

THE HELP AMERICA VOTE ACT:
IMPACT AND POTENTIAL FOR NEW YORK

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INTRODUCTION

The controversial vote count in the State of Florida in the 2000 presidential election placed a worldwide spotlight on the way elections are run and administered in the United States. The focus on the irregularities discovered in Florida should not have implied that gross errors and inadequacies were not prevalent in other states. Florida was neither the first, nor the only instance of election system dysfunction brought about by poor ballot design, faulty voting equipment, and inadequacy in the training of poll workers and in the education of voters. Florida was merely the poster child for these maladies—they are found in the election process in every state.

The situation in Florida created the imperative for remedial reform of the administration of elections and replacement of voting system technology. The television spectacle of confused voters and equally confused election officials examining hanging chads, as well as a 5–4 decision in the U.S. Supreme Court determining the outcome of the presidential election more than a month after voters cast their ballots, served as a wake-up call for democracy in the United States. It is now clear that “voting technology and ballot design can influence election outcomes, affect how voters feel about their ability to exercise their right to vote, and influence voters’ willingness to accept the results of an election as legitimate.”¹

After much debate, Congress passed and the president signed the Help America Vote Act (HAVA). This landmark legislation promises to alter dramatically the way in which each of the 50 states register voters and run elections. The statute provides for an expenditure of up to \$3.9 billion for administrative improvements, including new voting machines, a statewide

interactive computerized voter registration system, poll worker recruitment and training as well as voter education. Congress appropriated \$1.5 billion for fiscal year 2003.

HAVA also imposes new requirements on states and localities. The legal, administrative, and financial implications for New York State, its counties, cities, towns, and villages are substantial. Despite this, little media or government focus in New York has been given to the implications of the passage of HAVA and the obligations it imposes.

The Century Foundation, which has long been concerned with election reform issues, has commissioned this report. The report analyzes what changes in legislation, administration, and funding will be required in New York in order to meet HAVA's mandates. It seeks to outline not only the new initiatives that must be undertaken in New York but also the options and issues that elected and appointed officials will confront as a result of Congress's passage of the Help America Vote Act.

New York and the nation have experienced declining participation in elections. The public has displayed increasing apathy. HAVA provides the opportunity for us to seize a watershed moment in our nation's history by instituting reforms that will garner greater acceptance of and confidence in our election process. We pride ourselves on being the greatest democracy in the world, but it is a stain on our society to have exceedingly low levels of participation in the electoral process. We must not falter in achieving progress in the effort to administer fair and efficient elections.

These crucial areas of election reform will inevitably entail substantial financial investment. If our belief in voter participation is not matched by commensurate funding to support effective election administration ensuring not only the full and fair implementation of HAVA but also the full participation of all citizens, the commitment to our credo will ring hollow.

PART 1

FEDERAL PAYMENTS TO THE STATES AND COMMISSIONS

HAVA establishes breakthrough opportunities for technology investment in the registration and election process. New York presents enormous challenges. Nationwide, “[t]here are more than 10,000 local election jurisdictions, ranging in size from as small as 200 voters, to Los Angeles County, with more registered voters than in 41 of the states.”² There are also “roughly 18,000 election officials, 1.4 million poll workers, [and] 200,000 polling places.”³ This huge apparatus is launched only once or twice a year. Most of those responsible for smoothly run elections are volunteers. As many have pointed out, new technologies hold enormous promise—to make voting easier, more convenient, and accessible and, most importantly, more reliable, thereby ensuring that more votes are accurately obtained and counted.

The design of our current voting systems was driven largely by concerns about fraud and corruption, particularly organized attempts to buy or steal votes. Seemingly nonsensical rules such as those prohibiting extraneous marks on ballots (the famous “mustard stain” disqualification) arose from ward leaders requiring voters to place identifying marks on their ballots so that it could be determined whether they had voted as instructed. Recent experience now requires that we focus on additional concerns, such as min-

imizing errors by voters in casting their ballots, minimizing errors by machinery in recording and counting their votes, and minimizing the impact of registration problems and voting impediments, such as long lines and limited hours of availability. The Report of the CalTech/MIT Voting Technology Project (CalTech/MIT Report) estimates that 4 to 6 million votes were lost in the 2000 presidential election because of just some of these factors, with an additional 2.5 million votes lost in the Senate and gubernatorial races.⁴

As this data and the Florida 2000 presidential election suggest, the choice of technology can have dramatic consequences for elections. The CalTech/MIT Report concluded that 1.5% (or 1.5 million) of the votes intended to be cast for president in the 2000 election were not counted because of voting system inadequacy (ballots were unmarked, ambiguous, or spoiled), including the failure of the voter to successfully navigate the system. For the Senate and gubernatorial elections, the incidence of such spoiled, unmarked, and uncounted ballots soared to 5% (5 million votes), with 3.5% (3.5 million votes) lost because of voting system inadequacy. In 1988, only 3% of voters using hand-counted or scanned paper ballots had no vote recorded for senator or governor, while the incidence rose to 7% for lever machines. Just the difference in voting technology resulted in a loss of 1 million votes.⁵ The CalTech/MIT Voting Project found that over the past twelve years, voting systems that relied on optically scanned and hand-counted paper ballots consistently performed at the lowest levels of lost votes due to voting system inadequacy. While lever machines perform similarly for presidential elections, their performance plummets in races for senator and governor. Curiously, the CalTech/MIT Project found that electronic systems perform no better than punch card systems in this respect, and actually perform worse in the senatorial and gubernatorial races.⁶ More recent evidence indicates, however, that through improved programming and voter alerts, the latest generation of electronic voting machines can be just as effective as optical scanners.⁷

During the 1990s, New York City was on the verge of purchasing new

voting machines that were essentially electric versions of the current lever technology, complete with full-face ballots (New York State law requires that upon opening a ballot (or entering a voting booth) the voter must be able to see all candidates for all offices at the same time). After years of litigation, that contract was ultimately abrogated, in large part due to security concerns resulting from the lack of a vote-by-vote audit trail.

We now have technology capable of guiding voters through the ballot in various languages and presentation styles. Visually impaired voters can have the choices read to them. Voters of limited English proficiency can have the options presented to them in the language of their choice. Physically impaired voters can submit their votes orally, or by use of joysticks or other devices. Selections can be verified before they are counted. Voters can cast their ballots anywhere in the state (or country, for that matter), at any time.⁸

Faced with these capabilities, and the now popularly known shortcomings of many of the current election technologies, HAVA sets new standards for federal elections and provides significant funding to states to obtain new voting systems and otherwise improve election administration. This report examines the current technological options for election administration, what we know about how accurate, secure, and voter friendly they are, and how New York (and other jurisdictions) should go about choosing which approach best fits their needs.

TITLE I—PAYMENTS TO STATES FOR ELECTION REFORM

Section 101 of HAVA requires the Administrator of General Services to set up a program by December 13, 2002, to provide payments to states for such purposes as:

- A. Complying with the Federal Election Commission's voting system standards, provisional voting and voting information requirements, voter

verification and voter registration list requirements for federal elections found in Title III of the Act

- B. Improving election administration for federal offices
- C. Voter education
- D. Training for election officials, poll workers, and volunteers
- E. Developing the state plan required under the Act
- F. Improving, acquiring, leasing, modifying, or replacing voting systems and technology and methods of casting and counting votes
- G. Improving the accessibility and number of polling places
- H. Establishing toll free telephone hotlines.

Payments made under this section are essentially that state's proportionate amount of the total funds available, based on the proportion of voting age population in that state when compared to the nation.⁹

TITLE I FUNDING FOR THE REPLACEMENT OF THE LEVER MACHINES:

WHAT DOES IT MEAN FOR NEW YORK?

HAVA also authorizes payments to states specifically to replace punch card and lever voting systems used in the November 2002 federal election with other systems that meet the requirements of the Act.¹⁰ It does not require states to replace any such machines, but it seems that states must replace all such machines in the state to receive funding for the machines it does replace. This would prohibit New York State from receiving reimbursement under this section for the cost of providing one handicapped accessible machine per precinct, while retaining the current lever machines for other voters, as has been suggested. However, New York could, with its own funds or other funds provided under the Act, obtain such accessi-

ble machines for every precinct and retain the lever machines for non-disabled voters.

While the legislation does not appear to require the state to procure a single type of voting system statewide in order to obtain HAVA funding, there are some significant advantages to doing so. In addition to the likely economies of scale in purchasing, a statewide voter education campaign could be launched, and voters who move within the state will be familiar with the system in the new jurisdiction. On the other hand, human usability testing of various voting systems might reveal that some technologies work appreciably better than others with certain voting populations, a result that would counsel for obtaining a variety of machine types for use in different locations.

HAVA also requires that, in order to receive reimbursement, machines must be in place in time for the next regularly scheduled federal election to be held in November 2004.¹¹ While this system does not have to be in place for the September 2004 primaries in order to qualify for reimbursement, it is highly recommended that it be in place by the primary (or even the earlier presidential primary) so that there is an opportunity to work out any problems by the general election in November. However, a state may certify by January 1, 2004, that it will not meet, for good cause, the November 2004 deadline, providing the reasons for such failure, and still obtain HAVA funds if its voting systems are replaced by qualifying systems in time for the first election for federal office held after January 1, 2006. Despite the recommendation of the New York State Task Force, six months prior to HAVA's passage, that new electronic voting machines be in place in time for the 2004 presidential election,¹² New York City election officials are already indicating that certification for waiver of the November 2004 deadline will, in all likelihood, be sought.

To receive funds, a state must certify no later than six months after HAVA's enactment (i.e., by April 29, 2003) that it will use the payments to replace punch card or lever voting systems, will meet the requirements of

Section 301, will comply with the laws described in Section 906, and will satisfy whatever other requirements the Administrator may set.¹³ If state legislation is required, such certification shall still be made by April 29, with further certification(s) submitted once legislation is enacted.¹⁴

The maximum amount of funds available for voting system replacement under Title I is \$4,000 times the number of qualifying precincts,¹⁵ or approximately \$56 million for New York State.¹⁶ If the full amount of authorized funds are not appropriated, and so appropriated funds are not sufficient to ensure that all states receive the amount calculated pursuant to this formula, each state's funds shall be reduced proportionally.¹⁷ There are approximately 20,000 voting machines in use in New York State. At the current cost of between \$3,000 and \$8,000 per machine, depending on the characteristics desired, it would cost New York anywhere between \$60 million and \$160 million to replace them on a one-for-one basis. While funding is calculated in relation to the number of qualifying precincts in a state, there is no requirement that the funds be apportioned equally by precinct.¹⁸ Indeed, given the wide variations in the complexity of elections and voting populations around the state, funds should be allocated according to need, and not just apportioned in relation to the number of registered voters.

TITLE II—COMMISSIONS

HAVA also provides for the establishment of a Technical Guidelines Development Committee to adopt voluntary guidelines for voting systems. Its first set of recommendations is due January 1, 2004 (no later than nine months after its members have been appointed). The Director of the National Institute of Standards and Technology must provide technical support to the Development Committee on the security of computers, computer networks, and computer data storage, methods to detect and prevent fraud, protection of voter privacy, and the role of human factors in the design and application of voting systems, including assistive technologies for indi-

viduals with disabilities and varying levels of literacy, and remote access voting. Guidelines are to be adopted after notice, public comment, public hearing, publication in the Federal Register, and vote by the Commission.¹⁹

The Commission must provide for testing, certification, decertification, and recertification of voting system hardware and software by accredited laboratories. States may provide for such testing by laboratories certified by the Commissioner.²⁰ Because of the many variations and complexities of voting in the New York environment, New York may be well served by contracting for its own testing to meet its specifications.

As reported by the General Accounting Office, “each of the major stages of an election depends on the effective interaction of people (election officials and voters), processes (internal controls) and technology.”²¹ Accordingly, comprehensive evaluation of voting systems should include human factors and behavior, the voting process and election administration, ballot design, and interactive systems. Recognizing this, HAVA requires periodic studies to promote improvements in election administration and methods of voting, on the application of human factors, and on electronic communication and Internet technologies (particularly the potential for fraud). A report assessing various areas of human factor research is to be submitted to Congress within a year of enactment (by October 29, 2003).²² Human factor research includes usability engineering and human–computer and human–machine interaction, access for individuals with disabilities and limited proficiency in English, willingness of voters to navigate through multiple ballot screens, and research to reduce voter error and the number of spoiled ballots. Other studies should include convenience, accessibility and ease of use for voters, accuracy, security and expeditiousness of system, whether the system is nondiscriminatory, efficiency and cost effectiveness, and durability (performance over time). Differing usability of the varying technologies and voter interfaces among diversified components of the voting population should be tested as well. Research suggests that younger adults tend to perform computer-based tasks better than older adults.²³ Another report concluded

that voters who do not use computers frequently or have not attended college have the most difficulty using one system of touch-screen voting machines.²⁴ Because some groups may be more likely to vote for a particular party or candidate, systems that do not minimize or eliminate these differences risk affecting the outcome of elections in which they are used.

