election Study Group may be small in number, but together we represent significant segments of the voting electorate and stand in distinct contrast to the other study group members who were invited as government entity representatives, computer experts, election judges and the media. The electorate segments we represent include seniors, minorities and the broad coalition of citizens knowledgeable of the constitutionality of their right to vote and of their civil liberties. As increasing numbers of citizens realize the serious consequences of the *deaf ear syndrome* that elected officials now seem to exhibit more blatantly than ever, the number of voices supporting the recommendations of this report will only continue to grow.

We are fully aware that this report will not be well liked by the Travis County Clerk or her Election Division management team because it not only presents a very different course of action than the one they envision for future elections in Travis County, but it takes a critical look at the study group format and process itself. Nonetheless, we expect this document to still be linked with the other findings and recommendations, as previously promised, in order for them both to become part of the important public discourse about the future course of our elections here in Travis County.

II. EXECUTIVE SUMMARY

There are a number of disturbing trends occurring with the fundamental electoral process in this country that have been developing over the course of many years: near-impossible ballot access by third parties or independents, stricter voter ID legislation, the dismantling of voting rights protections at the federal level and more insidious versions of minority voter disenfranchisement, to name a few. But the sophisticated persuasion of the American voters to buy into electronic voting is the worst by far.

The fundamental basis of this report is the irrefutable truth that the counting of votes should be done in full public view, not in secret, so that all individuals and groups who have a vested interest in the outcome of an election will know for certain that all the votes were counted and that they were counted correctly. It is only with this sense of confirmed certainty that public confidence in the election results can be achieved.

The most serious problem with the way we vote in Travis County is that our votes are, in fact, being counted in secret – not in some locked back room but, nonetheless, out of sight inside desktop-size electronic devices that run on trademark-protected computer software created and controlled exclusively by a large private corporation. It would

make no difference if the counting software were to become “open source” as some envision the solution to the corporate control of election software because it is simply a clever sleight-of-hand and will *not* alter the basic truth that votes would still be counted out of public view. Some will also argue that it is a vast improvement on the way elections are administered today, when *no one* is allowed to readily review election software, but even open source will still keep the average voter having to rely on computer experts to assess the security of the software on their behalf.

If our votes are counted out of sight, how can we know that the persons (or measures) that are declared the winners have received the true consent of the governed? Instead, we are now made to simply “trust” those who tell us that the reported results are correct. But elections should not be about TRUST or a perception that everything is fine. For the same reasons the structure of our government was established with important checks and balances, elections must be built on implicit DISTRUST. As Benjamin Franklin once said: *“Distrust and caution are the parents of security.”*



Justices of the German Federal Constitutional Court.

Last year, the German equivalent of the U.S. Supreme Court found electronic voting to be unconstitutional and banned all electronic voting in their country’s public elections. In an article by Michael Collins published on [dailycensored.com](http://dailycensored.com/2009/10/19/a-censored-headline-and-why-it-matters/) found at <http://dailycensored.com/2009/10/19/a-censored-headline-and-why-it-matters/>, he wrote, “[The Court] reasoned that electronic voting is not verifiable because citizen votes are counted in secret. It obscured a technology inaccessible to all but a very few initiates. Most importantly, the German high court noted, electronic voting machines don’t allow citizens to ‘reliably examine, when the vote is cast, whether the vote has been recorded in an unadulterated manner’”. This European democratic republic, the fourth largest economy in the world, has set an incredible example for the U.S. to now follow.

As Germany is demonstrating, the only time-tested solution still used by nearly all the democratic nations in the world that provides voters with “an accurate, fair, secure, transparent [i.e., viewable and understandable to the public] and accessible voting system” is the use of voter-marked* hand-counted paper ballots. To ensure an uninterrupted, publicly observable chain of custody, the paper ballots must be cast and kept secured in a publicly viewable ballot box until they are publicly hand counted at

the precinct level immediately after the close of the polls on Election Day with the results publicly posted at the precinct before any election-related information or documents are conveyed in any manner to any other location. From this “bottom rung” public display of the results at the precinct level, on up to the final tabulation of county, state or nationwide totals, it is just a matter of using simple addition...by anyone, citizens and election officials alike. This system of building up from a publicly-confirmed base of precinct totals is the great equalizer of access to election results that are *known*, not trusted, to be correct.

**In order for voters with a broad range of visual or dexterity impairments to mark a ballot privately and independently as required by the Help America Vote Act of 2002 (HAVA), an electronic ballot-marking device, such as the AutoMARK, or a non-electronic voting-assist device, such as the Vote-PAD (now discontinued), which allow the disabled voter’s ballot to be publicly hand counted could be used. Only one of these marking devices per polling place is required by HAVA. Some states, such as CA and OH, have banned the widespread use of Direct Record Electronic voting machines (including the same machines used in Travis County) because they can be undetectably manipulated, but are allowing their continued use by disabled voters. However, these unsecurable machines are still secretly casting and counting the votes and are putting these votes at a much greater risk of not being counted as the voter intended.*

III. STUDY GROUP MEMBERS SUPPORTING THIS REPORT

1. VoteRescue

ESG Representatives (Rotating): Karen Renick, Vickie Karp, Abbe Waldman-DeLozier and Jenny Clark

Background on VoteRescue

Since 2003, a small group of dedicated election integrity experts living in Austin has been providing elected officials at both the county and state level with an ever growing stack of reputable institutional and governmental studies, books, videos and articles that all clearly explain the serious operational flaws and security vulnerabilities found in the various electronic voting systems used in Travis County and throughout Texas.

