

## FEDERAL ELECTION AUDIT ACT

APRIL 17, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. STEIL, from the Committee on House Administration, submitted the following

### R E P O R T

together with

### DISSENTING VIEWS

[To accompany H.R. 4555]

The Committee on House Administration, to whom was referred the bill (H.R. 4555) to amend the Help America Vote Act of 2002 to allow the use of requirements payments to conduct a post-election audit with respect to an election for Federal office in a State, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Federal Election Audit Act”.

**SEC. 2. USE OF REQUIREMENTS PAYMENTS FOR POST-ELECTION AUDITS.**

(a) **PERMITTING USE OF PAYMENTS FOR AUDITS.**—Section 251(b)(1) of the Help America Vote Act of 2002 (52 U.S.C. 21001(b)(1)) is amended by inserting “, including to conduct and publish an audit of the effectiveness and accuracy of the voting systems, nonvoting election technology (as defined in paragraph (4)(B)), election procedures, and outcomes used to carry out an election for Federal office in the State and the performance of the State and local election officials who carried out the election, but only if the audit meets the requirements of paragraph (4)(A)” after “requirements of title III”.

(b) **REQUIREMENTS FOR AUDITS; NONVOTING ELECTION TECHNOLOGY DEFINED.**—Section 251(b) of such Act (52 U.S.C. 21001(b)) is amended by adding at the end the following new paragraph:

“(4) **REQUIREMENTS FOR AUDITS CONDUCTED WITH REQUIREMENTS PAYMENTS.**—

“(A) **IN GENERAL.**—An audit described in paragraph (1) meets the requirements of this paragraph if—

“(i) no individual who participates in conducting the audit is an employee or contractor of an office of the State or local government which is responsible for the administration of elections for Federal office or of a subsidiary or affiliate of such an office; and

“(ii) the audit includes an examination of compliance with established processes for voter registration, voter check-in, voting, tabulation, canvassing, post-election proceedings (such as recounts and recanvasses), and reporting of results.

“(B) **NONVOTING ELECTION TECHNOLOGY DEFINED.**—In paragraph (1), the term ‘nonvoting election technology’ means technology used in the administration of elections for Federal office which is not used directly in the casting, counting, tabulating, or collecting of ballots or votes, including each of the following:

“(i) Electronic pollbooks or other systems used to check in voters at a polling place or verify a voter’s identification.

“(ii) Election result reporting systems.

“(iii) Electronic ballot delivery systems.

“(iv) Online voter registration systems.

“(v) Polling place location search systems.

“(vi) Sample ballot portals.

“(vii) Signature systems.

“(viii) Such other technology as may be recommended for treatment as nonvoting election technology as the Standards Board may recommend.”.

(c) **SENSE OF CONGRESS REGARDING TIMING OF AUDITS.**—It is the sense of Congress that post-election audits of the effectiveness and accuracy of the voting systems, election procedures, and outcomes used to carry out an election for Federal office in a State and the performance of the State and local election officials who carried out the election are most effective when the audits are completed before the expiration of the period during which persons are authorized under State law to challenge the results of the election.

**PURPOSE AND SUMMARY**

H.R. 4555, the Federal Election Audit Act, introduced by Representative Gregory Murphy (NC–03) permits a State to use federal Help America Vote Act (“HAVA”) Requirements Payments to conduct a post-election audit for federal offices in a State. Currently, HAVA funds are allowed to go towards a wide range of non-partisan, election administration activities. This bill authorizes federal dollars received from HAVA to be used by States to help conduct their post-election audits. Such audits conducted by the State using HAVA funds can be used to audit compliance with established processes for voter registration, voter check-in, voting, tabulation, canvassing, post-election proceedings, and reporting of results. However, the audit must be completed by individuals who are *inde-*

pendent from the office that administered the election. Election transparency is crucial for the American people’s confidence that our election process is free and fair, and audits of our elections will help to ensure transparency.