Each voting system must comply with an “out-of-the-box” error rate standard as established in section 3.2.1 of the federal voting system standards issued by the Federal Election Commission and in effect on the date of enactment.²⁵ While the specific error rate will not change, it is anticipated that over time, should technology provide for an improved error rate, Congress will amend this provision to reflect changing technology. Neither the conference report, nor the Senate-passed bill, establishes performance error rates, or residual error rates, for particular types of voting systems, as recommended by the National Commission on Federal Election Reform. Nor does the new voting system standards. What the new standards do is set forth voluntary guidelines for usability, stated as descriptive principles rather than in measurable terms.²⁶ For example, guidance such as “the design should support voter tasks by providing alerts, information, instructions, and controls when and where they are needed” and “ballot should clearly indicate the action voters must take to cast a vote and where the action must be made in order to vote for specific candidates” is provided.²⁷ However, the conference report does require that the new Commission study the best methods for establishing voting system performance benchmarks, expressed as a percentage of residual vote in the federal contest at the top of the ballot. If such benchmarks can be established with reliability, a future Congress may decide to add such performance benchmarks, or performance error rates, to the voting system standards.²⁸ Rather than wait for this possibility, New York State should establish its own benchmarks for the voting system to be obtained with HAVA funds.²⁹ These benchmarks should include both additional technological requirements and requirements that measure the quality of the human–system interface.

Voting system compliance with these standards should be measured by the systems in interface with actual voters, both in scientifically controlled settings and under actual voting conditions, and not be based solely on machine test conditions. The system's ability to reduce voter error should be a key indicator of performance. The now infamous “butterfly” ballot used in Palm Beach County during the presidential election of 2000 provided convincing testimony of the importance of ballot design and its interaction with the human factor in voting.³⁰ There is also some evidence that flashing red lights on the ballot interface of “Direct Recording Electronic” (DRE) machines encouraged more voters to complete the ballot when compared to lever machines.³¹ Assuming that we should use mechanisms to encourage voters to continue through a ballot, there are no doubt numerous other design mechanisms—such as colored or highlighted text, moving graphics, and audio capabilities—that deserve testing in this regard. The impact of ballot instructions also provides a fertile ground for experimentation.³²

Systems should also be tested as they are actually set up in the polling place. The CalTech/MIT team witnessed a public demonstration of a series of linked DRE machines that all reset the vote counts to zero when the connecting cables were shaken.³³ To evaluate voting systems under equivalent conditions, jurisdictions can “audition” various systems in different, yet similar, precincts during actual elections, as suggested by the CalTech/MIT Report. Likewise, systems should be auditioned with different user populations and under different conditions to determine whether some systems or user-interfaces work better with different populations and in different circumstances.

The studies, guidelines, and standards delineated throughout HAVA should provide a solid foundation for design of voting systems and voting system technology. These studies would be most helpful prior to the wide-scale securing of new voting technology. As the General Accounting Office recently concluded, while most U.S. jurisdictions “wish to obtain benefits from modernizing voting equipment, many are not in a position to make

the most suitable choice among technology options,” because of the lack of “reliable measures and objective data to know whether the technology being used is meeting user needs, and if not, why it is deficient.”³⁴ The studies will be of limited value in the short- to mid-term after new voting systems are secured. Indeed, New York’s current voting technology was purchased over 40 years ago (1962).

Unfortunately, the timeframes during which funds to obtain new voting systems are available under HAVA apparently preclude availability of the results of these activities in time to be incorporated into the technology to be obtained under HAVA. Indeed, the CalTech/MIT Report concludes that improvement in voting technology will likely be retarded if a large proportion of jurisdictions with punch card and lever machines replace them quickly, because the market for a new round of technological advances will be rendered largely nonexistent for quite some time. Other particular areas specified by the legislation for study that would optimally be completed prior to the selection of a new voting system include the feasibility of providing voting in eight or more languages and the best methods for establishing voting system performance benchmarks (and therefore the establishment of those benchmarks and the ability to identify systems that will satisfy those benchmarks). As it is, there is precious little information about the interface between voters and the various voting systems and ballot designs.³⁵ These factors make even more compelling the State Task Force’s recommendation that counties consider the feasibility of leasing, rather than purchasing, voting systems.³⁶ It does not appear that anything in HAVA would preclude using its funds to replace New York’s lever machinery initially through lease rather than purchase. However, if HAVA funds are not supplemented in the future, or unused funds cannot be rolled over, leasing of a voting system with HAVA funds now might leave the state with full responsibility for the purchase of a system later.

HAVA also requires a state to produce a plan delineating how it intends to implement its provisions. Such a plan must include performance meas-

ures.³⁷ These performance measures should cover, at the least, areas such as:

- u Convenience for voters
- u Ease of use
- u Accuracy of recording

- u Reliability (with continued use as well)
- u Speed of voting
- u Accessibility
- u Ability to reduce voter error
- u Need for assistance/poll worker training
- u Impact of full-face ballot and other ballot designs
- u Differing drop off rates
- u Flexibility for foreign language/disabled use/voice technology
- u System security
- u Susceptibility to fraud (including level of expertise needed to penetrate the fraud)
- u Individual auditability
- u Cost
 - s of system
 - s of verification

- of setup and maintenance

Additional performance measures are indicated elsewhere in this report.

The state plan should also identify the criteria to be used in evaluating performance in these areas and the relative value placed on these criteria.

HAVA also provides for grants for research on voting technology improvements—quality, reliability, accuracy, accessibility, affordability, and security.³⁸ As discussed above, these grants, although essential to supplement the relatively limited body of knowledge we possess on the actual field performance of voting technologies, will not likely have an impact on the next round of acquisition of voting machinery.

HAVA authorizes \$10 million for a grant program to test and implement new voting technologies on a trial basis. Again, any results of this program will likely not be available in time to impact the technologies to be obtained under this round of HAVA. Once again, an important step, but one that will not likely be useful for the round of voting system purchases that appears to be on the horizon.

POLLING PLACE ACCESSIBILITY FOR VOTERS WITH DISABILITIES

In addition to requiring and paying for one accessible voting system in every polling place, HAVA authorizes \$100 million over the next three years to make the polling places themselves physically accessible, to provide information to voters about the accessibility of poll sites, and to train election officials and poll workers about how best to promote polling place access and the participation of voters with disabilities.³⁹ In fiscal year 2003, the accessibility funding, distributed by the Department of Health and Human Services, was funded at only \$13 million, out of the \$50 million authorized.⁴⁰ The money can be used to improve the accessibility of entrances and exits, paths of travel, voting areas of poll sites, and to provide equal opportunity for the participation of voters with disabilities, including the

blind and visually impaired. The need for this funding is revealed by a study performed by the National Voter Independence Project in 1998 and 2000, which concluded that 47% of polling places have some type of accessibility problem.⁴¹ Within six months after the end of the fiscal year during which New York receives HAVA funds under this section, the state must submit to the Secretary of Health and Human Services a report describing how the money was spent.⁴²

Federal and New York State laws prohibit discrimination against individuals with disabilities and require polling places to be accessible to such individuals. According to Attorney General Eliot Spitzer, while some localities, such as New York City and Schenectady County, appear to have achieved almost full compliance with these provisions, New York State as a whole has not.⁴³ It is strongly suggested that New York take advantage of HAVA funding to work toward statewide compliance with existing state and federal laws regarding polling place accessibility.

HAVA provides no definition of accessibility or a deadline for implementation. To fully take advantage of these funds and ensure accessibility in a timely manner, it is recommended that New York's state plan and subsequent legislation include a definition of accessible and set a deadline by which improvements under this section must be complete. In addition, New York should consider offering a permanent absentee ballot (also known as an automatic absentee ballot) for voters with disabilities who voluntarily wish to vote absentee in all future elections. This procedure would automatically send an absentee ballot for each election to voters who qualify and request it. California has successfully implemented a similar provision, allowing any voter to request permanent absentee ballot status for any reason.

PART 2

HAVA MANDATES TO THE STATES

COMPARISON OF NEW HAVA REQUIREMENTS AND CURRENT NEW YORK LAW	
FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
Voting System Requirements [Section 301]	Voting System Requirements
1. Permits voter to verify votes before casting ballot [§ 301(a)(1)(A)(i), § 301(c)(2)]	Not in Statute
2. Provides opportunity to change ballot before casting [§ 301(a)(1)(A)(ii)]	In Compliance—See § 8-312(1)— No provision specifically for machines in statute
3. If voter overvotes: [§ 301(a)(1)(A)(iii)] <ul style="list-style-type: none"> a. notify voter they overvoted b. notify the effect of the overvote c. provide opportunity to correct ballot 	Not in Statute, except for machines that are compliant. See § 7-202(1), § 7-104. But see § 7-203. (A state that uses paper ballots, punch cards, or a central count voting system can comply by establishing a voter education system described in § 301(a)(1)(B).) See also Board of Elections Regulations
4. For mail-in absentees, establish a voter education program notifying the voter of the effect of the overvotes and instruct on how to correct before casting ballot	[§ 301(a)(1)(B)]

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
5. Permanent paper record with manual audit capacity [§ 301(a)(2)(B)(i)]	Not in Compliance/Needs Legislation—See § 3-222(1),(2), § 7-202(1), § 9-102, and Regulations § 6209.2(a)(13)
6. Voter must be able to change vote before paper record is produced [§ 301(a)(2)(B)(ii)]	Unclear—Seems to be compliant—See § 3-222(1),(2), § 7-202(1), § 8-312(1), § 9-102, and Regulations § 6209.2(a)(13)
7. Paper records must be available for recount [§ 301(a)(2)(B)(iii)]	Not in Compliance/Needs Legislation—See § 3-222(1),(2), § 7-202(1), § 9-102, and Regulations § 6209.2(a)(13)
8. System must be accessible to individuals with disabilities [§ 301(a)(3)(A)]	Not in Compliance/Needs Legislation. But see § 4-104(1)(a) provides for access but can be waived. See § 7-202(2), Regulations § 6206.1, and Regulations § 6209.3(b).
9. One accessible machine per precinct [§ 301(a)(3)(B)]	Statute is Compliant § 7-202(2) but not compliant in practice
10. System must provide for alternative language accessibility [§ 301(a)(4)]	Unclear—See § 4-118(2) and § 5-216
11. Error rate must comply with federal standards [§ 301(a)(5)]	Not in Statute, but see Regulation § 6209.3(b)
12. State must provide uniform standards for what constitutes a valid vote for each type of voting equipment used in the state [§ 301(a)(6)]	Not in Statute. See Regulations § 6211.10(b)(ii)
Provisional Ballots [Section 302]	Provisional Ballots
1. Provisional ballots to be offered to persons whose names are not on the list of eligible voters or is told she is not eligible [§ 302(a)]	Seems to be in Compliance—§ 8-302(e) provides a provisional ballot if not on registration poll record and claim to live in election district. Language of affidavits may need to be changed.
2. Poll worker must notify voter that he or she may cast a provisional ballot [§ 302(a)(1)]	Unclear—See § 8-302(3-a). N.Y. law requires poll worker to provide a ballot, but HAVA requires poll worker to “notify” voter that he or she may cast a provisional ballot

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
3. Voter executes a written affirmation stating he/she is registered in the jurisdiction and is eligible to vote [§ 302(a)(2)]	Partially in compliance—See § 8-302(e)(ii)—Statute doesn't require you to affirm you are eligible per se
4. If the voter is eligible to vote, the vote is counted [§ 302(a)(3)-(4)]	Seems to be Compliant
5. A free access system exists that enables any individual who casts a provisional to find out if the individual's provisional ballot was counted or if not, why [§ 302(a)(5)(B)]	Not in Compliance/Needs Legislation, but § 5-403 requires letter explaining rejection
6. At time of casting provisional ballot, voter is given written notice that voter can find out if ballot was counted through the free access system [§ 302(a)(5)(A)]	Not in Compliance/Needs Legislation, but § 5-403 requires letter explaining rejection
7. Voters who vote after polls close pursuant to court or other order extending hours must cast provisional ballot [§	302(c)]
Voting Information to Be Posted at Each Polling Place: Poll Worker and Voter Education [Section 302]	Voting Information to Be Posted at Each Polling Place: Poll Worker and Voter Education
1. Sample ballot [§ 302(b)(2)(A)]	In Compliance § 8-102(b), § 8-306(7)
2. Date of election and polling hours [§ 302(b)(2)(B)]	In Compliance § 8-102(j)
3. Instructions on how to vote and how to cast a provisional ballot [§ 302(b)(2)(C)]	Not in Compliance/Needs Legislation, but see § 7-118 and § 8-306(7)
4. Identification instructions for mail registrants who are first time voters [§ 302(b)(2)(D)]	Not in Compliance/Needs Legislation
5. General voting rights under state and federal laws, including right to cast a provisional ballot and who to contact if rights are violated [§	302(b)(2)(E)]
6. General information regarding fraud and misrepresentation [§ 302(b)(2)(F)]	Not in Compliance/Needs Legislation