In early 2005, VoteRescue was formerly founded as a non-partisan citizen-based organization to assist in educating the public about the serious problems with electronic voting and to form partnerships with other groups also concerned with the increasing lack of response from elected officials. In August 2007, a state-wide coalition, *Texans for REAL Elections*, was started by VoteRescue. Partners now include Independent Texans, Texans for Accountable Government (TAG), Texas Motorcycle Rights Association (TMRA2), Instruments for Peace, Code Pink Austin, TruthSeekers Austin

and Project for the New American Citizen. Although they have not been officially inducted into *Texans for REAL Elections*, we hope in the near future to be able to also list as our partners the groups supporting this report.

In addition to sitting down with numerous government officials, to educate them on the serious security flaws inherent in all types of electronic voting systems, VoteRescue members have also presented testimony in opposition to the electronic voting systems in public hearings called by the Secretary of State of Texas and the State Legislature over the past seven years. In the last two sessions of the Texas State Legislature, VoteRescue helped author a bill, introduced by Rep. Lon Burnham and Rep. Donna Howard, respectively, which called for the repeal of Title 8 (Voting Systems) of the Texas Election Code and for the enhancement of the security protocols for hand counting paper ballots which are already permitted under the Election Code. During the Interim Session of the Legislature in 2008, VoteRescue was asked by the Chair of the House Elections Committee, Rep. Leo Berman, to bring in national experts to testify about the serious security concerns of electronic voting, which we did.

In 2009, VoteRescue organized, trained and supervised the hand-counted paper ballot Delegate Elections to the Continental Congress 2009 at eighty-four Election Day Voting Centers across the country. Absentee ballots from nearly every state were also hand-counted by teams of VoteRescue volunteers here in Austin at the Lyons Gardens Senior Community Center in conjunction with the Gray Panthers. Other local groups and political parties at the state level have also requested and received our help to run their elections with hand-counted paper ballots.

Over the years, we have found that every time ordinary citizens participate in one of our events that demonstrates the secure, open system of hand-counted paper ballots, they feel empowered and understand, often for the very first time, what taking elections into their own hands truly means for their future and their children's future.

2. **Gray Panthers of Austin**
ESG Representative: Clint Smith, Gray Panthers National, *Board Member*
(See Appendix A for “*Gray Panthers Raise Questions about Implications of 1965 Voting Rights Act on Future Electoral Changes in Travis County, TX*”.)
3. **Travis County Green Party**
ESG Representative: Bill Stout, Green Party of Texas, *Legislative Liaison*
4. **League of United Latin American Citizens (LULAC), District 12**
ESG Representative: Fidel Acevedo, LULAC District XII, *Representative*

IV. BACKGROUND ON ELECTION PROBLEMS IN TRAVIS COUNTY

A Significant Difference of Perspectives

There is a striking difference of perspectives among the primary stakeholders involved in the debate about the problems with our elections in Travis County and it is important to understand these differences.

Over the past several decades, our County Clerk, Dana DeBeauvoir, has built a distinguished career here in Texas and earned a national reputation by wholeheartedly embracing the electronic voting revolution that overtook the country after the passage of the Help America Vote Act of 2002. She certainly is to be commended for the magnitude of time and energy she has devoted to her long-held position. Her top-notch staff who run the County Elections Division are also to be highly commended for their tireless efforts over the years to create and maintain a first class election office. Their procedures are impeccable. It's the voting system they use to conduct our elections that is the problem.

It is quite clear when one reads any recent treatise written by Ms. DeBeauvoir that she remains resolutely convinced, as many of her peers do, that the future of elections in Travis County and elsewhere *will* involve the use of some newer incarnation of electronic voting that will still, at the very least, count all our votes – *in secret*.

So, while the concerns of the County Clerk and her election staff remain entirely focused on maximizing the potential of electronic voting, without question, more and more voters now want to step back away from the trees to fully view the forest and ask, "Why are we, and why have we been, using a voting system that provides us with no way of knowing for certain that our votes are counted correctly?"

In her upcoming article, "Doing Things Differently This Time Around – *Perspective from an Elections Administrator*", Ms. DeBeauvoir presents a refreshingly candid overview of the frustrations experienced by the various players on the election stage during these past "rocky years". These players include election administrators such as herself, the voting machine vendors, the computer security academicians and experts, and the vast array of government agencies. The only player, ironically, who didn't receive the same degree of attention as the others in her article was the most important of all – the voter.

We applaud her frankness in an attempt to "get it right" on a second time around, but wish to point out that practically every item on her lists about the new "roles" every player "must" take on and the questions about "Where to start?" would become moot if she, too, could stand back from the forest with us, the voters, and look back at it with a fresh perspective. For that matter, all of our elected officials should do the very same thing for a change – for the right change.

Perhaps even more relevant questions are: How do We, the People, get our public servants to see the concerns of the people – the voters – from the *voters'* perspective instead of their own? And, Why are our election officials *allowing* private corporations who have private financial interests to provide the programming, software, equipment and assistance to *any* aspect of our elections when there is an alternative that is totally in the voters' best interest.

V. MISSION STATEMENT OF 2009 ELECTION STUDY GROUP

The Mission Statement of the 2009 Election Study Group was presented to the Travis County Commissioners Court by the County Clerk in her document entitled "*Outline of Study Group Mission, Background Issues, and Process*". (The original document was revised after comments were submitted to the County Clerk from VoteRescue.) The revised version reads as follows:

1. Ensure that Travis County voters have an accurate, fair, secure, transparent to the public, and accessible voting system.
2. Determine a minimum and maximum time range as to when replacement of the current voting system is necessary. When the voting system was purchased in 2003, it was assumed that the life of this type of technology was at least ten years.
3. Evaluate concerns regarding the existing electronic voting system and any other type of system that may be under consideration. These concerns include, but are not limited to, security; ease of use for voters; intent of voter issues; accessibility; accuracy of count; transparency to the public, and efficient use of taxpayer money to purchase, operate, and maintain a system.
4. Make recommendations to Commissioners Court regarding options for upgrading or replacing the current election system.

