

The House Committee on Governmental Affairs offers the following substitute to HR 610:

A RESOLUTION

1 Urging the United States Congress to remove election and voting systems from the critical
2 infrastructure designation; and for other purposes.

3 WHEREAS, during the 2016 election cycle, the United States Department of Homeland
4 Security designated election and voting systems as critical infrastructure; and

5 WHEREAS, the critical infrastructure designation is an official Department of Homeland
6 Security designation that covers 17 industry categories, including chemical and power plants,
7 transportation systems, and dams; and

8 WHEREAS, the new Secretary of Homeland Security has indicated that he intends to retain
9 this designation of election and voting systems as critical infrastructure; and

10 WHEREAS, during the 2016 election cycle, Georgia Secretary of State Brian Kemp's office
11 detected several unsuccessful attempts to penetrate its computer firewalls; some of the
12 attempts were traced to IP addresses associated with the Department of Homeland Security,
13 the reason for which is still not fully explained; and

14 WHEREAS, under Article I, Section IV of the United States Constitution, the times, places,
15 and manner of holding elections for United States Senators and Representatives are to be
16 determined by the states with the reservation that the Congress may at any time make or alter
17 such regulations; and

18 WHEREAS, with limited exceptions, the Congress has left the running of federal elections
19 to the states; and

20 WHEREAS, while Congress has the power to regulate elections for federal offices, the
21 power of Congress to regulate state and local elections is highly circumscribed by the Tenth

22 Amendment which reserves to the states all powers not delegated to the federal government
23 by the Constitution or expressly prohibited by it to the states; and

24 WHEREAS, among the powers reserved to the states under the Tenth Amendment is the
25 power to regulate state and local elections. Oregon v. Mitchell, 400 U.S. 112 (1970); and

26 WHEREAS, the only limitations on this reserved power of the states to regulate state and
27 local elections are the provisions of the Fourteenth, Fifteenth, Nineteenth, Twenty-fourth,
28 and Twenty-sixth Amendments to the Constitution, all of which begin with the assumption
29 that the states have the general supervisory power over state and local elections; and

30 WHEREAS, the Fourteenth and Fifteenth Amendments prohibit discrimination in voting on
31 the basis of race, the Nineteenth Amendment prohibits discrimination in voting on the basis
32 of sex, the Twenty-fourth Amendment abolished poll taxes in contests for federal office, and
33 the Twenty-sixth Amendment lowered the voting age to 18 years; and

34 WHEREAS, except to the limited degree necessary to enforce these Amendments, Congress
35 may not legislate in matters concerning the regulation of state and local elections; and

36 WHEREAS, the designation by the Department of Homeland Security of election and voting
37 systems as critical infrastructure is an attempt by the federal government to insinuate itself
38 into areas in which it has no part; and

39 WHEREAS, the United States Supreme Court has recognized in the cases of Printz v. United
40 States, 521 U.S. 898 (1997), and New York v. United States, 505 U.S. 144 (1992), that the
41 Tenth Amendment prevents the federal government from commanding state officials directly
42 to enforce federal law or taking over state functions; the designation by the Department of
43 Homeland Security of election and voting systems as critical infrastructure would be a
44 usurping of the election machinery of the states in violation of the anti-commandeering
45 doctrine; and

46 WHEREAS, the states have conducted elections throughout the history of this country under
47 this federalist system, and any attempt to insert the federal government into this area at this
48 time would be a fundamental change in the concept of how elections are to be conducted and
49 would, in the case of state and local elections, be overreaching by the federal government.

50 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES that
51 the members of this body urge the United States Congress to remove election and voting
52 systems from the designation of critical infrastructure.

53 BE IT FURTHER RESOLVED that the Clerk of the House of Representatives is authorized
54 and directed to make an appropriate copy of this resolution available for distribution to the
55 members of the Georgia Congressional delegation.