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
Computerized Statewide Voter Registration List [Section 303]	Computerized Statewide Voter Registration List
1. Single, uniform, centralized, and interactive computerized statewide list maintained and administered at the state level, containing name and registration information of every voter, with a unique identifier [§ 303(a)(1)(A), § 303(a)(1)(A)(ii), § 303(a)(1)(A)(iii)]	Not in Compliance/Needs Legislation—but § 5-500(1) does have a county “central file registration record” and § 5-504 and § 5-506 allow a computer file, but § 5-504 allows discontinuation of the central file registration record
2. Serves as the single system for storing and managing the official list of registered voters [§ 303(a)(1)(A)(i)]	Not in Compliance/Needs Legislation
3. Must coordinate with other agency databases [§ 303(a)(1)(A)(iv)]	Not in Compliance/Needs Legislation
4. Election officials in the state must be able to obtain immediate electronic access to the information [§ 303(a)(1)(A)(v)]	Not in Compliance/Needs Legislation
5. Information is entered on expedited basis [§ 303(a)(1)(A)(vi)]	Not in Compliance/Needs Legislation
6. State must provide support to the Supervisor of Elections [§ 303(a)(1)(A)(vii)]	Not in Compliance/Needs Legislation
7. List serves as official registration list for federal elections [§ 303(a)(1)(A)(viii)]	Not in Compliance/Needs Legislation
List Maintenance [Section 303]	List Maintenance
1. Regular list maintenance, with removals pursuant to NVRA [§ 303(a)(2)(A)(i)]	Not in Compliance/Needs Legislation, but § 5-213 places people on inactive list and removes some individuals; § 5-226 fixes some wrong registrations, § 5-400 cancels some registrations, and

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
2. Registration list must be coordinated with state felon records and state death records [§ 303(a)(2)(A)(i)(I),(II)]	Not in Compliance/Needs Legislation, but § 5-704 and § 5-708 provide for coordination
3. Ensure that all registered voters appear on list correctly, only ineligible voters are removed, and duplicate registrations are eliminated [§ 303(a)(2)(B)(i)–(iii)]	Not in Compliance/Needs Legislation, but § 5-213 places people on inactive list and removes some individuals, § 5-226 fixes some wrong registrations, § 5-400 cancels some registrations, and
4. Provide adequate technological security for the list [§ 303(a)(3)]	Not in Compliance/Needs Legislation
5. System of list maintenance that makes a reasonable effort to remove ineligible voters, pursuant to NVRA and safeguards to ensure that eligible voters are not removed in error [§ 303(a)(4)(A)-(B)]	Not in Compliance/Needs Legislation, but § 5-213 places people on inactive list and removes some individuals, § 5-226 fixes some wrong registrations, § 5-400 cancels some registrations, and
Voter Registration Requirements [Section 303]	Voter Registration Requirements
1. Application must include driver's license number of applicant, if applicant has a driver's license number [§ 303(a)(5)(A)(i)(I)]	Not in Compliance/Needs Legislation
2. If applicant has no driver's license, applicant must provide the last four digits of Social Security number, if applicant has a Social Security number [§ 303(a)(5)(A)(i)(II)]	Not in Compliance/Needs Legislation
3. If applicant has neither driver's license nor Social Security number, state must assign a unique identifier (which can be the same number assigned by the computer list) [§	303(a)(5)(A)(ii)]

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
4. State determines whether the information provided is sufficient [§ 303(a)(5)(A)(iii)]	Not in Compliance/Needs Legislation
5. Chief election official and head of DMV must enter into an agreement to match information in the voter database with information in the DMV database to verify accuracy of voter information [§ 303(a)(5)(B)(i)]	Not in Compliance/Needs Legislation
6. Head of DMV must enter into an agreement with the Commissioner of Social Security to verify voter registration information of applicants using last four digits of Social Security number [§	303(a)(5)(B)(ii)]
Voter Registration by Mail [Section 303]	Voter Registration by Mail
<p>1. An individual who registered by mail and either (i) has not previously voted in the state in an election for federal office or (ii) the individual has not previously voted in the jurisdiction and the jurisdiction is in a state that does not have statewide computerized list, must provide documentation. [§ 303(b)(1)]</p> <p>Documentation in the case of a person who votes in person is either (i) a current and valid photo identification or (ii) other prescribed government document with name and address of voter. [§ 303(b)(2)(A)(i)]</p> <p>Documentation in the case of a person who votes by mail is either (i) a copy of a current and valid photo identification</p> <p style="text-align: center;">(Entry Continued)</p>	Not in Compliance/Needs Legislation, but § 5-210 provides for registering by mail. See also § 8-302 and § 8-400.

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
<p>(entry continued)</p> <p>or (ii) a copy of other pre-scribed government document with name and address of voter. [§ 303(b)(2)(A)(ii)]</p> <p>Documentation not required if [§ 303(b)(3)]:</p> <ul style="list-style-type: none"> u At time of mail registration, applicant submits a copy of proper documentation; or u If at time of mail registration, applicant submits a driver's license number or last four digits of Social Security number and the state or county matches that information with an existing state record bearing the same number, name, and date of birth; or u The person is entitled to vote absentee under the Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, or is entitled to vote absentee under any other federal law. 	
<p>2. If voter appears in person without proper documentation, voter must vote a provisional ballot [§ 303(b)(2)(B)(i)]</p>	<p>Not in Compliance/Needs Legislation</p>
<p>3. If voter votes by mail without proper documentation, treat absentee ballot as provisional [§ 303(b)(2)(B)(ii)]</p>	<p>Not in Compliance/Needs Legislation</p>

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
Establishment of State-Based Administrative Complaint Procedures [Section 402]	Establishment of State-Based Administrative Complaint Procedures
1. If the State receives funds under HAVA, it shall establish and maintain a State-based uniform, nondiscriminatory administrative complaint system with prescribed procedures	[§ 402(a)]
2. If the State does not receive funds under HAVA, it shall certify that it either (i) has developed an administrative complaint system that meets the same requirements as if the State had received funds or (ii) submit a compliance plan to the Attorney General [§	402(b)]
Uniformed and Overseas Voters [Title VII]	Uniformed and Overseas Voters
1. The State shall designate a single office that shall be responsible for providing information regarding voter registration procedures and absentee ballots procedures to be used by absent uniformed services vot-	ers [§ 702]
2. 90 days after an election, each State shall submit a report to the Election Assistance Commission on the combined number of absentee ballots transmitted to absent uniformed and overseas voters and the number returned [§	703(a)]

FEDERAL REQUIREMENTS (HELP AMERICA VOTE ACT OF 2002)	CURRENT NEW YORK LAW
3. Amendment to 42 USC 1973ff-1: ⁴⁴ If the State accepts and processes an official postcard form submitted by a uniformed or overseas voter for simultaneous registration and absentee ballot application and the voter requests that application be considered an application for an absentee ballot for each subsequent election, the State shall provide an absentee ballot to the voter for each subsequent election for federal office held in that state through the next two regularly scheduled general elections [§ 704]	Seems not to be compliant. See § 10-106(7-a) and § 10-108
4. Amendment to 42 USC 1973ff-1(b): Where the State requires an oath for any document listed in 42 USC 1973ff-1, the State shall accept the oath prescribed by the presidential designee.	[§ 705]
5. Amendment to 42 USC 1973ff-3: A State may not refuse to accept or process any otherwise valid voter registration application or absentee ballot submitted by an absent uniformed services voter on the grounds that it was submitted before the first date on which the State otherwise accepts or processes such applications [§	706]
6. Amendment to 42 USC 1973ff-1: ⁴⁵ If the State rejects the registration application or absentee ballot request of an absent uniformed services or overseas voter, the State shall provide an explanation [§ 707]	Not in Compliance/Needs Legislation

VOTING SYSTEM REQUIREMENTS [SECTION 301]

In many ways, Title III forms the crux of HAVA's provisions. It sets the minimum standards that voting systems used in federal elections must satisfy beginning January 1, 2006. And, by incorporating the error rate and other voting system standards set by the Federal Election Commission, it lays the foundation for a dynamic system that, if properly designed, will lead to dramatic improvements in the way votes are cast and counted throughout the United States. However, this promise will not be realized if these standards are not updated with the information developed under the auspices of Title II of the Act, or if long-term purchases of voting systems are made before critical information is developed under these provisions.

SECTION 301 VOTING SYSTEM STANDARDS

This section sets standards for voting systems used in federal elections. Beginning January 1, 2006, such systems must:

- u Maintain voter privacy and ballot confidentiality. (New York's machines satisfy this, with the exception of certain disabled voters and voters with limited English language proficiency.)
- u Permit voters to verify their selections. (New York's machines satisfy this—to the extent that voters understand the ballot layout and machine interface.)
- u Notify voters of overvotes.⁴⁶ (For jurisdictions using paper ballot, punch card, or central-count systems, voter education can satisfy this requirement. New York's machines apparently satisfy this requirement, since they prevent overvotes when properly set up.)
- u Permit changing of votes and correcting of errors before vote is cast. (New York's machines are claimed to satisfy this, assuming the voter understands the ballot layout sufficiently to detect the error.⁴⁷)

- u Produce a permanent paper record for the voting system that can be manually audited and is available as an official record for recounts. (New York's machines do not seem to satisfy this requirement, see discussion below.)
- u Provide to individuals with disabilities, including the blind and visually impaired, the same accessibility to voting as other voters, through use of one Direct Recording Electronic (DRE) machine or properly equipped voting system at each polling place. Systems purchased with Title II money on or after January 1, 2007, must provide such accessibility. (New York's machines do not satisfy this requirement.)
- u Provide alternative language accessibility as required by law. (New York's machines—notably in certain New York City precincts—are probably on the edge of satisfying this requirement. Any additional language requirements, or any particularly complicated ballots, will likely strain to the breaking point the ability to satisfy this requirement.)
- u Comply with the error rate standards issued by the Federal Election Commission and in effect on the date of HAVA's enactment—October 29, 2002. (New York's machines have never been tested according to these standards. It is unlikely that they would comply.)

Each state must adopt uniform standards defining what constitutes and will be counted as a vote. (Uniform standards arguably exist in New York State. Their application, however, is extremely varied, according to election experts.)

PERMIT VOTERS TO VERIFY THEIR SELECTIONS—PERMIT CHANGING OF VOTES AND CORRECTING OF ERRORS BEFORE VOTE IS CAST

Many have argued that New York's lever machines adequately allow the voter to verify and correct his or her selections before casting the ballot. However, there is actually no particular mechanism on these lever machines to allow a voter to verify his or her selection or to notify the voter of a mistake

or of undervoting.⁴⁸ If the voter casts a ballot erroneously because he or she is confused about the ballot layout or the way in which the lever machines work, the voter will not be able to verify whether the intended selections have been properly made. With the large number of parties on the ballot in New York State, and candidates often running on multiple party lines, it can be difficult for some voters to determine which lines go with which races, and which levers cast ballots for the candidates they wish to support.

Indeed, the CalTech/MIT study indicates that New York voters do not always recognize their errors, since residual votes are relatively high with lever machines, particularly as one moves down the ballot. This would likely have been true of an electric machine that uses a full-face ballot, such as the one New York nearly purchased in the 1990s. Studies of this interface might indicate, for example, the need for verification being in a format or medium different than the one for casting the vote (i.e., the vote is formulated with a touch screen and verified on a summary screen or printed text, or the vote is formulated by choosing from a group, with the list of the selections that the voter has made presented for verification before the ballot is cast).

The importance of voter verifiability is demonstrated by the experience of Orange County, Florida, during the November 2000 presidential election. Using an optical scan system, 10,547 ballots were “spoiled.” Optical scanning done in the precinct in the presence of the voter allowed for the correction of all but 661 of those ballots.⁴⁹

PRODUCE A PERMANENT PAPER RECORD FOR THE VOTING SYSTEM THAT CAN BE MANUALLY AUDITED AND IS AVAILABLE AS AN OFFICIAL RECORD FOR RECOUNTS

It sounds from the language of this section that the paper record should be one that is of the individual votes, so it can later be counted or compared

with the electronic record on individual machines for audit purposes; this would disqualify New York's lever voting machines for elections for federal office held on or after January 1, 2006. However, some New York election officials maintain that since the end-of-day canvass currently done produces a paper record (albeit merely a manual recording of the vote totals that the machine provides), the paper record required by this section is produced. Ironically, this is not even an official record in New York and is not the record that is used for certification of the outcome or for recount or audit purposes. In determining the outcome of an election, and for any recount, the tally on the machines' counters forms the official record.⁵⁰

Analogously, this interpretation would mean that electronic voting systems would qualify if all they produced is a vote count at the end of the day or at intervals during the day. The only audit value this would provide would be the ability to match the vote totals against the total number of people who appeared at the polling place to determine whether the vote totals for any election were likely or possible, and also to determine the extent of lost votes. This also assumes that the number of people ostensibly voting at that machine is recorded, which is not a requirement of the Act. By contrast, the current voting system standards for electronic voting machines require separate and redundant vote-by-vote backups of the main voting records. Indeed, if these officials are correct, it would be hard to understand why § 301 (a)(2)(B)(ii) and (iii) speak in terms of providing "the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced" and "The paper record produced . . . shall be available as an official record for any recount" (emphasis added). The paper record produced by the end-of-day canvass is of no real use in a recount. In fact, as stated above, in New York it is the machine counter that forms the basis of the final tally and the recount in any contested election. In essence, elections in New York are not currently subject to recount or audit, save for the relatively small numbers of paper ballots (absentee, affidavit [provisional]).