## BACKGROUND AND NEED FOR LEGISLATION

### BACKGROUND

Article I, Section 4 of the United States Constitution<sup>1</sup> (“the Elections Clause”) explains that the States have the primary authority over election administration, the “times, places, and manner of holding elections, which includes post-election audits. Conversely, the Constitution grants the Congress a purely secondary role<sup>2</sup> to alter or create election laws only in the extreme cases of invasion, legislative neglect, or obstinate refusal to pass election laws. As do other aspects of our federal system, this division of sovereignty continues to serve to protect one of American citizens most precious freedoms, the right to vote.<sup>3</sup>

Following the 2000 presidential election, Congress enacted the Help America Vote Act of 2002 (“HAVA”) to help States and territories upgrade their voting systems and to improve the administration of federal elections. HAVA authorizes three distinct State<sup>4</sup> funding programs. Section 101 provides “general improvements” payments to improve the administration of elections for federal office, educate voters on voting procedures, secure voting rights, improve voting technology, and to train election officials, poll workers, and election volunteers.<sup>5</sup> Section 102 provides States with payments to help replace punch card or lever voting machines.<sup>6</sup> Finally, Section 251 directs the Election Assistance Commission (“EAC”) to provide “requirements payments” to help States carry out other parts of HAVA such as implementation of provisional voting, providing information at polling places, developing and maintaining a computerized voter registration list, and implementing identification requirements for first-time voters who register by mail.<sup>7</sup> Each program must follow a formula that determines the funds available for each section.<sup>8</sup> These funds are distributed to the State to determine the distribution of their HAVA funds (*e.g.*, to county or other local elections officials) to ensure the grant parameters are met. To ensure HAVA funds are being used in a lawful manner, the EAC’s Office of Inspector General “conducts periodic fiscal audits of State HAVA fund expenditures and determines if

<sup>1</sup>U.S. Const. art. I, § 4, cl. 1 (“[t]he 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 . . .”).

<sup>2</sup>Although the text of the Elections Clause, read literally, without context, might suggest Congress has unlimited authority in this space, an examination of an examination of history, precedent, the Framers’ words, debates concerning ratification, the Supreme Court, and the Constitution itself provide that this is not the case. See Report: The Elections Clause: States’ Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), [https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report\\_The%20Elections%20Clause\\_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf](https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report_The%20Elections%20Clause_States%20Primary%20Constitutional%20Authority%20over%20Elections%20%28Aug%2011%202021%29.pdf).

<sup>3</sup>*Id.*

<sup>4</sup>See 52 U.S.C. § 21141 defining “State” to include the District of Columbia and the U.S. territories.

<sup>5</sup>*Id.* at U.S.C. § 20901.

<sup>6</sup>*Id.* at § 20902.

<sup>7</sup>*Id.* at § 21001–21008, 21081–21085.

<sup>8</sup>For section 101 payments, *see Id.* at §§ 20901(d), 20903. For section 102 payments, *see Id.* at §§ 20902(c), 20903. For section 251 payments, *see Id.* at 21002.

any corrective actions are necessary to resolve issues identified during audits.”<sup>9</sup>

One of the core functions of the EAC is the distribution of HAVA grant funds to States to help them administer federal, State, and local elections. Congress appropriated a total of more than \$1.3 billion under HAVA’s Section 101 general improvements grant program for fiscal years 2018, 2020, 2022, and 2023.<sup>10</sup> Importantly, HAVA allows States to use funds provided for Section 101’s general improvement funding on activities provided for under Section 251’s requirements payments.<sup>11</sup>

Election system audits are essential to maintaining the integrity of elections. Audits ensure that voting systems operate accurately and that election administrators comply with election law and policies, and, in doing so, promote confidence in election results.

In response to the issues encountered in the 2000 presidential election<sup>12</sup> and 2004 congressional election,<sup>13</sup> the Commission on Federal Election Reform, commonly referred to as the “Carter-Baker Commission,” led by former President Jimmy Carter and former Secretary of State James A. Baker, III, was created to make bipartisan recommendations for improving the U.S. electoral process.<sup>14</sup> One of their recommendations was that election officials should publicly audit voting machines before, during, and after election day to increase confidence in election results.<sup>15</sup>

In 2013, President Barack Obama established the Presidential Commission on Election Administration, a bipartisan group tasked to “identify best practices in election administration and to make recommendations to improve the voting experience.”<sup>16</sup> Like the Carter-Baker Commission, the Presidential Commission on Election Administration also called upon jurisdictions to conduct election machinery audits.<sup>17</sup> However, the president’s commission limited its recommendation to post-election audits.<sup>18</sup>

Over time, many jurisdictions have come to see the wisdom in election audits and voluntarily adopted audit requirements. By 2018, 36 States required post-election audits by statute, and seven

<sup>9</sup>Audits & Resolutions, U.S. Election Assistance Commission (Aug. 7, 2023), <https://www.eac.gov/grants/audits-resolutions>.

