Election Reform after HAVA: Voter Verification in Congress and the States

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Requiring voting machines to produce a voter-verifiable paper record (VVPR) has been the most prominent election reform issue in Congress and across the states since the Help America Vote Act (HAVA) of 2002. Whereas HAVA emerged from a bipartisan process that included cooperation and input from state and local government officials, VVPR legislation represents a more coercive brand of federalism that has divided the parties and evoked opposition by state and local government organizations. Meanwhile, twenty-nine states adopted the VVPR from 2003 to 2007. Using a logistic regression model, informed by a theory of state policy activism, we find that adoption of VVPR legislation was most likely in states with moralistic political cultures, election reform activists, and professionalized legislatures controlled by Democratic majorities.

The Help America Vote Act (HAVA) of 2002, which capped off a two-year period of election reform in Congress and state capitols in the wake of the 2000 presidential election crisis, relied on extensive input from state and local government organizations (Palazzolo and McCarthy 2005). Yet, HAVA hardly settled matters over the role of the federal government in election administration. As states developed plans to implement HAVA, election officials complained about unrealistic timetables and Congress’ failure to appropriate funds authorized by the law. Meanwhile, members of Congress sought to amend HAVA, in some cases by imposing new federal requirements on state election systems. The most prominent debate in Congress has been over legislation containing a federal mandate that would require voting machines to produce a voter-verifiable paper record (VVPR).¹ Though Congress has yet to pass VVPR legislation, twenty-nine states adopted some type of paper trail requirement for voting machines from 2003 to 2007.

This study considers the implications of election reform politics on federalism by analyzing developments of VVPR legislation at two levels of government: within Congress and across the states. First, we assess the political forces and interest

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group differences that have prohibited Congress from building a consensus on VVPR legislation. Though most Democrats supported VVPR advocates and voting rights activists, Republicans, along with state and local government officials, voting machine manufacturers, and disability groups, questioned the feasibility of implementing a VVPR requirement in a timely, responsible, and effective way across fifty different state election systems. The objections of key stakeholders ultimately dissuaded Democratic leaders from pushing the legislation beyond a House subcommittee. Thus, state and local government organizations, which played a key role in the formation of HAVA, helped to block a move by Congress that would have taken a more coercive approach to implementing federal election standards. Second, using Krane’s (2007) theory of state policy activism, we estimate a logistic regression model to explain why some states adopted the VVPR and others did not. We find that two components of Krane’s theory—greater institutional capacity and activist group participation—help to explain why states adopted VVPR legislation. States with Democratic legislatures and moralistic political cultures were also more likely to enact the VVPR. Thus, election reform since HAVA has featured a continuation of state policy activism and has been shaped largely by political and interest group forces.

Federalism, Policy Activism, and Election Reform

One consequence of the shift from cooperative to coercive federalism (Kincaid 1990) has been a surge in state policy activism in several policy areas, including health care, transportation, education (Reeves 1990), the environment, and labor (Dinan and Krane 2006; Krane 2007). Krane (2007) suggests that institutional and political developments have enabled states to develop their policy-making capacity, respond to constituent demands, and devise pragmatic, centrist solutions to public problems that might otherwise be stymied by partisan politics and group paralysis at the federal level. Thus, states engage in policy activism when Congress fails to act (Reeves 1990; Dinan and Krane 2006), by reacting to federal policy, or by acting independently on problems specific to a particular state (Dinan and Krane 2006).

In recent years, election reform politics have reflected state policy activism, combined with a blend of coercive (Posner 2007) and cooperative federalism (Montjoy and Chapin 2005; Liebschutz and Palazzolo 2005). After the 2000 election fiasco in Florida, the need for some type of federal reform was evident, though Congress took over a year and a half to work out the details of HAVA. While Congress deliberated, three states—Florida, Georgia, and Maryland—passed major election reforms, and many other states made incremental changes to their elections laws (Palazzolo 2005). HAVA ultimately emerged from a bipartisan process in Congress, which included extensive input from state and local election officials who
provided members of Congress with expertise on election administration (Palazzolo and McCarthy 2005). HAVA struck a balance between civil rights groups that wanted federal protections of voter rights, and state and local government organizations that sought a bare-boned federal grant to replace voting equipment.² In exchange for federal funds to upgrade voting systems, states were required to meet several minimum standards of election administration and develop protocols for implementing various incentives and requirements in the law. Yet, HAVA gave the states ample flexibility to design statewide registration databases and provisional balloting procedures (Posner 2007; Montjoy 2005). Moreover, although HAVA contained financial incentives for replacing punch card and lever voting machines, states could select from a variety of electronic or optical scan machines (Montjoy 2005). Thus HAVA, with the concurrence of state and local government organizations, issued a “modified direct order” to the states (Liebschutz and Palazzolo 2005).

Yet, rather than putting the election reform debate to rest, HAVA created a new set of questions about implementation of federal standards and problems with federal funding (Chapin and Palazzolo 2005) as well as voter identification, provisional balloting, absentee voting, and paper ballots (Electionline.org 2006). Shortly after HAVA was passed, some members of Congress initiated efforts to expand the federal government’s role in election administration.