The following section is also pulled from the County Clerk's revised outline and is helpful for a better understanding of the intended scope of the study group's mission:

A Careful Review of the Different Voting Systems will be Required:

A major responsibility of this Study Group will be to develop a working knowledge of the different voting systems that have been certified at the state and federal level. This includes systems that have met full ADA compliance. With this background, the committee can develop a list of the pros and cons of each system and determine where additional research is needed. **A risk analysis of key negative aspects of each system will be required** [our emphasis]. The main categories of systems that will be reviewed are hand-counted paper ballots, optical scan systems (with and without precinct ballot counters), and electronic voting (with and without a voter-verified paper trail). We will also want to review new technologies in development for the future.

VI. OBSERVATIONS OF THE STUDY FORMAT AND GROUP PROCESS

As group participants, we believe it is fair to include our observations of the actual study group format and process because the outcome of any endeavor relies heavily on the establishment of these parameters from the outset. Since most persons reading this report and the report by the County Clerk were not present during any of the sessions, we would like to offer the following observations. Persons interested in viewing the recordings of the sessions, may go to the Travis County Elections Division webpage http://www.co.travis.tx.us/county_clerk/election/study_group_2009/default.asp.

Study Group Size and Group Dynamics

Originally, the number of proposed participants discussed by the County Clerk (and the number of those involved in the previous Election Study Group in 1999) was around 20 to 25 total. Although a tad on the high end for getting into full participation by all group members in a “round table” setting, it would have sufficed for the intended purpose of the 2009 Election Study Group.

The County Clerk decided that the total number of study group participants would be increased to forty-five, nearly twice the number originally proposed.

In our opinion, this one decision had a significant negative impact on the format and process of the group, as well as on the interactions among the members. It was no longer a group setting where members could sit around a common table facing their colleagues for easier and more interactive conversations, but rather it was forced to become a classroom setting with rows of tables all facing in one direction. From the beginning, we were all were back in school with the teacher in the front, raising our hand for permission to speak. Depending on where one sat in the room during a particular meeting (there were no seat assignments), one would only see the back of the heads of the people in front (if they weren't on the front row) and were unaware of all those sitting behind. It is true that polite conversations with one's flanking neighbors could occur before and after the meeting, but getting to know the entire group was near to impossible because of the large numbers and the seating arrangement.

Therefore, there was no opportunity for real, honest group-level conversations between the members. Typically, if there wasn't a presentation, the discussion or Q & A session was always moderated by the person “in charge” at the front acting as the broker or director between group members. More often than not, this individual was the County Clerk or the Elections Division Manager. Therefore, getting to know the wisdom and knowledge that each participant brought to the study group was impossible due to the large size of the group. Most likely there were many who did not share their thoughts with the group because of its size and so when the more vocal participants (such as VoteRescue) chimed in often during the “allowed” discussion times, those persons came across to some (we're certain) as being too assertive for the more regimented classroom-type decorum.

Additionally, though the names of all study group members were distributed prior to or during the first meeting, e-mail addresses or phone numbers of members were never distributed to the group; in fact, communication between group members outside of the study group setting was discouraged and even thought to be in violation of “open meeting” laws by a city official in the study group. Though we and a few other members were able to distribute additional handouts to the group, we all had to obtain prior permission to do so. In all these different ways, fairly tight control was maintained over extracurricular discussion and dialogue among the group members during the course of the study.

Elections 101, not a Think Tank

As was stated by the County Clerk in her outline for the study group, a “working knowledge” of the different potential voting systems would first need to be developed before more substantive discussions could occur. The goal of dispensing the “nuts and bolts” information about elections was definitely accomplished over the course of the eight sessions which gave the overall experience of the study group a feel more like that of a college lecture course (in fact, one of the initial sessions *was* titled “Elections101”) than an in-depth discussion group about stakeholders’ concerns, the pros and cons of the potential options and the risk analyses of each. More meaningful, roll-up-your-sleeve-and-let’s-get-serious-type conversations never happened.

VII. ALTERNATE FINDINGS

- a. The major failure of the study group agenda was its notable lack of a comprehensive presentation on the true security problems inherent with electronic voting systems of all types. Instead, these security concerns were dismissed as something that Travis County voters did not need to be concerned with. The message given by the County Clerk was that these types of security issues only happen rarely, in other settings and on other, less secure election equipment than that currently being used here. This was a very misleading view that became group-think early on in the study group.
- b. Glaringly missing were any mention by the Clerk or her staff of the numerous academic and governmental studies about electronic voting that have been published over the years which provide irrefutable evidence of the very security problems that caused VoteRescue to appeal to the County Commissioners for relief in the first place. Posting these studies to the county website does not constitute bringing this information to the attention of the group during live sessions, which should have led to at least one or even several study group discussion sessions on the security topic; this would have likely caused the security issue to hold a much higher priority position and be addressed in more comprehensive detail in the group’s final recommendations.