<sup>10</sup>Karen Shanton, *Election Administration: Federal Grant Funding for States and Localities*, Congressional Research Service (May 8, 2023), <https://crsreports.congress.gov/product/pdf/R/R46646>.

<sup>11</sup>52 U.S.C. § 20901(b)(1)(A).

<sup>12</sup>Ron Elving, *The Florida Recount of 2000: a Nightmare that Goes on Haunting*, NPR (Nov. 12, 2018), <https://www.npr.org/2018/11/12/666812854/the-florida-recount-of-2000-a-nightmare-that-goes-on-haunting>.

<sup>13</sup>Ted Barrett, *CNN.Com—Democrats Challenge Ohio Electoral Votes—Jan 6, 2005*, CNN (Jan. 06, 2005), <https://www.cnn.com/2005/ALLPOLITICS/01/06/electoral.vote.1718/#:~:text=WASHINGTON%20%28CNN%29%20--%20Alleging%20widespread%20%22irregularities%22%20on%20election,official%20certification%20of%20the%202004%20presidential%20election%20results>.

<sup>14</sup>Commission on Federal Election Reform, *Building Confidence in U.S. Elections* (Sept. 2005), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/Exhibit%20M.PDF](https://www.eac.gov/sites/default/files/eac_assets/1/6/Exhibit%20M.PDF).

<sup>15</sup>*Id.* at 28 (“State and local election authorities should publicly test all types of voting machines before, during, and after Election Day and allow public observation of zero machine counts at the start of Election Day and the machine certification process.”)

<sup>16</sup>Exec. Order No. 13,639, 78 Fed. Reg. 19979 (Mar. 28, 2013).

<sup>17</sup>Nathaniel Persily et al., *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, Presidential Commission on Election Administration (Jan. 2014), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf).

<sup>18</sup>*Id.*

States by administrative rule.<sup>19</sup> By 2020, 44 States required post-election audits of voting equipment, with other States choosing to conduct them.<sup>20</sup> In 2021, State lawmakers introduced over 68 bills addressing post-election audits in 29 States.<sup>21</sup>

Since its inception in 2002, the EAC has allocated discretionary grants exceeding \$1.4 million to support county and State organizations that research, develop, document, and share various protocols with all the States to improve management of pre-election audits, logic and accuracy testing, and post-election audit procedures.<sup>22</sup>

Another way the EAC assists States is through the development and implementation of audits pursuant to the Voluntary Voting System Guidelines, (“VVSG”)<sup>23</sup> which also includes overseeing a testing and certification program aimed at evaluating voter-system interactions and the design and development of voting systems.<sup>24</sup> In 2021, the EAC adopted VVSG 2.0, to enhance future election equipment’s capacity to facilitate efficient post-election tabulation audits and introducing a new requirement for software independence.<sup>25</sup> Software independence ensures that any unnoticed alteration or error in the software cannot lead to an undetectable alteration or error in the election results. The development and adoption of VVSG 2.0 by the EAC has prompted the need to address forthcoming challenges, replace outdated voting machines, enhance the voter experience, and establish vital safeguards to uphold the integrity of the voting process, particularly by improving the auditability of voting systems. All newly certified voting systems adhering to VVSG 2.0 will guarantee that votes are cast, verified, and counted as intended, further ensuring accurately results reflect voters’ true intentions.

Importantly, the implementation of VVSG 2.0 does not decertify voting systems certified under VVSG 1.1 or 1.0.<sup>26</sup> These systems remain secure. Rather, it means that beginning on November 16, 2023, the EAC only certifies new voting systems using VVSG 2.0.