The accuracy of the machine counts, whether mechanical or electronic, can only be audited if the paper record required by this section is of the votes cast by each individual voter, without identifying the voter.

The unadopted House version of HAVA was, admittedly, more explicit on this point. It required voting systems to have “the audit capacity to produce a record for each ballot cast.”⁵¹ Neither the conference report nor the floor discussion of the conference report reveal why the Senate language was adopted on this point.⁵² Nonetheless, it is hard to see how the paper record election officials maintain that New York’s voting system produces (the handwritten report taken from the machines’ counters) is of any use in an audit or recount, since there is no way to verify its accuracy. In any event, the current voting system standards require new DRE systems to record and retain redundant electronic copies of the original ballots cast.⁵³

The touch-screen terminals/computer-based voting systems used by 12.2% of the voters in 2000 store each voter’s choice in a memory cartridge, diskette, or smart card, but do not simultaneously produce a paper record.⁵⁴ Without a vote-by-vote paper record, fraud (tampered code) or some types of machine failure or faulty code would not be readily detected without an audit of each machine’s software.⁵⁵ In one Florida precinct in the November 2002 election, votes intended for one candidate were counted for his opponent because of a misaligned touch screen. How many votes were miscounted could not be determined, and thus corrected, because there was no voter-verifiable paper or other vote-by-vote record available.⁵⁶

Over 300 computer scientists and technologists from universities around the country have signed a “Resolution on Electronic Voting,” which states that it is “crucial that voting equipment provide a voter-verifiable audit trail, by which we mean a permanent record of each vote that can be checked for accuracy by the voter before the vote is submitted.” They conclude that most currently available touch-screen systems “pose an unacceptable risk that errors or deliberate election-rigging will go undetected, since they do not provide a way . . . to verify independently that the machine

correctly records and counts the votes [that have been] cast.”⁵⁷

By itself, the vote-by-vote paper record would not provide a foolproof method of audit in today’s single-box electronic voting systems, because someone fraudulently (or erroneously) programming a computerized system could code the machine to print out the ballot as the voter cast it, but record it differently. However, this type of fraud could be identified by an audit of the software. Absent such an audit, a printed record could catch voter and some machine error on site if the voter could see the printed record once the vote was cast. Of course, creating a paper record is not risk free. “You’ll have printer jams, you’ll run out of paper, you’ll have voters say, ‘That’s not how I voted,’ and you’ll have to have procedures for letting them re-vote and to determine which of the receipts you printed was the valid one, and which of those constitute the official recount in case of a contested vote,” said a former voting administrator in three states. “It would create a lot more problems than it solves,” says a representative of one of the touch-screen manufacturers.⁵⁸ Optimally, however, the technology would allow these errors to be identified and corrected before the vote is cast, thus avoiding some of these problems.

Such undetected errors are perhaps one of the greatest risks of using computer technology in today’s environment. Typically, today’s DRE machines are not open to public scrutiny (and therefore audit) because their manufacturers require purchasing jurisdictions to sign agreements prohibiting the programming codes from being inspected without a court order. An alternative, adopted by many jurisdictions, is to program the election software themselves.⁵⁹ This does not, of course, fully eliminate the possibility of fraud or error. The Independent Testing Authorities (ITA), which perform line-by-line code reviews of voting technology, test only examples of the technology being used, and even then have turned up unacceptable coding in submitted software. However, ITAs do not have the capacity to test every voting machine and software cartridge.⁶⁰

Rebecca Mercuri, an assistant professor of computer science at Bryn

Mawr College, says “We know that [some of] these machines have lost votes and have come up with zeroes at the end of the day. . . . What is going on with these machines we have no way of knowing.” She adds that there are reports of hundreds of these machines “locking up, jamming and having to be rebooted.”⁶¹ The new voting system standards address, and attempt to prevent, these types of problems.

Simply put, without a voter-verifiable vote-by-vote record, we are trusting the legitimacy of our elections to a handful of programmers operating without scrutiny. Even without contractual limitations on review of source code, it is unlikely that we will invest the resources necessary to independently audit, either fully or randomly, the program code in our voting machines. Voting officials, such as Commissioner Douglas Kellner of the New York City Board of Elections, are extremely wary of relying on such voting systems. On the other side, requiring revelation of the computer code eliminates the competitive advantage for the entity that developed it and might eliminate the incentive for enhancement.

One manufacturer has a patent pending for a touch-screen voting machine that produces a real-time printed ballot image that can be seen by the voter through a protective cover but cannot be removed from the machine. This technology was used in Sacramento County, California, for the 2002 election.⁶² (In Sacramento, the machine showed the printed ballot to the voter, then retracted it for storage.) The ballots were encoded to secure authenticity, but encrypted for voter privacy. Apparently, 52,000 machines (one-eighth of the total) in Brazil's October 2002 national election printed a record of the vote that could be viewed by the voter through a small window to confirm that the ballot was properly cast, which was then stored. Subsequently, 3% of the ballot boxes were checked against the paper printout.⁶³ These printed records can also be bar coded for easy audit/scan capability. As this report is being written, other voting system manufacturers, with HAVA's audit requirement in mind, are also developing touch-screen systems that produce a permanent, voter-verifiable, paper

audit record.⁶⁴

HAVA does not directly address Internet voting, although it could conceivably satisfy the Act's criteria. Internet voting was used in Arizona for the 2000 Democratic primary, and the Defense Department piloted Internet voting for overseas absentee voting for the military.⁶⁵ Because of the significant technological challenges raised by Internet voting, such as providing adequate secrecy and privacy safeguards, the need for security to protect against intrusions and inadvertent errors, the potential for coercion, and the need to ensure equal access to all voters, we are probably far away from widespread consideration of Internet voting, and we will not address it here. Internet voting might, however, provide significant advantages to the visually impaired as well as for those whose impairments make travel difficult.

PROVIDE TO INDIVIDUALS WITH DISABILITIES, INCLUDING THE BLIND AND VISUALLY IMPAIRED, THE SAME ACCESSIBILITY TO VOTING (INCLUDING PRIVACY AND INDEPENDENCE) AS OTHER VOTERS THROUGH USE OF ONE DRE OR PROPERLY EQUIPPED VOTING SYSTEM AT EACH POLLING PLACE

The voting systems in place during the 2000 elections required voters to interact with the machinery in a variety of ways in order to cast a ballot: pushing a button, turning a knob, touching a computer screen, turning a mechanical lever, punching a card with a stylus, and using a pencil to mark a form. This makes them unusable by many people with disabilities. Most of New York State's current lever machines are not accessible even to individuals in wheelchairs, nor can they be operated independently by the visually impaired or those with many other types of impairments.

The predominant current method of allowing individuals with impairments to vote in these systems is to provide the assistance of unimpaired individuals. This approach does not satisfy HAVA's privacy and independence requirements. Newer DREs have the capacity of providing independ-

ence to almost all voters through the use of audio, joysticks, Braille keypads, headphones with differing font sizes, response to voice commands, and sip and puff plug-ins. It appears that DREs have the greatest potential to serve people with the widest range of disabilities.⁶⁶

This requirement has led some to opine (in conjunction with interpretations of other provisions of HAVA) that HAVA compliance can be achieved by retaining New York's current lever technology and the purchasing of one "accessible" machine for each precinct for use by 2008. Whether this makes practical sense is, of course, another question. (In New York City there is more than one election district per polling place, making it especially impractical.) Indeed, leaders in the disability community are urging jurisdictions to make all machines equally accessible by all, to allow the use of all machines for all voters. This would prevent the segregation of disabled voters on Election Day. Virtually no studies have examined how successful the various technologies and voter-machine interfaces are in assisting people with disabilities and other special needs. New York's current full-face ballot requirement also provides great limitations on the accessibility of virtually any type of technology that could be used. Alternatively, purchasing DRE machines compatible with the full-face ballot requirement essentially fixes the voter-machine interface, preventing upgrades without the purchase of a new voting system.

Systems purchased with Title II money on or after January 1, 2007, must provide the same opportunity for access and participation (including privacy and independence) for disabled voters as for other voters.

PROVIDE ALTERNATIVE LANGUAGE ACCESSIBILITY AS REQUIRED BY LAW

With New York State's full-face ballot requirement, it will become increasingly difficult, if not impossible, to handle multiple languages. Currently, Chinese, Spanish, and Korean ballot translations are required in appropriate communities.⁶⁷ Magnifying glasses are required already (and

made available by the Board of Elections) for many to read some of the ballot text. Eliminating the full-face ballot requirement when moving to computer-type screens would allow accessibility to voting in many languages, allowing New York to not only keep up with the requirements of the Voting Rights Act as foreign language-speaking communities grow, but to exceed those requirements. Of course, voters whose primary language is Spanish live throughout New York State. Other common languages, particularly in New York City, are Bengali, Urdu, Russian, and Haitian/Creole. With new technology, expanding to languages not required by the Voting Rights Act should add very little additional cost to the voting system. Alternatively, as discussed above, purchasing DRE machines compatible with the full-face ballot requirement essentially fixes the voter-machine interface, preventing upgrades without the purchase of a new voting system.

COMPLY WITH THE ERROR RATE STANDARDS IN THE FEDERAL VOTING SYSTEM STANDARDS

It is unfortunate that this provision explicitly limits the standard to the “out-of-the-box” error rate of the voting system without taking into account human factors and errors attributable to the interaction of people (election officials and voters) and technology. It is typically not the technology per se that leads to the poor performance of voting systems. Rather, it is its usability—related to such characteristics as the user interface, physical reliability, and setup. For example, in the area of tabulation, existing voluntary standards provide for error tolerance of only 1 in 500,000.⁶⁸ This is measured using machine prepared, not voter cast, ballots, eliminating any measure of the human-machine interface. Moreover, the currently available systems’ errors in collecting and counting perfectly cast ballots are small in comparison to the errors caused by the voter-machine interface, reduced reliability after continued use, and problems with setup.

The existing federal voting system standards also address issues such as hardware, reliability, durability, maintainability, availability, and trans-

portability. Software standards address ballot construction, data storage, and auditability. Other than providing general guidance, they do not address the critical areas of ballot design and voter–system interface. They do not cover the ability of the voting system to accurately record voters’ intentions, to minimize voter errors, or to accurately count results. The standards also fail to cover separate ballot production and vote casting technology, save for optical scanners of paper ballots. Additional criteria that should be incorporated into voting system standards would also include drop-off from top to bottom of ballot and system performance over time.

From the information that is available, it appears that the actual ability of all of the more modern technologies currently available to collect and tabulate votes accurately, when the user interface is considered, leave something to be desired and, in fact, have performed no better than, and in some instances worse than, punch card systems. One exception to this poor performance is the optical scanning of paper ballots. According to the CalTech/MIT study, what they call the residual (lost) vote rate of electronic machines over the past four presidential elections was 2.3%. The rate rises to 5.9% for Senate and gubernatorial races (as opposed to 1.5% and 3.5%, respectively, for optical scanning).⁶⁹ The electronic machines comprise two categories—full-face push button (two-thirds) and touch screen (one-third). Of the two, the touch screens have performed better, but only in some locations. One way that the lost vote rates of electronic voting systems can be improved is through the use of voter verification of their selections prior to casting of the ballot, either through the paper record discussed above or otherwise. Indeed, it appears that voting systems produced after completion of the CalTech/MIT Report are using such mechanisms to improve system performance.⁷⁰

While collection, counting, and storage of paper optically scanned ballots seems like a daunting, if not impossible, task, Los Angeles County processes 2.5 million in a single night.⁷¹

Commendably, the revised federal voting system standards contain

voluntary standards for usability, and HAVA requires that future studies evaluate the voter–system interface. However, HAVA contains no explicit requirement that standards be revised to take into account the results of these studies. In addition, it is doubtful that this new information will be available, and appropriate testing accomplished, in time to satisfy the system purchase deadlines in HAVA. Also, these studies should inform the audit requirements. It seems difficult, if not impossible, to determine what the field condition error rate (as opposed to the lost or residual vote rate) is if a system does not have a mechanism for audit by vote cast (as opposed to the end-of-day count), at least on a random sample basis. How to measure voter error would seem to be a thorny area as well. These characteristics should be measured through testing, using real voters in circumstances approximating real election conditions.

EACH STATE MUST ADOPT UNIFORM STANDARDS DEFINING WHAT CONSTITUTES AND WILL BE COUNTED AS A VOTE

What constitutes a vote? This basic question became the subject of sharp debate during the 2000 presidential election in Florida due to the differing standards, views, and technologies used for the recording and counting of votes. Such issues, of course, are not particular to Florida. Alabama, for example, experienced problems in counting votes using optical scanners in its 2002 gubernatorial election.