**Election Reform in Congress after HAVA**

From 2003 to 2007, members of Congress introduced sixty-three bills to amend HAVA, but only one bill, first introduced by Rush Holt (D-NJ) just three months after HAVA was enacted into law, attracted high levels of support. Holt’s bill (H.R. 2239), entitled the “Voter Confidence and Increased Accessibility Act,” required all voting systems used for electing federal officeholders to produce a voter-verified paper record that could be used for a manual audit of votes cast in an election. Holt reintroduced the bill in two subsequent congresses, and judging by the number of cosponsors—156 in the 108th Congress (2003–2004), 221 in the 109th Congress (2005–2006), and 216 in the 110th Congress (2007–2008)—the VVPR has been the most prominent election reform issue since the passage of HAVA. The average number of cosponsors for all other bills to amend HAVA was thirteen.³ Yet, despite of the high levels of interest in the VVPR, Holt’s bill has yet to reach the House floor for a vote, and no similar bill has been voted on by the Senate. Congressional paralysis over the VVPR can be attributed firstly to party priorities and secondly to concerns among key stakeholders about the necessity, timing, and detailed regulations of the legislation. Congressional deliberations reflected political considerations and the effect of VVPR requirements on state and local governments.
Party Priorities

Different philosophical views of federalism sometimes cause Democrats and Republicans to take opposite positions on policy issues that involve intergovernmental relations. Democrats are generally more willing to authorize the federal government to address problems within or across states, whereas Republicans ideally prefer to give states more discretion and responsibility to implement policy (Hero 1987). Yet, scholars have found that Republican presidents and Republican members of Congress ignore basic principles of institutional federalism in order to advance policy goals or political interests (Conlan 1998; Conlan and Dinan 2007; Schram and Weissert 1999; Weissert and Schram 2000). This pattern seems to typify election reform politics. Most Republicans prefer to leave election administration to state and local officials, yet they do not consistently apply this principle to all election reform issues.

In debates over election reform shortly after the 2000 elections, Republicans accused Democrats of trying to “nationalize” elections and maintained that any federal election reforms should include guidelines or voluntary standards rather than federal mandates. Congressional Republicans saw state and local government organizations as natural allies, whereas Democrats shared the interests of civil rights organizations, which traditionally distrusted state governments (Palazzolo and McCarthy 2005). Yet, federalist principles involving the broad outlines of election administration have given way to political interests and policy preferences on specific issues. During the debate over HAVA, Republicans, led by Senator Christopher “Kit” Bond (R-MO), spearheaded federal legislation (S. 528) to require voters to present a photo id at the polling place. Since HAVA was enacted, Republicans have sponsored seven bills requiring photo ids, two that increased penalties for voter registration fraud, four that regulated voter registration, and two that prohibited use of HAVA funds for public communications.

Republicans have also supported VVPR legislation. Steven King (R-IA) introduced a VVPR bill in three consecutive congresses from 2004 to 2007. In fact, the first VVPR bill (S. 565) introduced in the Senate was sponsored by Senator John Ensign (R-NV). After losing the 1998 Senate election by a few hundred votes, Ensign was disappointed that the recount in Clark County, the only county in Nevada that used direct recording electronic (DRE) voting machines at the time, was meaningless because the computer simply reproduced the same result reported on election day. Ensign originally tried to amend HAVA in 2002 to include a VVPR requirement, but the amendment failed. Ensign’s experience shows that voting machines do not discriminate against one party or another; a Republican is just as likely as a Democrat to lose a close election in which a voting machine malfunctions.

Yet, as Holt’s bill began to attract attention in Congress, Democrats seemed to be on the losing end of several close elections, and Democratic constituents traced
their fate to electronic voting machines. During the 2004 presidential campaign, Walden O’Dell, a Republican fundraiser and CEO of Diebold, the manufacturer of electronic voting machines, wrote a letter in which he expressed his commitment “to helping Ohio deliver its electoral votes to the president” (Warner 2003, BU1). After the votes were counted, Democratic activists alleged computer-generated voter fraud in states won by Republican President George Bush, especially Ohio (Manjoo 2006; Kennedy 2006). John Conyers (D-MI), ranking minority member of the House Judiciary Committee, conducted an investigation of voting in Ohio that reported numerous voting irregularities. A second major event occurred during the 2006 elections in Florida’s thirteenth congressional district, where Republican Vern Buchanan defeated Democrat Christine Jennings by just 369 votes. In this case, 18,000 votes cast on electronic voting machines, mainly in Democratic-leaning areas of Sarasota County, went unrecorded. Left-leaning organizations, led by People for the American Way and Demos, were enraged by the results (Friel 2007). To the extent that Democrat constituents believed Republicans had “stolen” these close elections, the VVPR became an antidote to an election system that seemed to be rigged against them.

These events contributed to the partisan divide that had developed over Holt’s bill. After the 2004 presidential election, Democratic sponsorship of the Holt bill (renumbered H.R. 550) increased from 149 to 197, to the point where 98 percent of House Democrats had signed on to the bill. By comparison, only twenty-four Republicans, or 10 percent, cosponsored the bill. Since Ohio Republican Congressman Bob Ney, Chair of the Committee on House Administration from 2001 to 2005, opposed federal legislation mandating a VVPR (Murray and Newmyer 2006), Holt’s bill did not move forward while Republicans controlled the House of Representatives. But, after the Democrats gained majority control of the House in the 2006 congressional elections and in the wake of the controversial election in Florida’s thirteenth district, Holt’s bill (renumbered H.R. 811) rose to the top of House Committee on Administration’s agenda.

