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To: Members of the Washington D.C. Council  
1350 Pennsylvania Avenue, NW  
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Oct. 7, 2009

- 1. REQUEST TO HOLD OFF ON NO-FAULT VOTE-BY-MAIL**
- 2. Checks and Balances need to be articulated for Same-Day Registration**
- 3. Public rights in public elections**

**Black Box Voting** is a national nonpartisan nonprofit elections watchdog group. Here are our concerns regarding the upcoming changes in D.C. elections processes:

**1. MOVING TO NO-FAULT ABSENTEE:** This conceals who cast the votes that are counted, opens up very difficult challenges for ballot chain of custody, introduces unregulated and concealed authentication software, and can reduce ballot privacy. It is the new trend, but dependent on processes that are concealed from the public, and on technology and high risk signature databases which can be manipulated by insiders.

Need-based absentee voting contains checks and balances missing from no-fault absentee voting, and also caps risks at about 10-12 percent of ballots cast. Absentee voting should be limited to need only. We urge you to hold off on this trendy but unsafe change.

**In a nutshell:** Vote-by-mail conceals who casts the vote. At issue is protecting voter's rights by making sure the public is allowed to scrutinize and verify all essential components of public elections, and protecting voting rights by minimizing opportunity for inside tampering. Absentee voting has a history of inside tampering, most recently in New Jersey.<sup>(1)</sup>

Absentee voting carries higher risks than polling place voting. First, a real person need not show up, opening opportunities for insiders to submit counterfeit ballots to exploit vacant spaces from voters with a history of non-regular voting. Insiders can selectively purge votes from eligible voters by failing to authenticate certain envelopes' dates or signatures, and insiders can stuff the ballot box by authenticating ballots that are ineligible. A history of such exploits exists; for example, see Lake County (IN).<sup>(2)</sup>

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<sup>(1)</sup> North Jersey Conservative Examiner - Aug. 4, 2009, by Mark Impomeni: *Campaign workers indicted in election fraud case*; " ...At least one of the defendants was in a position to impact elections on a regular basis. **Gianine Narvaez worked in the office of the Essex County Superintendent of Elections.**"

<sup>(2)</sup> WJOB News - May 28, 2007: *Lake County Ballots Accidentally Manipulated from Outside System* - Lake County election officials say they were disturbed to learn a vendor had altered the status of dozens of absentee ballots after the election. Lake County Election Administrator Michelle Fajman says she was alarmed that the software allowed the vendor to add or remove voters. ...The incident occurred May 15th, when an employee of Indianapolis-based Quest Information Systems **changed the status of 58 Lake County absentee ballots cast in the May Eighth primary from rejected to accepted.**

**Here are some additional exploits specific to mail-in voting:** The oops excuse: Voting machine vendors and ballot printers have a history of sending wrong ballots, omitted ballots, late ballots and privacy-stealing ballots.

One of these problem vendors is Sequoia Voting Systems, the vendor you use in Washington D.C. During the crucial 2008 general election, Sequoia Voting Systems reported to Denver County (Colo.) that it had mailed 21,450 ballots, when it actually only mailed 10,364 ballots.<sup>(3)</sup> In Sutter County (Calif) Sequoia sent certain absentee ballots that were missing ballot questions, but only for some voters.<sup>(4)</sup> In addition, in the 2008 general election **Black Box Voting** received several reports from California citizens who received absentee ballots with party affiliation marked on the *outside envelope*, compromising their political privacy. While this is often done in primary elections, it is a violation of political privacy rights, and an invitation to tampering, to do it in a general election.

Absentee ballot authentication software is uncertified and unregulated. In Sarasota County (Fla) for the 2008 general election, observers and authenticators noticed that the software post-dated certain ballots by five days. Since absentee ballots are disqualified based on late date of receipt, this unexplained anomaly was especially troubling.

A ballot tracking program was used in San Juan County (Wash.) which removed voter privacy, altered ballot authentications back and forth during the canvassing period and even after the canvassing period had expired, and misreported who had voted and who had not. Related to this case, a lawsuit was filed in July 2009 seeking redress on some of these issues. This video reveals theft of voter privacy and alteration of authentications: <http://video.google.com/googleplayer.swf?docid=9179686114813589881>

Currently Washington D.C. has need-based absentee voting, an acceptable practice which limits risk to about 12% of the vote pool and provides checks and balances missing with no-fault absentee. Need-based absentee voting provides key statistical information. This kind of information has been used to identify absentee ballot fraud in the past.<sup>(5)</sup> This information will be missing with no-fault absentee voting.

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<sup>(3)</sup> Rocky Mountain News - Oct. 24, 2008, by Myung Oak Kim: ***'Missing' Denver mail ballots were never sent by vendor*** - The U.S. Postal Service said Friday afternoon that its Denver mail processing facility received 10,364 ballots on Oct. 16 and delivered them within a couple days. But the California printing company hired by Denver Elections said it delivered 21,450 ballots to the postal facility on that date. The discrepancy prompted Denver Election Director Michael Scarpello to ask Sequoia Voting Systems to give him paperwork to prove that the Porterville, Calif., printing plant shipped the ballots. That advice bore out on Saturday, when Denver Clerk and Recorder Stephanie O'Malley **said the ballots in question were never prepared by the vendor** ... "We take this matter very seriously and want Denver voters to know that no one will be disenfranchised by this vendor error."