New York has also experienced disputes about what counts as a vote. In the 2001 municipal elections in New York City, for example, candidates and elections officials in New York sparred—as in Florida—about which standards to apply in cases of disputed votes and ballots. Optical scanners were initially used to read paper (absentee and provisional) ballots. These scanners were programmed to count a vote if they detected a mark covering six pixels⁷² or more out of a possible 16 pixels of space within the oval the voter was required to fill in to select a candidate. However, in some contested races, voter intent was determined by manual recounts and/or

court rulings, and the vote was counted, even if the six-pixel rule was not satisfied.

For the vast majority of votes, the technology to be used will determine the standard for what constitutes a vote. For example, “a vote” on New York’s lever machines occurs when the lever adjacent to a candidate’s name is pushed down, and the bar that casts the vote is pulled across the machine. Although the definition of a vote for the paper ballots impacts a relatively small number of votes, it becomes important in closely contested races, and experience shows that the technical standard is often abandoned in place of a judgment as to the intent of the voter. Likewise, for voting systems that use the new technologies, the definition of a vote will be driven by the technology. For a touch-screen system, it will be touching the screen at a point that triggers the vote for a candidate or proposition, as determined by the system’s computer program. As noted above, those systems with the most effective voter interfaces will have the best “definition” of what constitutes a vote.

Of course, there will still be circumstances that require the use of paper ballots. And, whatever standard is adopted for counting these ballots, there will be situations in which votes will not satisfy the criteria of the standard. Experience shows that the inclination to count votes that are cast will lead election officials and judges to count these ballots where the intent of the voter can nonetheless be ascertained. This desire is the essence of our democracy, and the application of an intent standard, assuming an otherwise strong voter–system technology, is not necessarily problematic.⁷³

In addition to meeting these HAVA requirements, the new voting equipment should have software that can accommodate instant runoff voting and cumulative voting, in case the Legislature votes to use this method in some or all elections. Instant runoff voting is a ranked-choice voting system that allows voters to rank candidates in order of choice, ensuring a winning candidate will receive an absolute majority of votes rather than a simple plurality. Legislation to conduct primaries and local elections

through instant run-off voting has been introduced in the New York State Legislature (A4481, S4683 and A4482). In cumulative voting, voters cast as many votes as there are seats and can put multiple votes for one or more candidates.

LESSONS LEARNED

Since the impetus for HAVA came from the debacle that occurred in the presidential election in Florida in November 2000, we should look at the importance of some of the safeguards described above from the perspective of those problems. First, the now infamous “butterfly” ballot apparently led many voters to cast their ballot for one candidate (assertedly Pat Buchanan) when they actually meant to vote for another (assertedly Al Gore).⁷⁴ Because the punch card system in use in Florida did not provide a mechanism for the voter to verify that the ballot was being cast as intended, and make a correction if it was not, this error could go undetected and uncorrected. Also, because of the limitations of the technology in use, we will never know the extent to which this actually occurred.

Likewise, there has been limited study of the voter–technology interface of punch card systems. In addition to being misled into voting for the wrong candidate, many votes intended to be cast went uncounted because the voter did not cast them (punch the holes) in the manner necessary for the vote to be properly identified by the vote-counting technology in use.⁷⁵ A better understanding of the reliability of this interface could have led to: purchase of a different technology; a modification of the auxiliary equipment (template or device used to punch holes in the ballot); improved ballot reading technology; improved voter education; or use of a ballot reader that would inform the voter what choices had been recorded on the ballot, giving the voter a chance to correct any errors. We can estimate the extent to which an unintentional non-vote occurred, because the ballots themselves are preserved.

To overcome the limitations of the vote-reading technology in Florida, manual counts of the punch card ballots were undertaken. Preservation of the punch cards would seem to provide the auditable record that is optimal for helping to ensure election integrity. However, it turns out that the voters impressions on many punch card ballots were ambiguous, and the ballots themselves are subject to alteration by the counting process, particularly if recounts occur a few times, so even maintenance of the ballots in this system is an imperfect remedy for potential error or fraud related to the counting technology.

Florida, then, teaches us the need for a voter-verifiable system that maintains a nondegradable independent record of the votes cast for use in an audit or recount. As required by HAVA, voter verification should occur at a time and in a manner that allows the voter to correct easily any errors. It also teaches us the necessity for careful structuring and testing of the voter–technology interface and comprehensive training of voters on the proper use of the voting technology.

Modern computer technology does not automatically provide immunity from these potential problems. Similar difficulties have occurred with other voting systems. Like their lever and punch card counterparts, touch-screen and scanning systems are subject to numerous errors that can easily go undetected. Ironically, in Miami-Dade County the technology purchased to replace the punch card system faced similar problems. Votes had to be taken from the system’s memory chips because the ballot cartridges were blank.

In the November 2002 gubernatorial election in Alabama, the electronic cartridges from optical scanning vote-counting machines in four counties erroneously reported the results. In a single county, the error raised one candidate’s vote total by 50%, from 12,770 to 19,070, enough to give him what appeared to be the margin of victory. The errors in three of the counties were discovered before the unofficial results were reported. The other error was not discovered until the following morning, leading to an erroneous announcement of who had been elected governor. Because the

scanners remain in the custody of the Sheriff's Department, they have not been examined to determine the cause of the error. The manufacturer of the machine surmises that a power surge or static electricity may have caused what it terms a "glitch." Fortunately, this error was so significant that it was caught immediately, and a backup mechanism existed for obtaining the actual results.⁷⁶

Last May 28, Venezuela's highest court suspended its national elections because of technical problems with electronic cards used to tabulate the votes. The U.S. manufacturer of the voting system, which manufactures one-half of the voting machinery made in the United States, maintained that 11,200 changes in posting candidates for 6,200 offices hindered its ability to set up the machines.⁷⁷

It is notable that these were all instances in which the results of the errors were so glaring that they could not have been overlooked. Had the errors been less significant, they could have changed the outcome of a close election without ever being detected.

Of course, additional safeguards to address these concerns may require additional resources, either in time or in money. Once again, voting system evaluations over the next few years should help to identify technologies that satisfy these criteria with the least cost.

Ultimately, which technology/vendor to use will be determined by how the systems measure up to these standards, as well as the relative value that is placed on each of the criteria. Since widely varying conditions exist in jurisdictions around the state, different localities may conclude that different technologies/vendors work best for them. However, when considerations such as voter education and ease of use are considered, finding the best voting system for statewide use will likely be the best course.

Inevitably, the question will come down to this: Are we satisfied with the approximately accurate elections we currently have, or is it worth the cost to assure ourselves of the ability to count votes precisely where outcomes are legitimately questioned?

CONCLUSION

Modern technology holds the promise of elections that are far more inclusive, efficient, and, therefore, more fair than is the current standard. However, with that promise, comes greater risk. A failure of technology could lead to massive errors, far greater than those feared in the 2000 election in Florida (what if a large number of machines, in a group of precincts that historically voted heavily for one party, and which were located in a single polling place, all zeroed out because of a loss of electricity near the closing time for the polls, and no backup record is available?). While the current voting system standards require protection against these failures, such problems continue to occur.

The Help America Vote Act of 2002 places us at the crossroads in election process and technology in New York and around the country. We must use care to take full advantage of the opportunities that new technologies provide to us while minimizing the damage wrought by the inevitable failures and attempted malfeasance.

HAVA has the potential to lead to significant improvements in voting administration in the United States. However, rather than providing the avenue for answers to many of the questions necessary to determine the best available voting technologies (which may depend on the voting context in which they are used) prior to their implementation, HAVA will likely lead the way toward implementation of systems that will themselves form the laboratory in which we find out which technologies work best in which circumstances and for which challenges.

PROVISIONAL BALLOTS [SECTION 302]

HAVA requires every state to offer and provide a provisional ballot to two categories of voters, both of whom must be permitted to cast such a ballot even if their eligibility is challenged: (1) a voter whose name does not

appear on the registration list, and (2) first-time voters who registered by mail and are required but not able to show ID at the polls.⁷⁸ HAVA requires poll workers to notify these voters that they may cast a provisional ballot. HAVA also states that anyone voting “as a result of a federal or state court order or any other order extending the time established for closing the polls by a state law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot. . . . Any such ballot cast . . . shall be separated and held apart from other provisional ballots cast by those not affected by the order.”⁷⁹ The voter must then affirm, in writing, that he or she is registered in the jurisdiction and is eligible to vote in a federal election. The poll worker must also give the voter written notice describing how the voter can determine whether his or her provisional ballot was counted. HAVA requires New York to establish a system to notify a voter who cast a provisional ballot whether it was counted, and if not, why not.⁸⁰

New York already uses provisional ballots, called “affidavit ballots.” However, there are many issues that should be addressed, including the changes HAVA requires, various options for New York to enact in law and/or regulations, and several chronic problems regarding compliance with New York’s current law and local board policy regarding the use of affidavit ballots by poll workers.

Currently, New York offers affidavit ballots to voters whose names do not appear on the registration list but claim to live in the election district. To fully comply with HAVA, New York will probably need to rename “affidavit ballots” to match the term “provisional ballots” used in HAVA. New York should also likely update its election law and Inspector Handbooks to clarify that voters who are required but not able to show ID may cast a provisional ballot, and that anyone voting during extended polling place hours must cast a provisional ballot. New York election law and Inspector Handbooks also need now to explicitly state that poll workers must notify these categories of voters of the provisional ballot option. We recommend that this include a verbal explanation of what a provisional ballot is and the

procedure for casting one, as many provisional ballots are rejected because the accompanying forms are improperly filled out or incomplete.

New York will also need to update its affidavit form to require the voter to affirm that he is eligible to vote, and develop a written notice informing voters how to find out if their provisional ballot was counted. New York may need to establish a free access system, such as a toll-free phone number, by which voters may determine whether their provisional ballot was counted and, if not, an explanation as to why. In addition, it is recommended that New York continue its current practice of mailing a notice to voters whose provisional ballots are not counted. This notice should include a registration form, correct poll site location, and any other information necessary to correct a voter's registration. Another possibility is for provisional ballots to serve as voter registration applications. This will allow registrants to update their information, such as a change of address.

To fully comply with HAVA, New York will also need to update its affirmation form to accommodate HAVA's requirement that voters must affirm they are registered to vote in the jurisdiction.⁸¹ HAVA contains no definition of jurisdiction, but the National Voter Registration Act (NVRA), popularly known as motor voter, defines it for federal purposes as the largest geographic area governed by a unit of government (municipality or county) that performs all the functions of a voting registrar. Conceivably, when New York's statewide voter registration list is operational, this could cover the entire state and thereby such offices a voter qualifies to cast a ballot for. Until that time, however, the jurisdiction is likely to be defined as a county (and all five boroughs in New York City). It is not an election district or polling place. New York's current affidavit ballot requires voters to affirm that they are registered to vote in that particular election district, a far too restrictive definition for purposes of compliance with the new federal law. Following the NVRA standard would allow a registrant's vote choices to count for at least some offices.

HAVA is less specific about what must happen after a voter casts a

provisional ballot, requiring only that provisional ballots be counted if the voter is eligible to vote.⁸² But what happens if, due to poll worker error or voter confusion, a voter casts a provisional ballot at the wrong election district (ED) or poll site? Should the provisional ballot be counted? This scenario is particularly common following New York's redistricting process, when changes to polling places and election districts may cause voter confusion. In some jurisdictions in New York—such as New York City—the Board of Elections has set policy that makes the presumption that affidavit ballots cast in the correct polling place but at the wrong table, or election district, should be counted because poll worker error likely produced such occurrences. However, if a voter casts an affidavit ballot in the incorrect polling place, the presumption is that the voter made a mistake and the affidavit ballot is invalidated (unless there is evidence that the Board of Elections sent wrong poll site information to the voter).

In general, this is sound policy. However, there are instances where this policy could lead to the disenfranchisement of duly registered and eligible voters. For example, poll workers sometimes provide misinformation to voters. In two separate surveys by the New York Public Interest Research Group (NYPIRG)—one of the 2001 elections and one of the 2002 elections—over 50% of the poll workers surveyed said incorrectly that a voter who moved from one location in the city to another location in the city should vote at their old poll location instead of at their new poll site. (The correct answer is that such a voter should cast an affidavit ballot at their new poll site.) Thus, voters who followed these incorrect instructions from poll workers would end up casting affidavit ballots that would be invalidated under current New York City Board of Elections policy.

In this case, we defer to the advice of the National Commission on Federal Election Reform, chaired by former presidents Jimmy Carter and Gerald Ford. The Commission suggests “counting such ballots as limited ballots, valid only for those races in which the voter was qualified to vote.”⁸³ In other words, a voter who casts a provisional or affidavit ballot in the

wrong election district or polling place would have his votes counted only for those offices or questions that applied to his correct election district—such as presidential, congressional, gubernatorial, or even state legislative races. It is suggested that voters whose provisional ballots are counted in this manner still receive notification that they must update their registration information or determine their correct polling place to prevent the problem from recurring. Since under New York State law identification is not required to register or vote, provisional ballots cast without identification will be counted.