In spite of an announcement by Zoe Lofgren (D-CA), Chair of the Subcommittee on Elections of the Committee on House Administration, that “Election reform is not a partisan issue” (U.S. House 2007b, 1), the subcommittee ultimately divided along party lines. After several subcommittee hearings, Lofgren made changes to the original bill in order to address some of the concerns raised by “voting officials, technology companies and other advocates” (U.S. House 2007c, 1). Yet, those changes were not enough to persuade Republican members of the subcommittee. Ranking subcommittee Republican Vernon Ehlers (R-MI) concluded that, while he agreed with the concept of the VVPR, he thought “the burden placed upon the States by this bill is unnecessary, and by all accounts, unmanageable” (U.S. House 2007c, 2). Ehlers also cited insufficient attention to
concerns raised by disability groups and voting machine manufacturers. During the subcommittee markup, Republicans proposed eleven amendments, including four that sought to advance Republican priorities such as voter identification. Republicans voted unanimously for all of these amendments, and Democrats voted unanimously against them. The subcommittee then approved H.R. 811 in the nature of Lofgren’s substitute, and once again the vote broke along straight party lines.

**Interest Groups**

The progress of VVPR legislation in Congress also depended on the ability of legislators to manage the conflicting positions of several interest groups. VVPR advocacy groups and voting rights organizations supported Holt’s bill, while state and local government organizations, voting machine manufacturers, and disability groups opposed it. These groups brought different perspectives and resources to the process and their positions were enmeshed in the partisan differences noted earlier. Democrats generally had more in common with VVPR advocates and voting rights groups, while Republicans concurred with state and local government organizations, voting machine manufacturers, and disability organizations. Congress’ inability to reconcile the differences of key stakeholders has been a major reason for stalemate.

When HAVA passed, creating incentives for states and localities to replace outdated punch card and lever machines with the latest voting technology, policy makers paid no attention to Holt’s warnings about the flaws of DRE machines (Murray 2007a). Yet in January 2003, as voting machine manufacturers began to expand their business to meet increased demands created by HAVA, David Dill, a Stanford University professor, issued a warning that DRE machines were susceptible to error and manipulation, and the verified voting movement had been born. Dill consulted Congressman Holt, started the Verified Voting website, and founded the Verified Voting Foundation, a “nonpartisan, nonprofit organization championing reliable and publicly verifiable elections.” Dill’s research drew the attention of computer experts, state level policymakers, and citizen activists (Cohen 2007). Supporters of electronic voting machines initially argued that Dill’s claims about the adverse effects of DRE machines were exaggerated, and VVPR advocates were generally viewed by many election officials as harebrained computer scientists and conspiracy theorists (Barr 2006). But Dill and his supporters were vindicated over time by empirical studies conducted by the Government Accountability Office (2005), the Brennan Center for Justice (2006), and Princeton’s Center for Information Technology Policy (Feldman, Halderman, and Felten 2006). Ultimately, The National Institute for Standards and Technology reported to the Election Assistance Commission (EAC) in December 2006 that paperless electronic voting machines “cannot be made secure” (Barr 2006).
After the 2004 presidential election, science merged with politics and the movement began to pick up steam. While academics and government agencies produced the evidence of potential problems with electronic voting, the 2004 presidential election provided the political impetus for reform by engaging Democratic and liberal leaning groups. Kip Humphrey of Houston, TX, who claimed that problems with the Hart Intercivic electronic voting machines used in Harris County were “designed to deny John Kerry untold numbers of votes,” organized the 51 Capital March to protest paperless voting machines. The uprising led to the formation of VoteTrustUSA, founded by Warren Stewart, and VotersUnite founded by John Gideon, two websites that complemented Verified Voting’s efforts to educate the public and elected officials about the need for paper ballots.

The case for VVPR legislation was based on a combination of factual analysis and principles of good governance. Advocates believe that enabling voters to examine a printed record before exiting the polling place and requiring election officials to use that record to audit a close election are essential safeguards of democracy. Failure to provide such safeguards, against either machine malfunctions or attempts to manipulate election results, would further undermine voter confidence. Computer science experts and representatives of VoteTrustUSA and People for the American Way provided Congress with evidence of voting irregularities, lost ballots, equipment flaws, and stories of contested elections throughout the country where voters left the polling booths unsure if their votes were accurately counted. The VVPR advocates argued that the nation faced a crisis; in their view, without an auditable paper record, voters cannot have confidence in elections (U.S. House 2007c).

Yet, opposition groups reflected a variety of concerns that stifled progress in Congress. Disability groups, led by the American Association of People with Disabilities, argued that the DRE machines spawned by HAVA funds empowered many disabled people to vote independently for the first time. A VVPR requirement that did not protect the right of the disabled to vote privately and independently would be a step backward. The VVPR would prohibit a blind person from marking a ballot, or a person who could not use his or her hands from depositing a ballot without someone else’s assistance. Thus, Howard Snider, President of Access for the Handicapped, contended: “H.R. 811 hurts people with disabilities because it substantially delays the day when private and independent voting will become available throughout this country” (U.S. House 2007b, 101).