<sup>(4)</sup> Sutter County Registrar of Voters - Oct. 16, 2008: ***Printer's Error On Vote-By-Mail Ballots In Sutter County*** - A printer's error has resulted in the printing and mailing of incomplete vote-by-mail ballots to approximately 14,000 Sutter County voters. Voters who received incorrect ballots are being asked to wait to vote until they receive new ballots in the mail.

<sup>(5)</sup> GAEA News - June 2, 2009, by Wayne Parry: ***Fears of ballot corruption arise - once again - in Atlantic City mayoral race*** - ...absentee ballots designed for the ill and shut-ins have been flooding into Atlantic County election offices — hundreds upon hundreds of them. [Note: Statistics - over 8% of votes "sick and shut in"]

**2. SAME DAY REGISTRATION:** We commend D.C. for proposing to implement this. Same day registration is a better option than provisional ballots. It solves problems of purging and caging with fewer attack vectors. However, without adequate checks and balances, same-day registration is ripe for fraud.

(a) The registration cards containing identifying information must be available for public review on request;

(b) Full name and address needs to be included on poll book sign-in.

**Problems we've seen with same-day registration:** In New Hampshire, we have videotaped poll book same-day registrants inserted with just a list of names and NO ADDRESS, a fraud-ridiculous practice. New Hampshire requires names and addresses on the poll book sign in, but they did not follow this requirement, at least for the town of Woodstock in the 2008 Primary election. Because New Hampshire prohibits the public from examining the registration card filled out with same-day registrations, it was not possible to verify and authenticate New Hampshire same-day registrants. Someone could simply go through the phone book and add names at the end of the poll book list. (Adding to our concerns, we videotaped the Woodstock poll book -- called a "checklist" in New Hampshire election terminology -- as it was being carted around in a transport van driven by a couple of file clerks, a van that was not going to or coming from anywhere near the town Woodstock.)

If you implement same-day registration, will Washington D.C. (a) require full name and address on poll sheets and (b) allow the public to review actual registration cards?

Without those two safeguards, this practice is indeed ripe for fraud, as some critics have charged.

**3. PUBLIC CONTROLS:** At issue here are the rights of the PUBLIC, rather than the rights of political parties (political parties have no standing under the United States Constitution; the public does). It is the *public* who has standing to be able to see, verify and authenticate all essential phases in public elections.

The high court for the nation of Germany has recently determined that its e-voting machines violate the German Constitution because they conceal crucial components of the election from the public. The court did not specifically ban voting machines, but it did ban any process which conceals the counting from the public, and it also specified that the processes must be understandable by the public without need for special expertise, and that no after-the-fact process (like spot checks) can substitute for public scrutiny of the actual counting of all the ballots. The same principles apply in the USA.

Please begin to think about how we can restore the counting of the ballots in Washington D.C. to public view. Other US locations are beginning to implement projects to honor public rights in our public elections, and we hope you will join them. One method is that which Germany returned to, nationwide, this year: Public hand counting. Now, that's no good if ballots are counted out of public view, and substituting political party representatives does not suffice. But public hand counting at the polling place is a far more elegant solution than most people think, if done properly and in public view, allowing the public to videotape the announced publicly counted result (to deter the simple fraud tactic of writing down the wrong number on submission form.)

Public rights can be honored with optical scan machines by adding simple, inexpensive steps. One method would be to allow the public to videotape the face of every ballot before ballots are transported away from the polling place (for example, requiring poll workers to deal ballots out like a deck of cards to allow the public to capture evidence of the input to optical scanners, so that the public can compare the input to the output). This costs nothing; approximately 1,000 ballots can be shown for videotaping in 30 minutes.

As for absentee ballots, Whatcom County, (Wash.), citizens have set up a reasonably good public process to review and manually count ballot batches being scanned. I will be happy to put you in touch with Whatcom County citizen groups and election officials upon request. And in Humboldt County (Calif.) citizens and election officials cooperate to independently scan ballots for release to the public, a good process which uncovered an important counting flaw in the Diebold ballot tabulation system.

Please do give careful thought to how a "public election" can be truly public if crucial processes are concealed from the public. Cryptography, by the way, does not suffice at all since it does not allow the public to validate all votes. Technology proposals just transfer the problem to another entity; they don't solve public rights issues, but do add to cost while imperiling political privacy. Sadly for the e-voting industry, the fact is that simple, no-cost, low-tech measures can improve public rights without any new purchasing and without maintenance contracts or special licensing fees.

Requiring the public to "trust" insiders is not a true democratic system; in fact, requiring the public to trust government insiders is a hallmark of communist and dictatorships which pretend to be democracies.

The public right to see, verify and authenticate all parts of public elections is an inalienable right, a human right. You can't have liberty without self-government; you don't have self-government if insiders are allowed to conceal essential parts of the election from the public. That is a subtle transfer of power, from the public to insiders.

The article I read about the D.C. reforms states that D.C. is a national leader in this area. Not yet. But you will be a national leader when you recognize, protect and reinstall public rights for all essential phases of your elections. We at **Black Box Voting** look forward to this, and hope to see you make strides in this area.

I hope you'll carefully consider public rights when implementing future reforms. In the mean time, please take the prudent step of halting the change to no-fault absentee voting.

Sincerely,



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