To safeguard the integrity of the electoral process, novel audit methods have been devised to identify discrepancies. Regardless of the specific post-election audit method employed, the overarching objective remains consistent across all jurisdictions: ensuring the accuracy and integrity of elections and reported results. While the EAC has made available better pathways and opportunities for auditing election systems, each State determines whether to imple-

<sup>19</sup> Election Administration and Voting Survey 2018 Comprehensive Report, Election Assistance Commission (June 2019), [https://www.eac.gov/sites/default/files/eac\\_assets/1/6/2018\\_EAVS\\_Report.pdf](https://www.eac.gov/sites/default/files/eac_assets/1/6/2018_EAVS_Report.pdf).

<sup>20</sup> Election Administration and Voting Survey 2012 Comprehensive Report, Election Assistance Commission (Aug. 2021), [https://www.eac.gov/sites/default/files/document\\_library/files/2020\\_EAVS\\_Report\\_Final\\_508c.pdf](https://www.eac.gov/sites/default/files/document_library/files/2020_EAVS_Report_Final_508c.pdf).

<sup>21</sup> Election Audits Across the United States, Election Assistance Commission (Oct. 6, 2021), [https://www.eac.gov/election-officials/election-audits-across-united-states#:~:text=Election%20Audits%20Across%20the%20United%20States%20\(Full%20PDF\)&text=In%202021%2C%20state%20lawmakers%20have,Types%20of%20audits.](https://www.eac.gov/election-officials/election-audits-across-united-states#:~:text=Election%20Audits%20Across%20the%20United%20States%20(Full%20PDF)&text=In%202021%2C%20state%20lawmakers%20have,Types%20of%20audits.)

<sup>22</sup> *Id.*

<sup>23</sup> 52 U.S.C. § 20962.

<sup>24</sup> *Id.* at § 20971.

<sup>25</sup> Voluntary Voting System Guidelines, Election Assistance Commission (Feb. 10, 2021), [https://www.eac.gov/sites/default/files/TestingCertification/Voluntary\\_Voting\\_System\\_Guidelines\\_Version\\_2\\_0.pdf](https://www.eac.gov/sites/default/files/TestingCertification/Voluntary_Voting_System_Guidelines_Version_2_0.pdf).

<sup>26</sup> Voluntary Voting System Guidelines (VVSG) Migration, Election Assistance Commission (Nov. 1, 2023), <https://www.eac.gov/election-officials/voluntary-voting-system-guidelines-vvsg-migration>.

ment audits. Expanding the use of current federal funding for post-election audits provides States with a useful tool.

In the 117th Congress, former Ranking Member on the Committee on House Administration, Representative Rodney Davis (IL-13), introduced H.R. 8528, the American Confidence in Elections Act<sup>27</sup> that permitted States to use HAVA Requirements Payments for post-election audits of federal races held within a State.

Similarly, in the 118th Congress, Representative Bryan Steil (WI-01), introduced H.R. 4563,<sup>28</sup> an updated version of the American Confidence in Elections Act, which includes very similar language to Rep. Murphy's H.R. 4555.

#### NEED FOR LEGISLATION

On July 11, 2023, Representative Greg Murphy (NC-03) introduced H.R. 4555, Federal Election Audit Act. This bill amends HAVA to allow States to use HAVA's requirements payments to conduct audits of the accuracy and effectiveness of voting systems, election procedures used to carry out elections for federal office, the performance of the election officials who facilitate such elections and reported results and outcomes. By increasing the sources of election audit funding, States will have more resources to conduct robust audits of election systems, a necessary step in promoting public confidence in election outcomes. To make clear, this legislation does not require States HAVA funds to be used for post-election audits, nor does it require that States begin conducting post-election audits. Rather this legislation simply expands available HAVA funds to conduct State level audits.

The timeframe in which these HAVA-funded audits are conducted directly affects the capacity of the audit to not only detect but also to correct any discrepancies or issues that may have impacted the outcome of the election in question. If an audit is conducted after the period for contesting election results has passed, the opportunity to rectify any identified issues that could change the outcome is lost. In such a case, while the audit might provide valuable insights for improving future electoral processes, it fails to address any immediate concerns regarding the integrity of a just-concluded election.