Representatives of voting machine manufacturers raised concerns about the lack of guidelines, vague terminology, and especially the vulnerability of their proprietary source codes (Hunter 2007). David Beirne, Executive Director of the Election Technology Council (which consists of Election Systems Software, Premier Election Solutions, Hart InterCivic, and Sequoia Voting Systems), described the goal of implementing the VVPR by the 2012 deadline as “wishful
thinking,” noting that it normally takes 54 months to develop, install, and train people in new machines (Murray 2007b). Beirne also complained that lawmakers did not seek input from voting machine manufacturers who would be responsible for delivering the equipment.

Whereas disability groups represent the rights of specific voters and election manufacturers seek to protect their products and serve their clients, state and local government officials provide Congress with administrative expertise, and their access to Congress is based on their legitimacy as representatives of subgovernments affected by federal laws (Haider 1973). Doug Lewis of the Election Center, the National Association of Election Officials, who played a major role in the formation of HAVA (Palazzolo and McCarthy 2005), pointed out several problems with H.R. 811 that were echoed by various individual election officials: complications with audit procedures, unrealistic timetables, the potential for mishandling of ballots by “non-election officials,” and insufficient federal funds to implement the law. He argued that the best way to improve voting system security and software is to let the National Institute of Standards and Technology (NIST) and the EAC develop guidelines. He indicated that the states were still adapting to the changes required in HAVA, and additional changes would create greater uncertainty and instability. Lewis, and other representatives of state and local government associations who testified before the subcommittee, also reminded Members that Congress had not appropriated all of the funds authorized by HAVA. Finally, he challenged the argument that voters lacked confidence in voting machines, citing a CNN exit poll that showed 88 percent of voters “had full confidence that their vote was counted accurately and fairly in Congressional elections” (U.S. House 2007a).

Other state government officials were concerned that Holt’s bill did not appropriately take into account the diversity of special circumstances that exist in each state and locality. California Secretary of State Deborah Bowen noted that a universal deadline for the replacement of new voting machines was impossible given the complexities of purchasing a voting system and negotiating contracts with vendors. The procurement process varies tremendously across localities and often it is affected by factors beyond the control of elections officials (U.S. House 2007b, 38). South Dakota Secretary of State, Chris Nelson, cochair of the National Association of Secretaries of State summarized the objections of state and local officials: “Many of us at the state and local level perceive H.R. 811 as working against us. The rigidity of the requirements in the bill take away and complicate the progress we are making” (U.S. House 2007b, 47).

In spite of Lofgren’s efforts to modify H.R. 811 to address the concerns of opposition groups, they complained that lawmakers were unresponsive. State and local government officials expressed dissatisfaction with both the extent to which they were involved in the process of developing VVPR policy and the final result.
Kay Stimson, spokeswoman for the National Association of Secretaries of State stated: “There’s a feeling among people who oppose it [H.R. 811] that they were completely shut out of the process. They weren’t consulted when the bill was written; they… have the general feeling that they were treated with disdain by Rep. Holt and his staff” (Fratas 2007, 1). As evidence that Democrats deferred to VVPR advocates rather than state and local officials, Lofgren increased the estimated funds to implement the bill from $300 million to $1 billion on the advice of Warren Stewart, the Director of VoteTrustUSA (U.S. House 2007b, 106). Yet, Lewis had argued that the technology required to meet the standards set by Holt’s bill had not even been invented, and he estimated that replacement costs would reach $3–$4 billion (U.S. House 2007a; Abrams 2007).

State and local government organizations lobbied heavily against H.R. 811. The National Association of Counties (NACo) activated its network of 27,000 election officials and many sent e-mails and faxes to members of the Committee on Administration protesting the “unfunded mandate” in the bill (Fratas 2007). The National Conference of State Legislatures (NCSL) pursued a similar strategy. The ranking subcommittee Republican Vernon Ehlers (R-MI) pointed to letters from state and county election officials from over 35 states who objected to the bill “in spite of the few amendments that have been made” (U.S. House 2007c, 2). In response to the subcommittee’s work, Lewis complained: “I have no problem with the objective of creating paper receipts. But they have rejected every idea we’ve offered them to show what might work. I’ve been at this 40-some years, and I have not seen a piece of legislation worse than this. It is overly prescriptive, overly detailed, a cumbersome monstrosity to deal with” (Broder 2007, B7).

As House leaders prepared to bring the bill to the floor, a coalition of eleven state and local government associations sent a letter to Speaker of the House Nancy Pelosi (D-CA) and Majority Leader Steny Hoyer (D-MD) voicing their opposition to H.R. 811. They claimed that the bill would “preempt” state laws that had already included a VVPR requirement and that it created “an unfunded mandate of unknown proportions.” Representatives of state and local government organizations believed their lobbying efforts affected the way Democrats viewed the legislation. Susan Frederick, Lobbyist for the NCSL, noted: “Federal policymakers tend to take a lot of that information [from NCSL members] very seriously” (Fratas 2007, 2). Alysoun McLaughlin, a NACo lobbyist, reported: “There’s a number of high-profile Democrats who have quietly indicated that they have heard our concerns and agree with them (that) the bill is flawed and needs to be fixed” (Fratas 2007, 2).