In addition to what HAVA requires, it is suggested that the State Board of Elections consider establishing a set of statewide and uniform standards to guide the process of counting and rejecting provisional ballots. In New York, disputed affidavit ballots in contested races—whether they are valid or invalid—are currently settled by elections officials, representatives of candidates, or by the courts. Where a voter lives should not affect whether her provisional ballot is cast, though in past elections, both in New York and in other states, this has unfortunately been the case. Such statewide standards could also include specifications for notifying voters whose provisional ballots have not been counted—and assisting them in correcting their registration information—automatically registering voters whose provisional ballots have been counted and counting the ballots of voters who cast them at the wrong election district. Finally, statewide standards should be put into place that require all provisional ballots to be counted in every election and for every race, regardless of how close the races at the top of the ballot may be. As the National Commission on Federal Election Reform states, “The Commission recommends that any provisional voting plan should require that all provisional ballots be counted and included in the certified results.”⁸⁴

**VOTING INFORMATION TO BE POSTED AT EACH POLLING PLACE;
POLL WORKER AND VOTER EDUCATION [SECTION 302]**

HAVA includes the provision of federal appropriations for improvements in election administration including for recruitment and training of poll workers and for voter education. In some instances, we have included cost estimates of particular items HAVA requires (at the state and/or local level).

OVERVIEW OF POLL WORKERS AND VOTER EDUCATION: LESSONS FROM FLORIDA, PART II

As we have seen, the Help America Vote Act (HAVA) requires New York State to institute broad and significant changes in the way it currently conducts elections, from phasing out its aging fleet of voting machines and upgrading computer systems used in tracking voter registration data to the way election officials process registration applications and provide information to voters and poll workers alike.

Here again, Florida provides useful lessons. After the debacle of the 2000 presidential election, the State of Florida undertook a major overhaul of its election system, enacting many of these same changes now required by HAVA. Election officials and lawmakers in Florida purchased new voting machines, introduced provisional ballots for voters whose names do not appear on the rolls, and enacted many other reforms found in HAVA. However, the first test of these improved machines and procedures—the September 2002 primary elections in Florida—demonstrated these technological improvements were not matched with concomitant improvements in poll worker training and voter education. The human element proved to be decisive in many instances; there were severe breakdowns in the election process during the 2002 election cycle.

Although not as disastrous as the 2000 election, the September 2002 primary was far from the model of reform that state officials had anticipated. A range of problems beset voters and poll workers alike. For example, poll workers did not know how to plug the new voting machines into an electric outlet. Voters in many counties had not been educated about how to use the new machines. “Stories of malfunctioning machines, incorrect ballots, poll

workers not following a host of new rules and polling places opening in some cases hours late came in from all corners of the state.”⁸⁵

Moreover, conditions varied widely from county to county in Florida. According to Doug Chapin, director of electionline.org, “Florida’s experience on September 10 revealed what happens when each county approaches election administration differently. Some Florida counties trained their poll workers for up to twelve hours on new machines. In Broward County, poll workers received only three hours of training. That may have made the difference between success and chaos at the polls.”⁸⁶

Such problems were not unanticipated. A person in the Florida Division of Elections noted in 2001, “Human error is the biggest threat to the integrity of any voting system. Even with your crudest systems, if the human does everything they’re supposed to, that system will work.”⁸⁷ In short, what the Florida 2002 experience shows is that humans—poll workers and/or voters—are highly vulnerable and a critical link to successful election reform efforts.

Fortunately, Florida’s experience is not universal. The case of Georgia demonstrates a counterexample. Following the 2000 elections, Georgia purchased new electronic voting machines for the entire state, the same machine statewide. Contrary to Florida, Georgia went to great lengths to educate voters and poll workers alike about how to properly use the new voting machines. Georgia undertook an extensive statewide voter education campaign that permitted voters to practice on the new voting machines in locations throughout the state prior to Election Day. As a consequence, the 2002 elections in Georgia ran smoothly. To be clear, these smoother running elections are a result of two interconnected changes: new voting machines and the education of the people involved in running and using them.

CHALLENGES FOR NEW YORK

The election changes mandated by HAVA have the ability to signifi-

cantly improve the administration of elections and the experience of voting in New York. However, in order to do so successfully, they must be accompanied by sufficient education and training to avoid Florida-like election problems.

Most of the dedicated people who work for the state and county boards of election in New York are highly proficient in voting and elections. They know New York's voting process inside and out, and they should be commended for this expertise and dedication. But New York's voters themselves, and all too often the poll workers at polling places, are not experts. They are citizens with other jobs and roles who come to vote, or work at the polls, only twice a year or less. As the CalTech/MIT research team aptly put it, "Voting is not a frequent occurrence, and voters have limited experience with the process. A regular voter might vote at most one to three times a year. A non-regular voter might vote once every four to eight years."⁸⁸ The same can be said about poll workers.

Laws and procedures need to be announced, explained, and clarified to both voters and poll workers alike in a straightforward, user-friendly manner. As we have seen—and shall see below—HAVA will require significant changes in the way New York conducts its elections. These changes will pose a challenge to New York officials who will have to fulfill this mandate by ensuring the new law is successfully implemented. The burden will fall disproportionately on New York's election officials. Yet, it is the legislature and governor that will bear much of the responsibility and be held accountable for HAVA's successes and failures. Thus, it would behoove the State's elected officials to adequately fund elections officials and other state and local agencies. It would also be wise to ensure there are statewide standards in place to ensure local variations (like those problem areas seen in Florida and elsewhere) are kept to a minimum. In addition, it would be wise for both elected and elections officials to include knowledgeable elections experts and civic groups in the planning process.

These issues cannot be a mere afterthought. They must be planned for in

advance. Fortunately, there are states and jurisdictions that can provide New York with examples of both “promising practices” and failures. New York’s elected and elections officials have an opportunity to forge effective policy and plans to prepare as best as possible for effective implantation of HAVA. Moreover, performance measures and various indicators can help the state monitor how effectively HAVA is being implemented. Some such suggestions are detailed below.

Poll worker training and voter education will need to be done as extensively as possible prior to election days. In addition, access to information will need to be made as widely available as possible on Election Day itself.

Voter and poll worker education can be carried out through a variety of methods: through mailings, radio, television, and newspaper publicity; yearly training sessions; voter hotlines; the Internet; or simple person-to-person communication at the polls. Many of these forms of voter education and poll worker training are used currently. As is done in many jurisdictions, such voter education activities will need to be conducted in languages in addition to English. Given the vast demographic changes New York (and the United States more generally) has experienced, these practices will likely need to be expanded to other jurisdictions and to other elections practices.

In short, voters and poll workers must be educated to the fullest extent possible about elections, particularly about the changes to elections that HAVA requires. Poll worker training and voter education are critical to ensure New York effectively implements HAVA. Information and testing of new equipment and election practices must be conducted as widely as possible, for both poll workers and voters; that is, to make voting as voter friendly and as poll worker friendly as possible.

Other than requiring certain voting information to be posted at all polling places on Election Day, HAVA does not impose specific mandates for how New York must train its poll workers and educate its voters.

HAVA does, however, provide New York State with some of the funds necessary to carry out new education and training programs as well as enhance existing ones. The amount of federal funds New York will receive

to upgrade its election administration is not clear at the time of this writing. Moreover, HAVA does not specify how those funds must be spent. Nevertheless, Congress clearly intended states to pair the new required reforms with improved voter education and poll worker training. New York may find that the federal dollars it receives to improve the “human element” have as great an impact on the quality of elections as any new voting machines or registration systems. As the National Commission on Federal Election Reform noted, “Some administrators believe, with cause, that they can get more improvements, dollar for dollar, from voter education and poll worker training than they can from investments in new equipment.”⁸⁹ One thing is clear: The amount of federal funds that New York will receive will fall short of the total amount necessary to train properly all election officials and educate all voters about the changes HAVA requires. New York State will need to set aside its own money to ensure full and fair implementation of HAVA—to address the human element.

The following sections examine what New York must do to comply with the education requirements of HAVA, as well as suggestions for ways the State may utilize federal funding to best educate voters and train Election Day workers alike.

VOTING INFORMATION REQUIREMENTS

HAVA requires voting information to be posted at every polling place on Election Day.⁹⁰ This information must include, but is not limited to:

- A. A sample ballot;
- B. instructions on how to vote and how to cast a provisional ballot;
- C. instructions for mail-in registrants and first-time voters;
- D. general information on voting rights under applicable federal and state laws;
- E. instructions on how to contact the appropriate officials if these rights

have been violated; and

F. general information on laws prohibiting fraud and misrepresentation.

As the above list indicates, New York law already requires some of this information to be posted on Election Day, such as a sample ballot and, in some instances, information on how to vote.⁹¹ However, the majority of these requirements are new. The total dollar amount that will be required to make these changes is not known. However, it will total in the millions of dollars if the current costs of producing voter informational materials at poll sites is any gauge.

To comply with HAVA, each county could develop its own posters displaying this information, or the state could design standard voting information posters for all counties to use. This latter approach will likely save time and resources for county election officials, and would make it easier for the State Board of Elections to ensure that all voting information posters are written and designed in a clear, easy to understand manner, with all the required pieces of information included. Moreover, if the State provides uniform materials, a voter and/or poll worker who moves from one jurisdiction (county) in the state to another will be familiar with election materials (from ballot design and voter information to poll worker manuals). However, if localities design their own materials, variations may cause some confusion to voters and poll workers alike. In addition, the volume of new materials required by HAVA suggests that central purchase by the state will yield a more cost effective approach, given economies of scale.

The New York State Task Force on Election Modernization recommends taking this federal requirement one step further, by developing a “Voter’s Bill of Rights” that would incorporate the information required by HAVA. The Governor’s Task Force writes:

The State Board should develop a Voter’s Bill of Rights, which

should be displayed at every polling site across the State. It should also be available on all boards of elections' web sites and in print to individual voters, schools, and community groups. The bill of rights should inform voters in clear language of their right to vote in privacy, to have their vote accurately counted, to ask for and receive assistance while voting and their right to vote by affidavit ballot if they live in the election district but their names do not appear on the registration poll records.⁹²

Therefore, one desirable option would be for the State Board of Elections to adopt the Governor's Task Force recommendation and develop a statewide Voter's Bill of Rights that includes several additional information items than HAVA minimally requires, such as the right to ask for and receive assistance in the voting booth. A Voter's Bill of Rights could also incorporate detailed information about what forms of identification are acceptable for first-time voters who registered by mail, the right to replace a spoiled ballot, and the right to vote of anyone standing in line when the polls close. As Attorney General Eliot Spitzer points out, New York already publishes a Taxpayer's Bill of Rights and suggests there is no reason the state should not also have a similar document for voters.⁹³ Connecticut has had much success with its Voter's Bill of Rights, passed into law in June 2002.

As the Governor's Task Force points out, the Voter's Bill of Rights could be distributed and publicized prior to Election Day as well: on boards of elections' websites, in local newspapers in the weeks leading up to an election, and in voter guides and other information mailed to registered voters. It could even be distributed at all voter registration locations, such as the Department of Motor Vehicles and social services offices. Equally important to widespread distribution prior to an election, however, is ensuring that this information is actually displayed at poll

sites on Election Day. Even though New York law currently specifies that minimal information be made available to voters at poll sites (such as sample ballots), in practice these materials are frequently not posted, on hand, or distributed. Similarly, even though poll worker manuals state specific procedures poll workers are to follow, elections officials acknowledge, and independent monitors have documented, that poll workers do not always follow them.⁹⁴ The precise cost of changes to poll worker manuals and for a Voter's Bill of Rights and other voter informational materials is unknown. But estimates based on what the individual counties currently spend—as well as the State Board—could be developed and funds appropriated to the State Board. In any event, the cost of posting a Voter's Bill of Rights would not be appreciably different from the cost of posting the required information in other forms.

One way to address poll worker shortcomings might be for the State Board of Elections to institute a system to verify that procedures are properly followed, such as requiring specific information to evaluate performance of various aspects of election processes. For example, one method could be to distribute voter evaluation forms that could be tallied by the State Board of Elections and reported. Another could be to have an outside independent auditor conduct periodic surveys to assess performance. There are other methods to improve performance and ensure adequate service to voters. Essentially, the State should require the collection of relevant data to assess full and fair implementation of HAVA's provisions. We address poll worker issues further below.

OPTIONS/METHODS TO EDUCATE VOTERS

Although HAVA does not require it, the State Board of Elections may want to take this opportunity—and the federal funds offered by HAVA—to consider additional ways that it can help educate New Yorkers about the voting process and their rights and responsibilities as voters. Scholarship on voting behavior and national studies about elections provide useful guid-

ance. For example, the National Commission on Federal Election Reform recommends voter education that goes beyond posting information at poll sites: “Election officials should continue their efforts to educate voters through the use of sample ballots, voter pamphlets, demonstration equipment, and public outreach in a broad and diverse range of settings.”⁹⁵ One of the most straightforward types of public outreach is through mailings to registered voters. Another is publishing information in newspapers across the state. Currently, boards of elections in New York mail each voter an acknowledgment notice after they have registered and an additional mailing each year informing them when the primary or general election will take place and where they should go to vote. County boards are also required to publish a list of candidates in local newspapers, and the State must use newspapers to publish descriptions of constitutional amendments or ballot questions. The State could request discounted postal rates for such mailings and encourage news organizations and outlets to distribute critical voter information as a public service.