Voters expect audits to function as a means of verification and, if necessary, a corrective mechanism to ensure that their votes are counted as intended and that the election results are trustworthy. By conducting audits within the contestable period, election officials have a window in which they can address and resolve any discovered discrepancies, thereby upholding the integrity of the election and maintaining public confidence in the democratic process. This timely intervention is essential for reinforcing the electorate's belief that their participation in the voting process is meaningful and that the electoral system is both transparent and accountable.

<sup>27</sup> H.R. 8528—117th Congress (2021–2022): ACE Act, H.R. 8528, 117th Cong. (2022), <https://www.congress.gov/bill/117th-congress/house-bill/8528>.

<sup>28</sup> H.R. 4563—118th Congress (2023–2024): American Confidence in Elections Act, H.R. 4563, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/house-bill/4563>.

## COMMITTEE ACTION

## INTRODUCTION AND REFERRAL

On July 11, 2023, Representative Gregory Murphy (NC–03) introduced H.R. 4555, the Federal Election Audit Act. The bill was referred to the U.S. House of Representatives Committee on House Administration.

## HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, in the 118th Congress, the Committee on House Administration held two full committee hearings and one subcommittee hearing to develop H.R. 4555.

1. On April 27, 2023, the Committee held a full committee hearing titled, “American Confidence in Elections: State Tools to Promote Voter Confidence.” The hearing focused on Title I of H.R. 4563, the American Confidence in Elections Act, what tools States need to boost voter integrity and strengthen voter confidence, and how the federal government can provide States with access to the information needed to accomplish these goals. Witnesses included: The Honorable Ken Cuccinelli, Chairman, Election Transparency Initiative, The Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Senior Legal Fellow, on behalf of The Heritage Foundation, The Honorable Mac Warner, West Virginia Secretary of State, The Honorable Donald Palmer, Commissioner, U.S. Election Assistance Commission, and Mr. Joseph Paul Gloria, Chief Executive Officer for Operations, Election Center.<sup>29</sup>

2. On May 24, 2023, the Committee on House Administration Subcommittee on Elections held a subcommittee hearing titled, “American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law.” The hearing highlighted the strong election integrity reforms that have passed throughout several States and how important it is for States to learn from other States’ successes in the election arena. Witnesses included: Mr. Joseph Burns, Lawyer, Law Office of Joseph T. Burns, PLLC, Ms. Lisa Dixon, Executive Director, Lawyers Democracy Fund, Mr. Thor Hearne, Founding Partner, True North Law, LLC, The Honorable Scot Turner, Executive Director, Eternal Vigilance Action Inc., and Mr. Deuel Ross, Deputy Director of Litigation, NAACP Legal Defense and Educational Fund, Inc.<sup>30</sup>

3. On July 10, 2023, the Committee held a full committee field hearing titled, “American Confidence in Elections: The Path to Election Integrity Across America.” The hearing outlined the newly introduced H.R. 4563, the American Confidence in Elections Act, and highlighted the successes of S.B. 202, 2021. Witnesses included: The Honorable Hans von Spakovsky, Manager, Election Law Reform Initiative and Sen-

<sup>29</sup>*American Confidence in Elections: State Tools to Promote Voter Confidence: Hearing Before the H. Comm. On Admin., 118th Cong. (2023).*

<sup>30</sup>*American Confidence in Elections: Ensuring Every Eligible American has the Opportunity to Vote—and for their Vote to Count According to Law: Hearing Before the Subcomm. On Elections of the H. Comm. On Admin., 118th Cong. (2023).*

ior Legal Fellow, The Heritage Foundation, Dr. Kathleen Ruth, Former Vice Chair, Fulton County Board of Registration and Elections, Mrs. Vernetta Keith Nuriddin, Elections Consultant, City of Milton, and Ms. Cathy Woolard, Chair, Fulton County Board of Registration and Elections.<sup>31</sup>

#### COMMITTEE CONSIDERATION

On November 30, 2023, the Committee on House Administration met in open session with a quorum being present and ordered the bill, H.R. 4555, the Federal Election Audit Act favorably reported, as amended.