The strong opposition of state and local government organizations, combined with the objections of election machine manufacturers and disability groups, made it difficult for Holt to convince his fellow Democrats beyond the subcommittee to support the legislation (Dennis 2007; Hunter 2007; Ornstein 2007). Under pressure
from these groups, key Democratic leaders decided not to move the bill further in the House. During the House Rules Committee hearing on a resolution for considering H.R. 811, Rules Committee Chair Louise Slaughter (D-NY) expressed reservations about the bill: “I am very much concerned that we are passing this law that you have to have it by a certain date, when experts tell us there is not a machine that will do this right” (Soraghan and Kucinich 2007, 4), and “I have got to tell you I am scared we are waltzing off a cliff here, and I am worried about it” (Abrams 2007). Representative Alcee Hastings (D-FL), another member of the Rules Committee, concurred with Slaughter.

VVPR proponents fared no better in the Senate. Senator Dianne Feinstein (D-CA) faced opposition from VVPR advocates who believed her bill (S. 1487), which included a VVPR requirement, assigned too much power to the EAC and contained weak disclosure provisions for source codes (Theisen 2007). After holding hearings on her bill in the Senate Rules and Administration Committee, Feinstein concluded that implementing a federal VVPR requirement by the 2008 election was infeasible (Murray 2007b). Further progress on VVPR reform ground to a halt in both chambers of Congress.

**VVPR Adoption in the States**

While VVPR legislation stalled in Congress, the idea swept across the states. Two states—New Hampshire and South Dakota—had adopted paper trail requirements prior to the enactment of HAVA, but between 2003 and 2007 legislatures and executive officials in twenty-nine states adopted VVPR requirements, most of them after the 2004 election (figure 1). Three states—Illinois, Michigan, and Nevada—adopted

![Figure 1](https://academic.oup.com/publius/article-abstract/38/3/515/1866915/Election-Reform-after-HAVA-Voter-Verification-Protections)
VVPR policies in 2003, and in two of those cases (Michigan and Nevada), the Secretary of State issued orders implementing paper ballots. Five states adopted the VVPR in 2004 (one, Missouri, by executive fiat), sixteen more in 2005, two in 2006, and three in 2007.\textsuperscript{15} VVPR legislation has been proposed but not passed in nine states and no such legislation has been introduced in ten other states.

Why did some states adopt VVPR legislation while others did not? To answer this question, we model intra-state variation in the legislative enactment of VVPR requirements between 2003 and 2007 as a function of political and policy-related variables. We draw primarily from Krane’s (2007) theory of policy activism, though we include specific measures of party control to capture the political responsiveness to an emergent VVPR advocacy movement. We find that VVPR reform has been most common in states with Democratic legislatures, but it is also associated with two important conditions of policy activism: professionalized legislatures and the presence of VVPR advocacy organizations. State political culture, which may color the identification of and response to some social problems, is also associated with VVPR reform, but the severity of DRE machine problems within a state had no effect on the likelihood of VVPR reform.

Modernization and Policy-making Capacity

An important factor in Krane’s (2007, 470) theory of state policy activism is “the modernization of American state government,” or the state’s institutional capacity for policy making. Some legislatures have more resources and are thereby able to respond more quickly to public policy challenges. Thus, we hypothesize that the greater the extent to which states have undergone this modernization process, the greater the likelihood they will enact VVPR reform. We operationalize modernization of state governments as the extent to which a state’s legislature is “professionalized” or “professionalizing.” We use Squire’s index of professionalization, which “uses an index of...member pay, average days in session, and mean staff per member” (Squire and Hamm 2005, 79) to measure the professionalization of state legislatures.

Political Mobilization and Group Activism

Krane (2007, 471) also argues that state policy activism has “been driven by higher levels of political mobilization and participation.” One indicator of these higher levels of mobilization and participation is the growing presence of activist groups in state policy making (Haider-Markel and O’Brien 1997; Haider-Markel 1998). Group activism in favor of the VVPR was clearly evident in many state capitals. Two weeks after Humphrey (the founder of the 51 Capital March) posted a message on his website to “Make a Sign and Show Up,” 3,000 citizens in over forty-one capitals staged “You Stole My Vote” protests, and urged investigations of...
“vote fraud and voter suppression.” In Tennessee, activists returned to Nashville for a second week to protest irregularities with the vote. By June of 2005, VoteTrustUSA claimed that there were over sixty “state and locally-based e-voting reform groups working to improve the laws and regulations governing voting systems and election administration” (Krawitz 2005). State level VVPR activists lobbied vigorously at all levels of government toward a central cause: replacing or upgrading DRE voting machines with machines that produced a paper record that could be used in a manual audit of election results. They conducted research on their states’ voting systems, testified in hearings, contacted members of Congress, appealed to HAVA planning bodies, lobbied state legislators, led petition drives to create and pass local ballot initiatives, fed information to the media, and brought lawsuits against election officials. They even volunteered as poll workers, partly to perform a civic duty and partly to gather evidence of problems with DRE machines. They have used the Internet to create a national web of voices for reform by sharing information via blogs, e-mail exchanges, and websites. Many of them seek fresh news and opinion online from Brad Friedman’s Bradblog (http://www.bradblog.com) and the Democratic Underground (http://www.democraticunderground.com), and they frequently cite studies by GAO, Princeton, and the Brennan Center as evidence that DRE machines need to be replaced or equipped with paper ballots. If a state adopts a VVPR requirement, activists monitor implementation at the local level, or fight efforts to repeal legislation.