- c. Because the County failed to do so in any meaningful way during the first five study group sessions, VoteRescue felt it necessary to present at least some of the “hard evidence” on security issues during the first half of its September 23rd presentation on hand-counted paper ballot elections;
- d. Other than a brief discussion of the Voterescue presentation during the next session, the evidence presented was never mentioned, explained, discussed, or debated by the County; instead it was simply dismissed out of hand by the Elections Division staff with no mention or explanation offered, for example, of the Dan Wallace interview (Associate Professor of Computer Science from Rice University and nationally-recognized computer security expert) in which he clearly explains why each of the three types of testing done by the Travis County Election staff cannot protect against undetectable vote total manipulation. This evidence alone should be enough to discontinue the use of Hart eSlate machines here in Travis County. Nor was there any reaction or discussion about the ease with which optical scanners could be hacked, as demonstrated in the video clips we showed the study group on September 23rd from the 2007 Emmy-award nominated film, “Hacking Democracy”.
- e. The study group members did not have the opportunity they needed to fully grasp the serious situation that exists with Travis County elections: instead of demanding more answers to the irrefutable evidence against the machines presented by VoteRescue, the majority of group members still managed to deem our elections “safe” as if none of that information had ever been brought up. Clearly, this was a case where the messenger was perceived as an outside threat and therefore, both the messenger and the message were dismissed, hence, illustrating the vital importance of the group members hearing this same information directly from the perceived “teacher”, the County Clerk. This did not happen.

VIII. ALTERNATE RECOMMENDATIONS

The twelve recommendations of the 2009 Election Study Group, as last drafted by the Travis County Clerk and issued to the group members for comments in December 2009, are included below in *italics*. Immediately following each one is the corresponding ALTERNATE Recommendation.

No. 1

The 2009 Election Study Group recommends a move as soon as possible away from an all-electronic voting system because of these systems’ potential vulnerability to computer attacks and the public’s concern that these attacks might be possible.

ALTERNATE Recommendation No. 1

We agree that such a move must be made, but instead recommend that the move be made immediately, as opposed to “as soon as possible”. In numerous reputable studies, all-electronic voting systems, also known as a Direct Recording Electronic (DRE) voting systems, have been proven to be vulnerable to undetectable fraudulent manipulation both in advance of and during elections, as opposed to having “potential” vulnerability. (California Secretary of State Debra Bowen’s July 2007 “Top To Bottom Review”, Ohio Secretary of State Jennifer Brunner’s December 2007 “Project Everest” study, Princeton viral hacks by Professor Ed Felton, etc.) More importantly, these voting systems count votes secretly inside the computer, i.e., out of the public’s view. Counting votes in secret is in direct violation of the Texas State Constitution, Article VI, Section 4, which demands that the purity of the ballot box is preserved in all elections. How can the purity - the untainted accuracy of the votes - be preserved if the counting is done in secret?

No. 2

The 2009 Election Study Group finds that no voting system is 100% tamper proof, but recommends Travis County move to a system that has the advantages offered by combining both a paper ballot and an electronic count and also meets the other requirements this Group finds fundamental.

ALTERNATE Recommendation No. 2

We agree there is no perfect voting system, but recommend Travis County move to a hand-counted paper ballot voting system because it is the only voting system that can provide a continuous, publicly observable chain of custody of the votes and hence maintains the “purity of the ballot box”. An “electronic count” uses ballot-scanning electronic machines that use computer software proven (in the same reputable studies) to be just as vulnerable to undetectable manipulation as the DRE voting systems and secretly counts the votes, as well, therefore violating the rights of Texans as guaranteed by the State Constitution.

No. 3

The 2009 Election Study Group concludes that a move to a new system at this time would be premature because the market does not currently offer a voting system that meets the standards this Group has deemed essential and because election equipment vendors are now entering a stage where they are actively developing and/or preparing to release new generations of voting systems.

ALTERNATE Recommendation No. 3

We conclude that a hand-counted paper ballot voting system, which can be implemented immediately, would entirely eliminate the (mistaken) need to wait for election equipment vendors to develop the new generation of voting system. The tried and true voting system of hand-counted paper ballots meets all the standards deemed

essential to us including supporting the local economy of Travis County by spending the tax dollars to hire citizens to publicly count votes instead of using the people's money to pay the vendors the high dollar amounts for their machines to count our votes in secret.

No. 4

The 2009 Election Study Group commends and supports the County Clerk's current emphasis on security. While the Group has concerns about all-electronic voting in general, the extensive information and demonstrations provided by the County Clerk show that the Travis County Clerk's Office provides safeguards beyond those provided by law and incorporates numerous practices that minimize risk. The Group believes the manner in which Travis County has implemented electronic voting makes it as or more secure than most other systems currently in use, even those that incorporate a paper ballot.

ALTERNATE Recommendation No. 4

As mentioned in the "Alternate Findings" section, we support the extensive discoveries of computer security expert and Rice University professor, Dan Wallach – one of a handful of persons worldwide who has been permitted to examine the Hart Intercivic eSlate voting system used in Travis County. Professor Wallach has stated on numerous occasions, including a taped interview presented to the study group by VoteRescue, that the three types of security testing done by the staff of the Travis County Election Division on the Hart eSlate machines would *not* be able to detect malicious tampering done at any time to the software. Hence, the County's continued insistence that their security measures are sufficient to protect the integrity of Travis County's votes is illogical and must be called into serious question. Professor Wallach is in a unique and knowledgeable position of expertise on this subject and his researched conclusions about the Hart machines, and all other current versions of electronic voting systems, should be highly prioritized by the County Clerk and the County Commissioners.

No. 5

The 2009 Election Study Group recommends that until a change in voting systems can occur, that the County Clerk continue her focus on and search for even higher standards of security, stronger methods for mitigating risk, and better detection practices. The Study Group recommends that the Clerk continue to use the expertise of computer security experts to assist in identifying, analyzing, mitigating, and detecting these risks. The Group also recommends the Court continue to work with the Clerk to keep the current system maintained and operating at top performance until a new system can be implemented.