#### COMMITTEE VOTES

In compliance with clause 3(b) of House rule XIII, the following vote occurred during the Committee’s consideration of H.R. 4555:

1. Vote on an amendment in the nature of a substitute to H.R. 4555 offered by Mr. Steil, adopted by voice vote.

2. Vote on an amendment to H.R. 4555, offered by Mr. Morelle, failed by a vote of eight to four. Nays: Steil, B., Loudermilk, B., Griffith, M., Murphy, G., Bice, S., Carey, M., D’Esposito, A., Lee, L. Ayes: Morelle, J., Sewell, T., Kilmer, D., Torres, N.

3. Vote to report H.R. 4555 favorably, as amended, to the House of Representatives, passed by a vote of eight to four. Ayes: Steil, B., Loudermilk, B., Griffith, M., Murphy, G., Bice, S., Carey, M., D’Esposito, A., Lee, L. Nays: Morelle, J., Sewell, T., Kilmer, D., Torres, N.

#### STATEMENT OF CONSTITUTIONAL AUTHORITY

Congress has the power to enact this legislation pursuant to the following:

- Article I, Section 4, Clause 1—“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof . . .”<sup>32</sup> This clause, consistent with contemporary thought and context, informs Congress that the primary authority to set election law and to administer federal elections rests with the States and not with the Congress.

- Article I, Section 4, Clause 1—“To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; . . .”<sup>33</sup>

- Article I, Section 8, Clause 18—“To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”<sup>34</sup>

<sup>31</sup>*American Confidence in Elections: The Path to Election Integrity Across America: Hearing Before the H. Comm. On Admin., 118th Cong. (2023).*

<sup>32</sup>U.S. Const. art. I, § 4, cl. 1.

<sup>33</sup>U.S. Const. art. I, § 8, cl. 1.

<sup>34</sup>U.S. CONST. art. I, § 8, cl. 18. In *U.S. v. Singh*, the United States Court of Appeals for the Ninth Circuit held that the foreign national spending prohibition was justified under Congress’ powers to provide for a uniform rule of naturalization, and was necessary and proper to the exercise of its immigration and foreign relations powers. See 924 F. 3d 1030, 1042–1043



### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the rules of the House of Representatives, are incorporated in the descriptive portions of this report.

### STATEMENT OF BUDGET AUTHORITY AND RELATED ITEMS

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a)(I) of the Congressional Budget Act of 1974, the Committee provides the following opinion and estimate with respect to new budget authority, entitlement authority, and tax expenditures. The Committee believes that there will be no additional costs attributable to H.R. 4555.

### CONGRESSIONAL BUDGET OFFICE ESTIMATE

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

### PERFORMANCE GOALS AND OBJECTIVES

The performance goals and objectives of H.R. 4555 are to allow States to use federal Help America Vote Act (“HAVA”) Requirements Payments to conduct a post-election audit for federal offices in a State. This legislation authorizes federal dollars received from HAVA to be used by States to help conduct their post-election audits. Such audits conducted by the State using HAVA funds can be used to audit compliance with established processes for voter registration, voter check-in, voting, tabulation, canvassing, post-election proceedings, and reporting of results. However, the audit must be done by individuals who are *independent* from the office which administered the election that is being audited.

### DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 4555 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

### ADVISORY ON EARMARKS

In accordance with clause 9 of House rule XXI, H.R. 4555 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House rule XXI.

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(2019). Importantly, the court did *not* rely on the Elections Clause of Article I, Section 4 to justify the prohibition. Cf Report: The Elections Clause: States’ Primary Constitutional Authority Over Elections, Comm. on H. Admin. (Republicans) (Aug. 12, 2021), [https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report The%20Elections%20Clause States%20Primary%20Constitutional%20Authority%20over%20Elections%2028Aug%2011%202021%29.pdf](https://republicanscha.house.gov/sites/republicans.cha.house.gov/files/documents/Report%20The%20Elections%20Clause%20States%20Primary%20Constitutional%20Authority%20over%20Elections%2028Aug%2011%202021%29.pdf).