If this type of mobilization has fueled policy activity in the states, then we would expect the presence of an activist group in a state to be positively associated with the likelihood of legislative enactment of VVPR reform. To determine if a state has an active VVPR advocacy organization, we relied on information from Verified Voting (www.verifiedvoting.org) and VoteTrustUSA (www.votetrustusa.org), each of which has extensive and updated information on state-level lobbying activities. We code states listed on either website as having active advocacy organizations as one (1) and states without such organizations as zero (0).

**Problem Context**

Next, Krane (2007, 471) argues that the rise in state government policy activism is attributable to “the increasing similarity of economic and social problems faced by the states.” Since he is attempting to explain a nationwide rise in state policy activism over time, his argument hinges on secular trends that have had a homogenizing impact on the policy agendas of states. However, even if states are increasingly facing common problems, this is not a guarantee that all states will approach these problems in the same way, or that the problems themselves are of equal severity across states. A state’s identification of and response to emerging social problems will be dictated in part by historical, social, and political forces that contribute to its political
culture (Elazar 1984). Palazzolo and Moscardelli (2006) found that states with “moralistic” political cultures (Elazar 1984), which tend to value participation and democratic governance, were more likely to enact various election administration reforms in the wake of the 2000 presidential election than states with traditionalistic or individualistic cultures (see also King 1994). If conflict over VVPR reform breaks out along the same lines, then states with moralistic political cultures (coded “1”) may prove more likely to adopt this reform than those with either traditionalistic or individualistic cultures (both of which we code as “0”).

The severity of a social problem may also impact a state’s response. In this case, the severity of problems with the administration of elections has been shown to affect the scale of election administration reform in the states (Palazzolo and Moscardelli 2006). National studies documenting problems with DRE voting machines might garner the concern of state policy makers, but we suspect the pressure for reform in any given state will more likely depend on the degree of voting irregularities within that state. Thus, we hypothesize that the number of DRE machine errors in a state will be positively associated with the likelihood of VVPR reform. Because states are not required to report the errors they uncover, and because not all errors are even known, there is not at this time a completely valid or reliable measure of machine error rates across states. We use a state-by-state count of media reports of DRE machine malfunctions during the 2004 election collected by VotersUnite!, a nonpartisan group advocating more transparent election procedures, including the VVPR.20

Partisan Context

Finally, Krane (2007, 472) posits that “[w]hile some states today are strongly conservative or liberal, many states are not, and within most states one finds a mix of ‘red’ and ‘blue’ districts.” According to Krane, this “admixture of ‘red and blue’ areas in state electoral arenas helps explain the centrist, pragmatic politics at the state level in contrast to the polarized politics at the national level.” By this logic, the more “pragmatic” approach to policy making in these “purple” states may make VVPR reform more likely than in more solidly partisan states. Krane identifies “purple” states as those in which the governor is a member of the minority party in the state (as indicated by voting in the presidential election). However, because our data cover multiple election cycles, we instead operationalize a “purple” state as one that is competitive in presidential elections. We categorized states in which the two major party candidates secured between 45 percent and 55 percent of the popular vote in the 2004 presidential election as “purple,” and hypothesize that these states will be more likely to enact VVPR requirements.

While Krane’s framework does not emphasize partisanship per se, many studies of state policymaking have investigated whether party control influences policy
adoption (Hansen 1983; Berry and Berry 1992; Morehouse 1996). The results of these studies have been mixed, but the dynamics of VVPR reform in the U.S. Congress suggest that reformers might have greater success in Democratic-leaning states. If activists are as important to understanding VVPR reform in the states as the discussion above leads us to believe, a greater presence of sympathetic—read Democratic—legislators would seem to be an important condition for reform. We hypothesize that states with Democratically controlled legislatures will be more likely to enact VVPR reform, and include a binary variable coded one (1) for states in which Democrats controlled both chambers of the legislature at any time between 2004 and 2007 and zero (0) otherwise.