ALTERNATE Recommendation No. 5

To state as a recommendation that the Clerk should continue to use the expertise of computer security experts, while she is totally ignoring the work, evidence and conclusions of Rice University Professor Dan Wallach on the Clerk's ineffective

security measures using the Hart eSlates, proves that this recommendation is all words and no substance. Nor are any of the other scholarly reports by computer experts who condemn electronic voting - cited elsewhere in this document - being considered by the Clerk, nor their authors being requested for further advice or consult.

We recommend that the County immediately change its focus from propping up a seriously vulnerable, irreparably insecure all-electronic voting system and immediately put its resources and efforts into a hand-counted paper ballot voting system that safeguards the rights of all Texans, rather than violates them as all secret vote-counting systems do. The constant search for higher standards of security, stronger methods for mitigating risk and better fraud detection practices should be re-directed at the newly implemented hand-counted paper ballot system because elections are (rightly) about DISTrust and people will always try to steal votes one way or another. Eliminating all types of electronic vote counting immediately will have the positive effect of removing the voting method that allows for “wholesale” election fraud to occur – for example, programming for vote total manipulation can undetectably change election results with one keystroke on a computer, or the introduction of a virus into one machine that spreads to other machines, or vote total manipulation through the switching out of a single memory card which is the same as an electronic “ballot box”. To achieve the same level of election fraud with hand-counted paper ballots would be extremely difficult, if not impossible.

No. 6

The 2009 Election Study Group encourages the political parties, candidate and issue representatives, and interested members of the public to continue to participate in and observe the process of voting to help ensure the process is fair and secure.

ALTERNATE Recommendation No. 6

We contend that the County should first ensure that the voting process is fair and secure by changing to the voting system of hand-counted paper ballots because it is a fully observable system. Both types of electronically-based counting systems, the DREs currently in use and the paper ballot scanner proposed option, make it impossible for anyone to truly participate in and observe a fair and secure voting process. Group B also contends that more members of the public will want to participate in the process and also be willing to hand-count ballots on Election Day when they know the process is fully observable. A widespread public education effort will be needed to remind/educate the citizens that their involvement is critical to maintaining our freedoms and the viability of our constitutional republic.

No. 7

The 2009 Election Study Group recommends the Clerk continue carefully monitoring potential new federal and state legislation that could impose new regulations for voting systems and may provide full or partial funding for new system purchases.

ALTERNATE Recommendation No. 7

We agree that the County Clerk, with the support of the Commissioners Court, must continue to proactively monitor all federal and state legislation, not only for the funding possibilities, but to be certain that it will never harm or interfere with the current laws regarding hand-counted paper ballot voting systems and the Texas Constitutional right of Texans to a “ballot box”, i.e., a voting process, that is pure and open for all to see and understand.

No. 8

The 2009 Election Study Group recommends that the Travis County Commissioners Court study whether or not any state or federal legislative changes are necessary in order to implement the voting system the Study Group supports and that Commissioners Court take action to pursue those changes.

ALTERNATE Recommendation No. 8

We recommend that the County Clerk and the Commissioners Court make every effort to enhance the security protocols of the hand-counted paper ballot voting system by encouraging and supporting legislation at both the federal and state levels. We present as an example of security-enhancement legislation the two bills introduced by State Representatives Lon Burnam and Donna Howard in the 2007 and 2009 Texas State Legislative Sessions respectively. Among the several revisions to the Texas Election Code called for in both Burnam’s HB 9834 and Howard’s HB 4653 were increased public observation protocols during the hand counting of the paper ballots, posting the final precinct results at the polling place before the moving of any ballots and repealing the use of all electronic, hence secret, vote-counting systems in Texas.

In addition, we recommend that the County Clerk and the Commissioners Court immediately seek legislative remedy for the current law prohibiting video cameras at the polling place, so that cameras can be used to add security to the hand-counted paper ballot election process. In this manner it can be validated that the ballot box does not leave the table or the room all day and that all votes are publicly counted and the count recorded on videotape.

We also recommend that the current laws requiring Early Voting be revised to either:

- (1) eliminate this highly insecure phase of the voting process statewide (because the publicly observable chain of custody - possible only with a hand-counted paper ballot voting system - is violated *daily* over the course of two weeks prior to Election Day) and return to Election Day and Absentee voting only, or
- (2) allow voting jurisdictions at any level (county, city, school district, MUD, etc.) to opt out from Early Voting and return to Election Day and Absentee voting only.

It appears that the Travis County Clerk is also thinking along similar lines, albeit from an economical standpoint which we also support. On June 4, 2010, the editorial board of the Austin American Statesman published a piece entitled, “Democracy in action or

democracy inaction?” (<http://www.statesman.com/opinion/democracy-in-action-or-democracy-inaction-727927.html>) and included the following statement,

“In discussing ways that cash-strapped school districts and city governments can save money on elections — municipal elections are also low turnout affairs — DeBeauvoir [the Travis County Clerk] mentioned a couple of ideas worth exploring. One would be to shorten the early voting period, and the other is for school boards and municipalities to consider scrapping runoffs... While we are not yet prepared to embrace either shortening the early voting period or scrapping runoffs, there is certainly no harm in exploring the possibilities. It is disheartening to even mention the notion of restricting access to voting, but it's even more disheartening to witness the electorate ignoring elections.”

In our opinion, the paper’s editorial board, as well as most public officials, refuse to acknowledge that the public’s low participation in elections may very well be due to the voters’ inherent lack of confidence in the results because they perceive that the system is, or can be easily, “rigged”. And, whereas, many in public office prefer to portray Early Voting as increasing access to voting, in reality it is simply putting more importance on convenience than protecting our basic right to vote and to know - by publicly observing - that our votes are counted as cast. (Please also read our comments about Early Voting under “Cost Comparisons”, p. 20.)