## FEDERAL MANDATES STATEMENT

An estimate of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such an estimate to be printed in the Congressional Record if it is received by the Committee.

## ADVISORY COMMITTEE STATEMENT

H.R. 4555 does not establish or authorize any new advisory committees.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section provides a short title for H.R. 4555, the Federal Election Audit Act.

*Section 2. Use of requirements payments for post-election audits*

Section (2)(a) allows HAVA funds to be used to conduct and publish an audit of the effectiveness and accuracy of the voting systems, nonvoting election technology, election procedures, and outcomes used to carry out an election for Federal office in the State and the performance of the State and local election officials who carried out the election, but only if the audit meets requirements set forth in (4)(A).

Section (2)(b) provides the requirements for the election audits that will be funded with HAVA grants by adding (4)(A) (below).

(4)(A) Requirements for audits conducted with requirements payments:

(i) No one affiliated with the administration of federal elections may be part of the audit.

(ii) The audit must examine compliance of established processes for voter check-in, registration, tabulation, canvassing, post-election proceedings, and reporting of results.

(4)(B) Nonvoting Election Technology: Defines non-voting election technology and lists such non-voting election technologies in (i) through (viii).

Section (2)(c) provides a sense of Congress that the timing of post-election audits should be completed before the State's deadline to challenge the results of the election.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics)

and existing law in which no change is proposed is shown in roman):

**HELP AMERICA VOTE ACT OF 2002**

\* \* \* \* \*

**TITLE II—COMMISSION**

\* \* \* \* \*

**Subtitle D—Election Assistance**

**PART 1—REQUIREMENTS PAYMENTS**

**SEC. 251. REQUIREMENTS PAYMENTS.**

(a) **IN GENERAL.**—The Commission shall make a requirements payment each year in an amount determined under section 252 to each State which meets the conditions described in section 253 for the year.

(b) **USE OF FUNDS.**—

(1) **IN GENERAL.**—Except as provided in paragraphs (2) and (3), a State receiving a requirements payment shall use the payment only to meet the requirements of title III, *including to conduct and publish an audit of the effectiveness and accuracy of the voting systems, nonvoting election technology (as defined in paragraph (4)(B)), election procedures, and outcomes used to carry out an election for Federal office in the State and the performance of the State and local election officials who carried out the election, but only if the audit meets the requirements of paragraph (4)(A).*

(2) **OTHER ACTIVITIES.**—A State may use a requirements payment to carry out other activities to improve the administration of elections for Federal office if the State certifies to the Commission that—

(A) the State has implemented the requirements of title III; or

(B) the amount expended with respect to such other activities does not exceed an amount equal to the minimum payment amount applicable to the State under section 252(c).

(3) **ACTIVITIES UNDER UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT.**—A State shall use a requirements payment made using funds appropriated pursuant to the authorization under section 257(a)(4) only to meet the requirements under the Uniformed and Overseas Citizens Absentee Voting Act imposed as a result of the provisions of and amendments made by the Military and Overseas Voter Empowerment Act.

(4) **REQUIREMENTS FOR AUDITS CONDUCTED WITH REQUIREMENTS PAYMENTS.**—

(A) **IN GENERAL.**—*An audit described in paragraph (1) meets the requirements of this paragraph if—*

*(i) no individual who participates in conducting the audit is an employee or contractor of an office of the*

*State or local government which is responsible for the administration of elections for Federal office or of a subsidiary or affiliate of such an office; and*

*(ii) the audit includes an examination of compliance with established processes for voter registration, voter check-in, voting, tabulation, canvassing, post-election proceedings (such as recounts and recanvasses), and reporting of results.*

**(B) NONVOTING ELECTION TECHNOLOGY DEFINED.**—*In paragraph (1), the term “nonvoting election technology” means technology used in the administration of elections for Federal office which is not used directly in the casting, counting, tabulating, or collecting of ballots or votes, including each of the following:*

*(i) Electronic pollbooks or other systems used to check in voters at a polling place or verify a voter’s identification.*

*(ii) Election result reporting systems.*

*(iii) Electronic ballot delivery systems.*

*(iv) Online voter registration systems.*

*(v) Polling place location search systems.*

*(vi) Sample ballot portals.*

*(vii) Signature systems.*

*(viii) Such other technology as may be recommended for treatment as nonvoting election technology as the Standards Board may recommend.*

**(c) RETROACTIVE PAYMENTS.**—

**(1) IN GENERAL.**—Notwithstanding any other provision of this subtitle, including the maintenance of effort requirements of section 254(a)(7), a State may use a requirements payment as a reimbursement for costs incurred in obtaining voting equipment which meets the requirements of section 301 if the State obtains the equipment after the regularly scheduled general election for Federal office held in November 2000.