Additional information in newspapers and mailings, presented in a user-friendly fashion, would significantly enhance voter knowledge and potentially increase turnout on Election Day. For instance, the New York City Campaign Finance Board issues a voter pamphlet for municipal elections to all registered voters in the City of New York. The pamphlet contains detailed candidate information, instructions about how to use voting machines, how to find out if one is registered and where one’s poll site is, and other pertinent voter information. The State Board of Elections could develop a framework for this type of voter guide. These voter guides could either be sent by the State Board to every registered voter in the state, or the State Board could provide guidance and financial support to local county boards of elections that would, in turn, develop their own voter guides with pertinent local information, based on the State Board’s framework. Such a guide could include the type of information that is required to be posted on poll sites on Election Day—ideally a Voter’s Bill of Rights—as well as candidate infor-

mation, a sample ballot, and information about where and when a voter should go to vote. A sample ballot and the Voter's Bill of Rights could also be published in local newspapers along with candidate and ballot question information.

California provides a good model regarding such voter education. By law, each county in California must mail every registered voter a sample ballot and voter information prior to an election. The mailing includes poll site location tailored to each voter, a sample ballot that matches exactly the ballot featured at each precinct, voting instructions with graphics, an application for an absentee ballot, and an alert that a voter's polling place may have changed due to redistricting. Voters may receive the mailing in the language of their choice, if the Voting Rights Act covers that language. In addition to the specific sample ballots sent by localities, the State of California sends to all households with at least one registered voter, a general election brochure with detailed information about statewide ballot initiatives and biographies and photographs of all candidates for statewide office. According to Conny McCormack, Los Angeles County Registrar-Recorder/County Clerk, the sample ballots are expensive but worth the cost. The sample ballots sent by Los Angeles County cost roughly \$4 million per election; with four million voters in the county, that works out to about \$1 per voter, not including the cost of the state brochure. However, because New York has far fewer ballot initiatives and constitutional amendments than California, the State and counties could save money by producing only one voter guide for each registered voter—containing information about both local and statewide races—rather than mailing out two. New York State should apply for HAVA funding to cover much of the cost of such mailings.

Another interesting component of voter education in California is the pamphlet that Los Angeles County has developed for newly registered voters. The pamphlet, aptly named "I've Registered to Vote. . . . What's Next?" explains that voters should expect to receive material in the mail before

the next election. It also informs voters how to cast an absentee ballot, how to receive translated voting materials and information, and how to serve as a poll worker on Election Day, all in a simple, well-designed format. Conny McCormack's philosophy is that such pamphlets are necessary because without follow-up voter education, voter registration is meaningless. We recommend that boards of elections in New York mail similar pamphlets to all voters who register or update their registration, either instead of or in addition to the bland acknowledgment notice that is currently sent out.

Short of expanding the information sent to New York voters by the boards of elections, the state and local boards could expand and improve existing information sent to voters. Although state law requires boards of elections to send a notice 70 days before the general election to registered voters about where and when they should cast their ballots, New Yorkers frequently complain that they never receive such information. This problem is particularly acute after a redistricting year, when voters whose poll sites have changed may not find out about it until Election Day, causing frustration, anger, and mistrust at the polls and leading many voters to walk away without casting a ballot or casting an affidavit ballot at the wrong site. Voters who register or change their registration in the months leading up to the election are also likely to receive no information about the location of their poll site, even if they registered well in advance of the registration deadline. The CalTech/MIT research team suggests a solution to this problem: "Make sure the voter knows where his or her polling place is located. Send cards to voters that indicate their registration status and where they go to vote. There could also be a public information campaign to let people know when they should expect a registration card and what to do if they do not receive one."⁹⁶ The State Board of Elections could require all county election boards to publicize what voters should do if they have not received this notice in the mail. In addition, all boards of elections should be capable of adding an online polling place locator to their websites. Several organizations now provide this on the web. As Attorney General Eliot Spitzer notes, "With available technology, a voter

should be able to type in a home address and automatically learn the location of the polling site.”⁹⁷ The CalTech/MIT Project points out that adding “a sample ballot tailored to each precinct could enhance such database applications.”⁹⁸

In addition, television and radio public service announcements and educational programming could enhance voter knowledge. Public service announcements are free. The State could pass legislation encouraging media outlets to disseminate such information as a public service. Additionally, the State could appropriate federal funds to place advertisements and information in media outlets, particularly the largest media markets. These methods have been used effectively in several states and jurisdictions. Moreover, as the use of the World Wide Web and other electronic sources of information increases, these resources should be put into the service of disseminating information and educating voters (and poll workers alike).

POLL WORKERS: A CRITICAL LINK BETWEEN STATE AND CITIZEN

A final component of voter education must take place at the polls on Election Day. Educated and courteous poll workers, who are prepared to answer questions and offer assistance, will most likely produce educated voters who leave the poll site confident that their vote will be counted. The CalTech/MIT study paints an ideal picture of what might happen in New York on Election Day:

To address voters who are unprepared for how to vote, the polling place must provide just-in-time training and education on an as needed basis. The polling place should have provisions in hand to identify such voters and to provide the requisite training quickly and without disruption to the rest of the flow. For instance, any voter who asks for help could be brought to an instructional area,

where the voter can learn the steps required to execute a vote. This may require hiring additional poll workers at peak times.⁹⁹

We have witnessed dedicated and knowledgeable poll workers in New York who have created poll sites very similar to the one described above, all on their own accord. The State Board of Elections could standardize such behavior by including these aspects in all poll worker training sessions and, perhaps, by designating one or two poll workers at every site to serve as a “Voter Education Specialist,” whose job it would be to spot confused or frustrated voters and conduct the “just-in-time training and education” described above.

Another option for educating voters and making elections run smoothly is to provide a greater number of voter help lines—and staff—for voters to call if they experience difficulty at the polls or need help locating their polling place. Many voters in past elections have expressed frustration that boards of elections’ voter hotlines are busy and difficult to get through. Counties with a large number of voters who have limited English proficiency should be sure to staff the hotlines with enough bilingual workers (as well as at poll sites). These hotlines should be up and running during the weeks leading to an election, with a significant increase of staff and available phone lines on Election Day.

Finally, as New York begins the process of replacing its lever machines with new voting equipment, the state and county election boards should include voting system education and public outreach in the budget for new machines. As the experience of Florida in the 2002 primary elections shows, new voting machines cannot be introduced without comprehensive voter education and poll worker education and training programs.

As noted earlier, while Florida’s experience with new voting machines poses a warning to New York and other states, Georgia presents a positive alternative. Unlike Florida, when Georgia purchased new electronic voting machines in 2002 it did so uniformly across the state, with every county

obtaining the same voting equipment. The statewide purchase simplified voter education. It also had the effect of cutting costs, because it could take advantage of an economy of scale. Because every Georgia voter would be using the same new machine in the 2002 elections, the state was able to conduct a blanket, statewide education campaign through the media, without the concern that a voter from any given county might receive misinformation that applies to another county's different kind of voting machines. Georgia hired thirteen regional voter education coordinators about five months prior to the November 2002 election, when the new machines were first used. The state also mailed to every registered voter in the state a color brochure with instructions about how to use the new machines. Georgia appropriated approximately \$4.5 million—distinct from the cost of the new machines—to support its statewide deployment, a substantial portion of which was spent on voter education and outreach.¹⁰⁰

PERFORMANCE MEASURES/INDICATORS

In order to gauge New York's performance in the above areas as it moves forward in implementing various provisions of HAVA, New York could develop standards, collect data, and institute mechanisms to assess and evaluate specific parts of New York's evolving election system. Various indicators would provide confidence in New York's election system and ensure that HAVA is being effectively implemented. Moreover, such performance measures could ensure that election practices are fair and that their impacts are nondiscriminatory, as required by HAVA, the NVRA, and the Voting Rights Act; that is, to assure our election system works well for all New Yorkers. As Governor George Pataki's Task Force reported:

Quality voter education requires a carefully thought out plan with clearly defined minimum standards and objective measurements of effectiveness. The State Board of Elections should assist each

county board to develop a comprehensive written voter education plan that includes voter outreach through the media, mail, information centers, web sites, and hotlines.¹⁰¹

The State Board of Elections could promulgate statewide standards for voter education that counties must meet in order to receive HAVA funds.

Specific election information could provide the basis to gauge the performance of election administrators including:

- u The nature and the number of recorded poll site problems such as
 - a. when poll sites open late;
 - b. where election worker staffing is inadequate;
 - c. where poll workers are not trained or fail to follow proper procedures;
 - d. when poll sites change without proper notification to voters;
 - e. the level of accessibility of poll sites for people with disabilities;
 - f. the number of voting “breakdowns” (whether by machine or paper ballots);
 - g. where there are missing or incorrect supplies and materials for voters and/or for poll workers;
 - h. a lack of required bilingual materials and assistance in communities covered by the Voting Rights Act, or in diverse communities more generally;
 - i. where there are poll worker actions and inactions that disenfranchise eligible voters, such as providing misinformation, not offering affidavit ballots to eligible voters, committing one of

several possible errors, producing delays or disruption, or “harassment” of voters; and

- j. the accuracy of vote tabulation;
- u The number of affidavit ballots cast, validated, and invalidated, as a percentage of the total number of votes cast;
- u The number of registration forms printed, distributed, and processed by boards of elections;
- u Assessment and analysis of the accuracy of processing registration applications;
- u The timing and accuracy of mail voter notifications;
- u Voter telephone hotline availability and capacity of boards of elections to handle the volume of inquiries, whether by voters or poll workers or poll watchers;
- u Evidence of any effects of particular election technologies on voter registration, voting, and vote tabulation.

Again, New York could not only require the State Board of Elections and all local boards to provide this kind of information but also require regular and independent audits of such processes. In all these areas, New York could develop specific benchmarks that would serve to gauge progress with the goal of eliminating errors.

POLL WORKER RECRUITMENT

Funds for HAVA provide an opportunity to help New York upgrade its poll worker recruitment and training mechanisms.¹⁰² Across the state, boards of elections have experienced a chronic shortage of poll workers. Moreover, studies have shown that many poll workers lack the necessary

level of competency to adequately perform all their duties. Given the new requirements HAVA requires, such conditions pose significant challenges to these critical areas of election administration in New York. Fortunately, HAVA provides new money and opportunity to upgrade these areas of election administration in New York, and there are examples of election programs and practices in New York and from other states that can serve as models to emulate.

POLL WORKER PAY. Poll work pay scales are abysmally low, even by government standards. Payment to poll workers has been increased in some jurisdictions, such as New York City. In 2001 for example, pay for poll workers increased from \$125 for a sixteen hour work day to \$200. This change—along with recruitment efforts and collaboration with several civic groups, particularly the Citizens Union Foundation and the City University of New York—produced significant additional poll workers in the 2001 elections.¹⁰³ HAVA does provide funds to the states that could be used for such purposes, though it does not specify an amount. However, it is clear that an increase in poll worker pay will likely improve the number and quality of workers. Alternatively, working at the polls could qualify as compensatory time for government employees, be supported by tax incentives to businesses, or count as jury duty.

EXPAND RECRUITMENT. New York could expand its channels to recruit poll workers. Currently, most poll workers are provided by the party organizations. Efforts to hire poll workers from outside the party organizations have proven fruitful in New York and elsewhere, including recruitment from a broad range of organizations such as student and youth groups, civic groups, businesses, unions, senior citizen groups, and faith-based institutions. Similarly, immigrant organizations have been particularly valuable to recruit language minority individuals, especially for bilingual poll workers including those who speak languages not designated under Section 203 of

the Voting Rights Act (such as Spanish, Russian, Cantonese, Mandarin, and Bengali—i.e., populations that are rapidly increasing across the state). In short, to the extent possible, New York should recruit and hire a greater number and variety of poll workers so that it will have the best chance of fully and fairly implementing all the requirements of HAVA.

Language issues are and will likely continue to be important as HAVA is implemented. As the National Commission on Election Reform stated: “Election administrators must ensure that language minority voters receive the assistance at the polls that is legally required—and wherever feasible go beyond that to provide what the voter actually needs—such as translators, bilingual poll workers, translated voter education materials, and assistance in the voting booth.”¹⁰⁴ This issue is most relevant for particular areas in New York State, such as New York City, other urban areas, and Long Island.

Los Angeles County, which mirrors New York City in both its size and diversity of population, provides a useful model. Election officials there have made special efforts to hire bilingual poll workers and translators and deploy them to targeted poll sites in communities with high populations of voters who may have limited English proficiency. In Los Angeles, this has meant recruiting poll workers who speak Russian, Cambodian, and Armenian, even though the county does not make ballots and other written materials available in those languages. In New York City, elections officials have attempted to meet the needs of Korean Americans in this respect. The new census figures now make this policy mandatory under the Voting Rights Act. Several other groups may not be far behind, including Russians. What this means is that where possible, recruiting poll workers who can communicate the voting process to speakers of Russian, Bengali, and other languages will go a long way to reduce problems voters experience with the implementation of HAVA.