No. 9

The 2009 Election Study Group recommends that the County Clerk provide vendors, legislators, and the appropriate government agencies the basic list of requirements that Travis County wants including in soon-to-be-introduced voting systems. This list of requirements includes providing a voting system that has:

- a. a paper record that is verified by the voter and can be used to independently, transparently, and efficiently reconcile an electronic tally in an audit or recount;*
- b. an electronic tallying system that offers an accurate count of voters’ choices;*
- c. hardware, firmware, and software that has been evaluated by independent computer security and engineering experts who can substantiate that the system is well designed and meets high security standards. The experts must confirm that proper measures were taken to minimize the risk of tampering. They must also ensure that efficient and reliable methods exist to test or audit the system before, during, and after an election to confirm that the counts are accurate and that the system has not been altered;*
- d. demonstrated methods for securing the paper element of the system and detecting security attacks;*
- e. an efficient means of managing intent-of-the-voter issues;*
- f. vendor-independent programming;*

- g. *the same voting method other voters use for the disabled community and those who do not have English as their first language;*
- h. *a secure, easy-to manage, cost-efficient, and environmentally friendly means of handing ballot distribution during early voting and in the possible future use of vote centers;*
- i. *ease and convenience for the voter;*
- j. *reliable and durable equipment;*
- k. *methods for setting up, operating, and taking down the system in the field that are easily managed by election workers;*
- l. *received certification using the new federal Election Assistance Commission standards and certification by the State of Texas;*
- m. *a reasonable cost to purchase, operate, and maintain;*
- n. *been designed and manufactured in an environmentally responsible manner. For example, we encourage the selection of a system that is built using recycled materials, operates using minimal amounts of paper and electricity, and can be recycled or disposed of in an environmentally friendly manner at the end of its life;*
- o. *the ability to manage the different types of elections and high number of ballot formats that are required in Travis County; and*
- p. *funding and a detailed plan for providing public education on the aspects and use of the new system.*

ALTERNATE Recommendations 9a. through 9p.

We believe that Travis County does *not* need to wait for a yet-to-be-introduced voting system because there is one already available and currently in use in Texas that “ensures that Travis County voters have an accurate, fair, secure, transparent to the public, and accessible voting system” as described in the 2009 Election Study Group’s Mission Statement. This voting system is commonly referred to as Hand-Counted Paper Ballots and has the following basic list of requirements that mirror closely those of the computerized voting system recommended by the Election Study Group:

- a. a paper ballot (*not a paper record - see note below*) that all voters can privately and independently mark and readily review before casting into a secure, publicly-observable ballot box and that can be used to independently, transparently and correctly reconcile a disputed election result for a recount or handle a randomly selected audit;
(Note: a paper record - also called a paper trail - is typically produced by a printing device that has been attached to a Direct Recording Election (DRE) voting system. Studies have shown that 10 to 20 percent of paper records are typically unusable for audits or recounts due to paper jams, failures in printing, and mistakes in recording accuracy. In addition to the high percentage of paper records being unusable in audits and recounts, studies have also shown that a large percentage - nearly 33% - of voters do not even look to verify a paper record printout, so discrepancies between the way they voted and the paper record could be missed. A third and very serious problem exists with a paper record: computer programmers have confirmed

that a paper *record* could be printed to match a voter's choices while inside the machine, the software can easily be pre-programmed to record the vote a different way, which could ONLY be discovered if a 100% recount of the paper *records* was possible to perform. But, with paper *records*, 100% of them are never produced successfully, therefore they are useless.)

- b. hand counting the paper ballots in full public view at all times, rather than secret, unobservable counting by people in back-rooms or by DREs and ballot scanners that have also been proven to be vulnerable to undetectable fraudulent manipulation such as malicious programming, spreading of viruses, switching out of memory cards or remote hacking;
- c. a voting process with an unbroken, publicly observable chain of custody start to finish on Election day that allows any citizen the ability to know for certain that the ballot they cast is still in a ballot box that has remained in its same position all day with citizen observers present, that it is one of the total number of ballots removed for counting at the polling place and that the final results for each precinct are posted at each polling place immediately after the counting and before the ballots are moved away from that location and a voting process that does not require expert knowledge for the voter to understand or confirm the method of counting and the results;
- d. demonstrated methods for securing the paper element and detecting security attacks
- e. a means for handling intent-of-the-voter issues;
- f. more of the county's money spent on elections is kept in the community because the printing contracts can go to locally-owned printers and county citizens are being paid to execute the election as opposed to paying the voting machine corporations
- g. the use of one ballot-marking device (that marks the same paper ballot used by every voter) in each precinct to fulfill the HAVA requirement for the disabled and those who do not have English as their first language and that still allows those paper ballots to be hand-counted along with all the other voters' ballots;
- h. a secure, easy-to manage, cost-efficient, and environmentally friendly means of handing ballot distribution on Election Day to all the precinct polling places;
- i. ease and convenience for voters – no long waits at voter's neighborhood polling place on Election Day due to ability to accommodate more voters voting at same time;
- j. vastly fewer numbers of machines to purchase, maintain and store
- k. methods for setting up, using and taking down the components of the voting system in the field that are easily managed by election workers;
- l. legally allowed for use in the State of Texas;
- m. a reasonable cost to (a) purchase, maintain and store election supplies and ballot-marking equipment, (b) prepare the ballots and (3) to recruit, train and pay election workers;
- n. an environmentally responsible voting system because it uses a renewable and recyclable material for the ballots: paper. After the legally-prescribed

- length of time that all ballots must be kept after an election, the paper can be properly and securely shredded and recycled;
- o. the ability to manage different types of elections and high number of ballot formats;
 - p. funding of a detailed plan for providing public education on the importance of the public’s literal “hands-on” involvement in their election process from start to finish. (See ALTERNATE Recommendation No. 6 above.)