Results

We used logistic regression to estimate the effects of the variables outlined above on the likelihood a state enacted VVPR reform through the legislative process. The unit of analysis is the state, and the dependent variable is a simple indicator of the enactment of VVPR reform. We estimated two models. In the first, we limited our analysis to the post-2004 period so we could assess the importance of the immediate problem context (indicated by media reports of machine errors during the 2004 election) on a state’s likelihood of enacting VVPR reform. In the second, we remove the problem context variable, which allows us to include the states that legislatively enacted VVPR reform in 2003–2004. As the results in table 1 indicate the performance of the models was robust to this change in model specification and case selection. The discussion that follows reflects the results of Model 2, which analyzes a larger number of states.21

The model performs extremely well, correctly predicting thirty-eight of the forty-three (88.4 percent) valid cases. The null model correctly predicts 60.5 percent, resulting in a proportional reduction in error of 72.2 percent. The results provide strong support for two of the factors Krane identifies—activist presence and legislative professionalism—and clearly point to the importance of Democratic control of the legislature in securing reform. Activists appear to have played a key role in encouraging VVPR reform, and Democratic legislators proved more receptive to reformers’ pleas. Holding other variables at their median values, states with Democratically controlled legislatures and no activist community had just a 0.13 probability of enacting VVPR reform. Similarly, states with an activist community in which Republicans controlled one or more chambers of the legislature had just a 0.20 probability of enacting VVPR reform legislatively. However, states with both an activist community and a Democratically controlled legislature had a 0.76 probability of enacting VVPR reform. Of the twenty-two states that experienced Democratic control of both legislative chambers at some point during the 2003–2007 period, seventeen enacted VVPR reform. In fact, unified Democratic
control of both the legislature and the executive proved to be an even more powerful predictor of reform in the bivariate test: of the fourteen states that experienced unified Democratic government at some point during the 2004–2007 period, twelve enacted VVPR reform legislatively. However, substituting the unified government variable for the legislative variable employed in Model 2 actually reduces the predictive capacity of the model, leading us to retain the specification that includes the legislative party control variable, suggesting that Democratic control of the legislative branch, not unified Democratic government, was the crucial threshold for reformers.

Legislative professionalism, which we use to capture Krane’s “modernization” argument, and state political culture, which Elazar (1984) argued may explain...
different responses to the increasingly similar “economic and social problems faced by the states” (Krane 2007, 471), both emerge as strong, statistically significant predictors of VVPR reform. Holding other variables constant at their medians, a move from one standard deviation below the mean on the professionalization variable to one standard deviation above the mean is associated with an increase of 0.42 in the probability of VVPR reform. Having a moralist political culture increased the probability of VVPR reform by 0.23.

Despite our expectation that the “pragmatic” politics of “purple” states would increase the likelihood of VVPR reform, we found no evidence of such a relationship once we controlled for other factors. Purple states were no more likely to enact VVPR reform than their “red” and “blue” counterparts.22

We were also surprised to find that the problem context did not emerge as a statistically significant predictor of VVPR reform at the state level (Model 1). While we only report the results of the model that includes number of DRE machine errors reported by the media, we also used the residual vote rates in the 2000 and 2004 elections as indicators of the problem context, and neither was statistically significant. While our model provides no leverage on this argument, it is possible that a high profile example of election system failure in the state, rather than the number of media reports of errors, would have a greater impact on the ability of VVPR activists to convince policy makers that paperless machines pose a major danger to the state’s election system. The experience in North Carolina illustrates how a major electoral failure, combined with VVPR activism, could result in reform. Joyce McCloy started the North Carolina Coalition for Verified Voting in 2004, when “most elected officials said we didn’t have any problems with electronic machines.”23 McCloy and her colleagues conducted studies of North Carolina’s voting system, catalogued newspaper stories of problems with computerized voting equipment on the www.ncvoter.net website, and found a legislator, Democratic Senator Eleanor Kinnaird, to sponsor a bill with a VVPR requirement. But, according the McCloy, the Director of Elections, election officials across the state and voting machine vendors blocked reform efforts. Then, after election day in 2004, the media reported that 4,500 votes in Carteret County were lost. Shortly thereafter, a commission was formed to draft legislation. The commission modeled its proposal on U.S. Rep. Rush Holt’s bill and the North Carolina legislature passed a bill during the 2005 session.

Conclusion

The politics of the VVPR since the passage of HAVA show a continuance of state policy activism, though this time well ahead of congressional efforts to coerce states into acting. Partisan differences and interest group activity at the national level interacted to kill VVPR legislation, and, in the face of congressional inaction, many
states—particularly those with moralistic political cultures, professionalized legislatures, Democratic legislatures, and advocacy groups—took action themselves. Krane’s (2007) theory helps to explain the widespread adoption of VVPR legislation, though our findings suggest that to understand variation across the states, the theory’s general causes of policy activism should be supplemented with measures of political conditions that might affect state legislative behavior. Our analysis leads to two additional conclusions about federalism in the area of election reform.

First, states were more responsive to advocacy groups than Congress. Given the political events of 2004 and 2006, it is not surprising that Democratic policymakers would be more sympathetic to the wishes of VVPR activists; yet Democratic state legislatures were more successful in meeting the expectations of VVPR advocates than the Democratic majority in Congress. One reason for this difference may reside in the policy issue itself. Since state legislatures have always had a greater responsibility for election law, they are likely to respond to advocates who draw attention to problems with the electoral system. Yet, to the extent that increased citizen participation is a cause of state policy activism (Krane 2007), state legislatures may be more responsive than Congress in general to grassroots organizations, particularly those that share a common interest with the majority party. With respect to the VVPR, grassroots activism and the specifics of the policy area conspired to encourage state legislative action.