**(2) SPECIAL RULE REGARDING MULTIYEAR CONTRACTS.**—A State may use a requirements payment for any costs for voting equipment which meets the requirements of section 301 that, pursuant to a multiyear contract, were incurred on or after January 1, 2001, except that the amount that the State is otherwise required to contribute under the maintenance of effort requirements of section 254(a)(7) shall be increased by the amount of the payment made with respect to such multiyear contract.

**(d) ADOPTION OF COMMISSION GUIDELINES AND GUIDANCE NOT REQUIRED TO RECEIVE PAYMENT.**—Nothing in this part may be construed to require a State to implement any of the voluntary voting system guidelines or any of the voluntary guidance adopted by the Commission with respect to any matter as a condition for receiving a requirements payment.

**(e) SCHEDULE OF PAYMENTS.**—As soon as practicable after the initial appointment of all members of the Commission (but in no event later than 6 months thereafter), and not less frequently than once each calendar year thereafter, the Commission shall make requirements payments to States under this part.

(f) LIMITATION.—A State may not use any portion of a requirements payment—

(1) to pay costs associated with any litigation, except to the extent that such costs otherwise constitute permitted uses of a requirements payment under this part; or

(2) for the payment of any judgment.

\* \* \* \* \*

## DISSENTING VIEWS

The Federal Election Audit Act purports to allow Help America Vote Act Section 251 funds to be used for auditing the effectiveness and accuracy of voting systems, election procedures, and outcomes used to carry out an election for Federal office, as well as the performance of the State and local election officials who carried out the election. Post-election audits are a necessary tool for ensuring accuracy and transparency in our elections. Unfortunately, the bill put forth by the Committee Republicans fails to provide any guardrails or protect against any of the abuses we have seen by third-party bad actors who have attempted to weaponize the post-election audit process in furtherance of election-related lies and disinformation, and election denialism.

In fact, the Committee Republicans took it a step further with the Amendment in the Nature of a Substitute (“ANS”) offered at mark-up. Rather than provide common sense protections against abuse and misuse of taxpayer dollars, the Republican ANS prohibits any individual who is an employee or contractor of an office of the State or local government responsible for administering the election (or a subsidiary or affiliate of the office) from participating in conducting the audit.

Prohibiting any individual who is an employee or contractor of the State or local government office responsible for the administration of the election from participating in conducting the audit—removes critical individuals from the process. State and local election administrators are the experts in how their elections are run. Committee Republicans should not be barring them from participating in an audit.

We have seen too many troubling examples of bad actors conducting or attempting to conduct audits of the 2020 election to allow federal funds to be used to facilitate such undertakings without adequate safeguards in place. The false claims about the 2020 election results led to fraudulent post-election audits in a cynical attempt to undermine confidence in the results.

Committee Democrats believe that post-election audits are a necessary and critical part of the election administration process, and that we should be providing States with the resources they need to conduct them. While the Majority’s bill would allow states to use HAVA funds to conduct audits, Republicans failed to provide any funding for elections in their Financial Services and General Government appropriations bill, all but ensuring that our State and local election officials are under-resourced headed into a Presidential election year.

Committee Democrats are opposed to H.R. 4555, and believe that those who administer elections should not be barred from participating in a post-election audit, and that there should be proper, common sense guardrails on third parties—such as those offered in

the Morelle amendment—to ensure that any post-election audit which utilizes Federal tax dollars meets the highest standards of rigor and integrity, and that taxpayer dollars are not used to further election denialism.

JOSEPH D. MORELLE,  
*Ranking Member.*