No. 10

The 2009 Election Study Group recommends that requirements for any new system must address the weaknesses that computer scientists have found exist in some or all of the voting systems that have an electronic component. These conditions must be met for any type of voting system that is considered whether it is all-electronic or has a paper ballot component with electronic tallying (for example: a precinct ballot counter with an optical or digital reader).

ALTERNATE Recommendation No. 10

We contend that when electronic voting systems are no longer used for either vote casting or vote counting (however, their use for ballot marking for the disabled is important to maintain), all the complex and difficult issues of software and machine compromises effectively disappear off the table and are no longer relevant problems. With the exit of secret vote-counting by the voting machines, new challenges do emerge with hand-counted paper ballots, primarily in regards to the recruitment of large numbers of poll workers needed to count the ballots on Election Day and the acceptability of election results being reported later than the 10 o’clock news. We recommend that the County Clerk immediately convene a summit of community-based organization leaders for the purpose of figuring out the best approaches for solving these two challenges.

No. 11

The 2009 Election Study Group understands the requirements at this initial level are broad because new ideas and technologies could supersede any specific requirements that we can imagine at this time. The Group recommends that flexibility and openness be maintained so that a wide variety of solutions can be considered. For example, one specific idea of interest is a system where the voter uses an electronic component to make selections. That unit then produces a machine-marked paper ballot that can be reviewed by the voter before it is placed in a ballot box that automatically tallies the vote. We are assuming this same unit would also provide ease of use by voters with disabilities and those who do not have English as their primary language.

ALTERNATE Recommendation No. 11

We recommend wholeheartedly that “flexibility and openness be maintained so that a wide variety of solutions can be considered” especially in regards to looking at hand-counted paper ballot voting systems in other counties both here in Texas and in other

states, as well as in other countries, to incorporate more stream-lined counting practices and security measures. For example, the Swiss paper ballot voting system uses color-coded ballots to differentiate local from federal races. There is much to be gleaned from others to incorporate here in Travis County so it can maintain its national leadership role in election protocols - now with hand-counted paper ballots and putting people, not corporations, first.

No. 12

The 2009 Election Study Group recommends the Clerk reconvene the Study Group with the purpose of considering and preparing for the purchase of a new voting system when new products meeting this Group's basic requirements become available on the market. Included in this effort will be the creation of a detailed list of specifications this Group wants included in a request for proposal for a new system.

Alternate Recommendation No. 12

We concurrently recommend that the Clerk reconvenes the Study Group, even on an ongoing basis, to not only become familiar with new hand counting protocols (as mentioned in No. 11), but to also take a closer look into what other counties here in Texas have experienced since the passage of the Help America Vote Act of 2002 (HAVA). This one piece of federal legislation, written predominantly by the machine vendors' lobbyists, singlehandedly swept electronic voting into every jurisdiction in this country. Many of the 90+ Texas counties that used hand-counted paper ballots exclusively until 2006 when the HAVA mandates went into effect, have seen their election budgets skyrocket and in turn cause serious county-wide budgetary problems. Those suffering the worst among these former paper ballot counties were the counties that were apparently misled by the machine vendors and were told they had to totally abandon their paper ballots and go with all electronic voting. Voters of all ages in these counties, but especially the older voters, are very displeased and do not wish to have their votes counted secretly inside a machine. Many of these frustrating experiences have been included in a survey conducted by Voterescue volunteers of eighty-four of the election administrators in former hand-counted paper ballot Texas counties.

IX. COST COMPARISONS

During the latter part of the study group sessions, two independently prepared voting system cost comparisons were completed and presented to the study group; one by VoteRescue and the other by the County Clerk and her Elections Division staff.

VoteRescue's cost comparison was presented during their presentation on hand-counted paper ballots on September 23, 2009. Having contracted with the Austin office of the nationwide consulting firm of MGT of America, Inc., VoteRescue used information from a variety of sources, including Travis and Garza Counties, the Texas Secretary of State and the New Hampshire Fair Elections Committee. The three voting systems

compared using voter participation and election cost data related to the November 2006 Mid-Term Election in Travis County included (1) the Hart Intercivic voting system currently used in Travis County, (2) a paper ballot/precinct scanner system and (3) a hand-counted paper ballot system.

During the month *following* the VoteRescue presentation, a second cost comparison was completed, this time by the County Clerk and her Elections Division staff and with the help of 4-5 specifically selected members of the study group. Surprisingly, VoteRescue was *not* selected to participate even though we had just gone through a considerable amount of effort and great personal expense to provide a professional cost comparison to the group that realistically reflected our vision of a fully transparent public election.

After four months of repeated requests to the County Clerk and her elections staff, we were finally granted a follow-up meeting on February 17, 2010 to thoroughly review both our cost comparison and the County Clerk's. We were essentially scolded for not being totally aware of the entire election preparation process and the costs associated with it. We do admit we made several errors and omissions and thank the Clerk's staff for the corrections, but we will not capitulate on two of our positions for which we - and our professional cost consultant, MGT - were publicly admonished in front of the group and in subsequent correspondence. These include:

1. Excluding all costs associated with Early Voting

Early voting fails to meet the world's election gold-standard of providing an uninterrupted, publicly observable chain of custody of the ballots. Period. All the other countries that use the hand-counted paper ballot voting system provide only one vote-in-person opportunity – on Election Day. Therefore, without Early Voting, the high staffing costs to prepare the hundreds of permutations of paper ballots for all the Early Voting locations would be eliminated. We, unfortunately, are not privy to all the specifics of this preparation process in order to correctly calculate these savings, but know it would be significant based on our conversations with the Election Division staff at our meeting to discuss costs in mid-February, 2010. To properly assess these numbers, an impartial outside party should be enlisted.