Second, a close analysis of the sequence of partisan and group effects indicates that political factors and concerns about federalism affected congressional deliberations on the VVPR. Republican majority party opposition to the VVPR was the first obstacle to reform during the 2003–2006 period. Although a small portion of Republicans supported VVPR legislation, most Republicans opposed it, or had very weak preferences for reform. Republicans gained nothing politically from advancing a measure that had nonpartisan electoral effects, and Republicans invoked principles of federalism to explain their opposition to the VVPR. Given the variety of Republican-sponsored election reform bills that did contain federal mandates, it is hard to determine if Republican opposition to the VVPR was motivated more by a principle of institutional federalism or by political convenience. Republicans may well have been following a well documented pattern on issues involving intergovernmental relations, i.e., adhering to principle only when it coincided with political interests or policy goals, and abandoning principle when it did not (Conlan 1998; Conlan and Dinan 2007; Schram and Weissert 1999; Weissert and Schram 2000). We might conclude that Republicans hold varying degrees of tolerance for federal mandates on election administration, yet we cannot say that institutional federalism trumps politics as a reason for opposing election reform.

The Democrats, on the other hand, present an even more complex puzzle with respect to the trade off between political motivations and concerns about federalism. After the Democrats gained control of the House in 2007, interest group
influence replaced majority party opposition as the primary obstacle to election reform. Democrats had very strong preferences for the VVPR, and Holt’s bill was a priority for the Speaker of the House and the Majority Leader (Fratas 2007; Wolf 2007). Given the political headwinds, Democratic leaders were poised to satisfy the expectations of liberal activists and, if the fate of the VVPR hinged entirely on political calculations, Holt’s bill should have gone further in the House. Yet, representatives of state and local organizations lobbied hard against H.R. 811 and believed they created doubts among enough Democrats to cause party leaders to hold off on scheduling the bill for a vote. Since state and local governments offer almost nothing in the way of political resources, their arguments about the effects of Holt’s bill on the capacity of states and localities to implement the VVPR requirement seemed to be one reason why the bill never emerged from the Rules Committee. Key Democrats were skittish about imposing a new federal mandate on the timetable specified in the bill.

Thus, while political calculations will continue to affect congressional actions on election reform, members of Congress will also need to consider the fundamental question of which level of government is better situated to deal with election reform issues. The state and local government officials who testified before Congress presented compelling reasons why it is virtually impossible to make a single federal VVPR requirement mesh with the various laws and practices of fifty state election systems. Although Holt and other Democrats continue to push for a federal VVPR requirement (Hunter 2007; Martinez 2007), Republican opposition and splits within the Democratic Party, reinforced by opposition groups, will make specific federal requirements very difficult to enact in the future. We suspect that by the time Congress builds consensus for a federal VVPR requirement, virtually all states that need or want paper ballots will have them.

Notes

1. VVPR requirements are alternatively referred to as voter verified paper trail (VVPT), voter verified paper ballot (VVPB), or voter verifiable paper audit trail (VVPAT). For the sake of consistency, we use the acronym VVPR.

2. HAVA also addressed concerns raised by disability groups about voter access and included a provision that required voters who registered by mail for the first time to present a photo identification.

3. Susan Davis’ (D-CA) bill (H.R. 281), which would allow all eligible voters to vote by mail, received the second highest number of cosponsors (seventy-one) in 2007.


6. The following examples of why the VVPR became more politicized were repeated in several interviews conducted by the authors. Bob Kibrick; Doug Chapin and Sean Greene of electionline.org, November 19, 2007; Warren Stewart, Verified Voting Foundation and VoteTrustUSA, November 30, 2007; and Bernie Ellis, Gathering to Save Our Democracy, December 20, 2007.


10. Interviews with Doug Chapin, Sean Greene, and Warren Stewart. See also, Friel (2007).


12. A recent survey found that election officials are not necessarily opposed to voting machines that print paper, but they do value stability and believe that the best type of voting machine is the one which they and their voters are most familiar with (Fischer and Coleman 2008).


15. We include Arkansas in the list of twenty-nine states that adopted VVPR requirements, though Arkansas’ law creates a mixed model that requires all DRE machines in use after 2006 that were not in use in 2004 to print a paper record. However, we do not count Virginia as a state that requires VVPR.


17. Interview with Bernie Ellis.

18. Evidence of state activist group lobbying efforts mentioned here can be found at verifiedvoting.org and votetrustusa.org.


21. Diagnostics revealed the possibility that the large number of variables relative to the number of cases in Model 1 was resulting in inflated parameter estimates. The estimates in Model 2, which also happens to be more robust to changes in model specification and measurement of individual variables than Model 1, do not appear to suffer from such upward bias. In no multivariate specification do the estimates associated with the purple state and machine errors variables achieve statistical significance.

22. Neither our indicator of “purple” status (the two major party candidates received between 45 percent and 55 percent of the vote in the 2004 presidential election) nor Krane’s (the governor is a member of the minority political party, as indicated by presidential election voting) is related to the likelihood of legislative enactment of VVPR reform.

23. Interview with Joyce McCloy.

References


Morehouse, Sarah M. 1996. Legislative party voting for the governor’s program. Legislative Studies Quarterly 21 (August): 359–381.