More about the Early Voting Debate:

We have been told repeatedly by the County Clerk and her elections staff that Travis County voters would *never* give up the convenience of Early Voting. We challenge this long-held assumption and surmise that if the voters truly understood how the broken chain of public observation of the ballots *every day* during Early Voting compromised the certainty of the results, they would forgo this hollow "convenience". For those who truly are unable to go to their neighborhood precinct polling place on Election Day, there is still absentee voting which, unfortunately, is fraught with many of the same issues of ballots leaving the public view before being counted. Making Election Day a mid-week work (and school) holiday would also greatly help

voters get to the polls all on one day and vastly increase the pool of people available to work at the polls as judges, workers, ballot counters and watchers.

(Note: In a very limited public survey taken on February 26, 2010 during Early Voting in Austin, VoteRescue volunteers asked voters to mark on a scale numbered left to right how they would compare “accuracy of the vote count” to “the convenience of Early Voting”. Most of the voters who participated strongly favored the “accuracy” end of the scale. We want to thank UT Prof. Marc Musick for his assistance in designing this semantic differential type survey with VoteRescue. As a disclaimer, we are not saying these results prove our point, but show that at least the notion of foregoing Early Voting is something that voters might consider after all. Hopefully, more statistically-valid surveys will be done.)

2. Using the 3 seconds per race multiplier for read & mark counting method.

Until we can observe an actual researcher-directed vote counting time study, we will continue to use our figure of three seconds, as opposed to the six seconds used by the County Clerk. Our method of calculating the number of counters needed on Election Night included a full extra hour for readying the ballots for counting, settling disputes about voter intent, tallying the results, etc. Our multiplier is derived from our hand counting experiences over the years and from our observations of counting teams – albeit from a series of videos - filmed in several New Hampshire townships during the November 2004 elections, as well as a video about hand counting from the Texas Secretary of State.

Given the lack of incentive of the County to even explore the possibility of no Early Voting in the future because it is legally mandated now and therefore make the appropriate adjustments in a cost model for hand-counted paper ballot elections that do *not* include Early Voting, it may never be possible to know the true cost comparison between a totally transparent voting system with hand-counted paper ballots cast only on Election Day and the current system used in Travis County which includes two weeks of Early Voting and the use of the paperless electronic voting systems, the Hart eSlates.

Since any adjustments we attempt to make to our cost comparison will be lacking well-informed assumptions about the Early Voting preparation processes for paper ballots, we will not be submitting a revised VoteRescue cost estimate with this report, but may release one in the future for other purposes.

X. CONCLUSION

Travis County must take the issue of corporate privatization out of our elections by immediately taking steps to convert our current election process to one that is citizen-monitored to the fullest degree. Hand-counted paper ballot elections held only on Election Day (with no Early Voting option) will undoubtedly be difficult to orchestrate and execute in the first few years after changing over from machines. But the will must be found because this is the only election system when executed with the proper security protocols that allows for total transparency of the election process and allows all voters to know with certainty, without having any special technical knowledge, that their votes are being counted as cast.

Having concluded the above, we have little confidence that this type of shift can happen here in Travis County given that the County Clerk and her Election Division staff have deeply entrenched biases *for* electronic voting systems and strong dislikes for handling large quantities of paper, even if counted electronically. This has been made very clear to us in every conversation we have attempted to have with them about hand-counted paper ballot elections. They will continue to construct barriers to our ideas and work hard to convince their fellow public officials, the members of the legislature and the public at large that hand-counted paper ballot elections will never work because the voters don't want them when, in fact, it is they themselves who don't.

Voters are waking up, but it may be too late. Or is it? That's a question we each have to decide for ourselves and for the future of our country. We can only hope that America will ultimately follow the brave example of the Germans and resoundingly reclaim its elections from the corporate vendors and put them back into the hands of its people. And it all can begin right here, in Travis County, Texas. Now.

APPENDIX A

Gray Panthers Raise Questions about Implications of 1965 Voting Rights Act on Future Electoral Changes in Travis County

Gray Panther Views/Comments (prepared by Clint Smith):

- (1) In '06 Congress voted & the President signed a 25-year extension of the Voting Rights Act of 1965, (with its basic enforcement provisions all included);
- (2) The VRA was based on/& extended protections of/in the Fifteenth Amendment to the United States Constitution (i.e., covering eligible U.S. Citizens regardless of race/creed/gender/extenuating etc).
- (3) The original '65 VRA, signed by Pres. LBJ to establish overall fair/equitable electoral SYSTEMS is still very much in force and effect (since 2006, for another 22 years), then,
- (4) Why has this review, analysis & report on electoral system operation & possible changes by the TC Clerk not referenced the 1965 VRA background & regulatory requirements in establishing &/or updating or to otherwise consider **IN EVALUATING ANY NECESSARY CHANGES, TO ENSURE INTEGRITY IN OUR ELECTION SYSTEM/CIVIL LIBERTIES PROTECTIONS?**-

Question:

Why does the TC Clerk's study & publication of the report not discuss electoral process & program changes and requirements within the context of governing policies/operational context of the VRA?