One possible option for New York’s county boards of elections—and particularly for the New York City Board of Elections—is to emulate Los Angeles County’s Community Voter Outreach Committee (CVOC). The

CVOC consists of a wide range of community organizations, advocates, political party officials, and others. The committee meets regularly, usually with 50 or 60 people in attendance. Conny McCormack, the Registrar-Recorder/County Clerk of Los Angeles County, uses the CVOC as vehicle to get information out to voters and to learn about the issues affecting Los Angeles voters. The committee, which includes a number of organizations representing the county's language minorities, helps recruit bilingual poll workers and makes recommendations about which precincts require translated voting materials and bilingual workers. The CVOC is also an inexpensive and effective tool for educating voters; county election officials simply hand out voter education materials at CVOC meetings, and the organizations in attendance in turn distribute them widely throughout their community networks. Most important, perhaps, the committee has greatly improved the relationship between election officials and community advocates, "helping to turn an 'us vs. them' situation into a working partnership that is no longer adversarial," according to Conny McCormack.¹⁰⁵

Recruiting a diverse and large enough number of poll workers is a continuous task for election administrators. Citizen organizations could work with election officials to assist them in recruitment and in training poll workers. Some organizations have in fact been actively involved in such efforts in certain jurisdictions in New York. For example, the New York City Board of Elections has been working with groups such as the City University of New York (CUNY) and other colleges, the Citizens Union Foundation (CUF), the New York Immigration Coalition, the New York City Election Dialogue, the New York Public Interest Research Group (NYPIRG), and the Asian American Legal Defense and Education Fund, and others.

PARTY AFFILIATION. These initiatives would probably be more successful if not hampered by New York's practice of hiring poll workers who are registered members of one of the two major political parties. Nationally, and in New York, nearly one in three eligible voters is not registered as either Democrat or Republican. Many are registered in third (minor) parties or as

independents (blanks). Such statistics suggest that New York might want to re-examine this practice of requiring poll workers to be either Democrats or Republicans. If changed, this would allow members of other political parties, as well as independents, to work the polls. Such a change would expand the pool of potential poll workers tremendously.

Several studies have also suggested that diversifying the pool of poll workers has many positive dividends: “Expand the pool of potential precinct workers. . . . One promising source of potential precinct workers may not be eligible to vote at all—high school students. Some states already allow high school students to staff polling sites, through their community service programs. Such programs may not only help address short term staffing problems at polls, but may engage young people in the electoral process at an earlier age.”¹⁰⁶ HAVA provides \$3 million in FY03 to implement programs to recruit high school and college students to serve as poll workers.¹⁰⁷ New York’s Attorney General Elliot Spitzer also recommends employing high school students as poll workers.¹⁰⁸ To do this, New York could amend Election Law §§ 3-400, 3-401 to permit nonregistered voters to serve as poll workers if they are not yet eligible to vote. California again provides a good example of how such a program might work. In 1997, the state passed legislation permitting high school students to serve as poll workers, a practice that roughly 15 other states have put into place. In order to serve in California, a student must be a citizen, a high school senior, at least 16 years old, and must have a grade point average of at least 2.5. The student must also be nominated by a teacher and must obtain parental permission. Los Angeles County reports that this program has been a huge success, with roughly 1,500 high school students working at the polls in November 2002. Veteran poll workers in Los Angeles have been especially appreciative of the young poll workers’ ability to carry and set up heavy supplies and voting equipment. In addition, many high school seniors make ideal bilingual translators at the polls.

ADDITIONAL POSSIBILITIES. Additional related alternative proposals could be considered by New York. Some have suggested providing various incentives to individuals who work in the public sector as well as in the private sector. One such proposal would allow individuals to work the polls instead of perform jury duty. Another proposal would be to make Election Day a holiday. Some have suggested holding all federal elections on Veterans Day. All of these proposals would free up a vast number of potential poll workers from both the public sector and private sector that possess a wealth of highly competent workers who could readily perform the tasks required of poll workers. Individuals from the public and private sectors are increasingly well versed—and usually trained—in using new computer and information technologies and machinery. Their skills could be adapted to readily learn how to use and assist voters in casting ballots on whatever new voting technology New York adopts.

BENEFITS. Expanding the number and quality of poll workers would allow for an additional potential change in the way New York's administers its elections for which HAVA provides funds: the possibility for election officials to create split shifts for poll workers, which would require a change in New York election law. Currently, poll workers log in a 16-hour day (not including work to set up and close the polls). Many poll workers report fatigue, which is natural during the course of such a long work day. This may also be one of the reasons poll workers sometimes make errors or get overwhelmed. Such a change would not only reduce problems, it would also greatly expand the pool of poll workers to ensure full staffing levels and likely increase the diversity and competency of poll workers. HAVA provides funding for these initiatives, and many states and jurisdictions already use some mix of them.

POLL WORKER TRAINING

Many of the problems that occur in elections are caused or exacerbated by poll workers who were not fully educated about the

rights of voters. We heard testimony that the electoral system works most effectively when poll workers are well educated about the rights of voters and the procedures for handling voters with special needs.¹⁰⁹

Train poll workers to be service agents for the voters. The poll workers must view their job as being there to assist voters cast their votes accurately, with privacy and dignity. They need to be able to identify voters who might need help, and to deliver this help with respect and efficiency.¹¹⁰

These statements capture why poll worker training—and the training of all election personnel—is essential for the effective functioning of the electoral process. Toward that end, New York could adopt new statewide uniform and mandatory standards, procedures, and training materials to ensure workers are adequately prepared to serve the voting public. Training materials can and should be clear and understandable. In addition, materials produced should be the same as those used on Election Day; this will help reduce any confusion on the part of poll workers and voters alike. Lastly, training materials can and should be developed in consultation with literacy and graphic design experts.

These training standards, procedures, and materials could include:

- u Improve mechanisms for processing poll worker applications and multilingual translators, and communicating with them
- u Create split shifts so poll workers are not required to work a 16 plus-hour day. This will increase the pool of workers, the quality of applicants, and their attentiveness
- u Develop a training video and distribute it to every poll worker before election days

- u Increase the length of training classes and the quality of trainers
- u Provide more hands-on training, including practicing with new provisional/affidavit ballot procedures, voter identification requirements and verification mechanisms, posting voter information, sample ballots, using

new voting technologies, computer technologies, and all critical facets of election law and voter's rights
- u Poll worker training sessions could focus on special situations (such as when machines break down and emergency ballots are needed) and implement role-playing of various scenarios
- u Training class sizes could be reduced and locations should be expanded
- u Training manuals will need to be rewritten in clearer language and covering more procedures and situations. These could also be posted on the state and county board of elections websites
- u Standards for the poll worker examination could be raised, including a provision that requires examinees to actually pass the test in order to work an election
- u Pay could also be linked to performance—that is, poll workers that perform ably could be rewarded financially
- u Create more standby poll worker positions and utilize them.

There are examples in New York of effective poll worker training programs, and several jurisdictions are moving to make improvements. For example, Suffolk County has a highly regarded poll worker training program. The Suffolk County Board of Elections offers training sessions each year and believes it is imperative that workers attend training sessions

annually. The classes are divided into grade levels, so that poll workers can receive instruction that is appropriate to their varying levels of experience. First-time poll workers may even be required to start out as trainees for their first election to make it easier for them and reduce the possibility of erroneous administration at the polls.

At any poll site with more than two election districts, Suffolk County has instituted the position of coordinator, which is also done in New York City. Coordinators in Suffolk County are handpicked by the Board of Elections and attend a special seminar that takes place immediately before the primary election every year. According to G. G. Collins, a Suffolk County election official, coordinators use their experience and expertise to help direct the flow of traffic at poll sites, oversee affidavit voting—an often complicated and confusing process for poll workers and voters alike—deal with the personnel representing the building where the site is located, and generally act as the eyes and ears of the Board. At poll sites without coordinators, the election district chairs provide leadership on Election Day. Suffolk County has chosen to elect chairs in November, rather than before the primary as in most counties, because primary elections are often confusing and the Board likes to be able to work with the chairs well before the primary.¹¹¹

In Suffolk County there are 12 locations where coordinators and chairs pick up the Election Day suitcases. At each of these locations the Board has made it standard procedure to set up a voting machine and display the full ballot so that the leadership of each poll site will know what to expect the day of the election. In the days prior to an election, the Board also updates coordinators and chairs about any new developments that may effect the election, such as last-minute court decisions. Coordinators in Suffolk County have also become increasingly knowledgeable about voting machines, thanks to voting machine training sessions conducted by the Board. Many coordinators are able to fix broken machines while talking on the phone with a machine expert, which saves time and resources on Election Day.

The New York City Board of Elections, which includes all five boroughs of New York City, has instituted similar provisions as well.

In addition, the New York City Board of Elections produced a training video. Although this training video will have to be updated to include new HAVA information—particularly voter identification provisions, posted voter information, ballots, and new voting machine information—the video has the potential to help ensure that all poll workers receive critical information in a user-friendly and effective manner. The training video cost the New York City Board approximately \$250,000 (not counting the cost of duplicating the video), and could be given and/or sent to poll workers.

In general, all New York's training sessions and poll worker manuals must be updated to include new HAVA requirements and information. New York must put training systems in place for poll workers and other election officials to ensure uniform and nondiscriminatory treatment of voters in determining:

- A. Who is offered a provisional ballot;
- B. Whose provisional ballots are counted;
- C. How "second-chance" voting works;
- D. Who may provide assistance to voters in the polling booth;
- E. Who is asked for identification at the polls;
- F. What forms of identification are accepted at the polls;
- G. What forms of identification are accepted upon registration;
- H. How registration applications are processed and approved;
- I. How ex-felons who have completed their prison sentence or parole may re-register to vote;

- J. How voters' names are removed from the list because of ineligibility or duplication; and
- K. How voter education requirements are carried out.

Poll worker manuals—like other voter educational materials—could be written with the advice and assistance of literacy experts and designed in consultation with or by graphic designers so as to best convey information in the most expedient and effective ways.

While all the areas of HAVA will necessitate a thorough revamping of training methods and content, the new technology, registration, and identification requirements clearly warrant special attention. The new laws and procedures will require intensive and concentrated energy and adequate funding to ensure full and fair implementation of HAVA.

COMPUTERIZED STATEWIDE VOTER REGISTRATION LIST [SECTION 303]

A basic challenge for any democracy is identifying who is eligible to vote. The difficulty stems from two divergent policy considerations: On the one hand, if registered voters are turned away because their names do not appear on the proper list, they are effectively disenfranchised, making the most advanced voting systems and registration processes meaningless. On the other hand, if an accurate system for recording who is registered is not in place, then unscrupulous people will be able to perpetrate a variety of election frauds, chief among them the capacity to vote multiple times. In an effort to reconcile these two concerns, HAVA mandates that the states create a “computerized statewide voter registration list”¹¹² to serve as the official registration list for federal elections.¹¹³ More specifically, the list must serve as the “single system for storing and managing the official list of registered voters throughout the State”¹¹⁴ and contain “the name and registration information of every legally registered voter in the State.”¹¹⁵ As well,

each voter must have a “unique identifier.”¹¹⁶ In order to ensure that the list is complete, accurate, and up to date, the list must be coordinated with other agency databases within the State.¹¹⁷ Local election officials must enter registration information they receive on “on an expedited basis,”¹¹⁸ with the chief State election official required to provide support to the local election officials in this regard.¹¹⁹ Any state or local election official must be able to “obtain immediate electronic access to the information contained in the computerized list.”¹²⁰ Much like the switch from periodic registration to permanent registration,¹²¹ HAVA’s requirements, as outlined in more detail below, have the potential of reducing fraud. Unfortunately, depending on how it is done, compliance with HAVA may create needless expensive, confusion, and disenfranchisement.

The gap between New York’s current method of maintaining registration records and what HAVA mandates is substantial. HAVA requires that a “single, uniform, official centralized [and] interactive”¹²² list of all registered voters be maintained at the state level in a uniform and nondiscriminatory way. Currently, however, New York “does not maintain a statewide list of registered voters” at all.¹²³ Instead, the 58¹²⁴ local boards of elections are each responsible for maintaining registration records, in the manner described in Election Law §§ 5-500, 5-504, and 5-506, for their counties. Among other things, these sections require each local board of elections to maintain a record with each voter’s unique registration serial number, name, residence address, and election district.¹²⁵ In this decentralized system, the local election board’s list may be computerized, but the format in which each board maintains its records varies dramatically.¹²⁶ Simply ensuring that each local board of elections’ list is computerizing and linking those lists to each other, while administratively simpler, is probably violative of HAVA. As already noted, HAVA requires that there be one “single, uniform . . . [and] centralized”¹²⁷ list “defined, maintained and administered at the state level.”¹²⁸ This language seems to suggest that merely linking local databases together is insufficient. Indeed, it is widely believed that Congress had

Michigan's and Kentucky's systems (discussed below) in mind when it drafted this language, and both of those states have just one statewide list. Moreover, it was clearly the intention of the drafters in the House of Representatives that the states abolish local lists, as the House of Representatives Committee Report that accompanied an early version of HAVA notes, "databases which simply link local databases do not qualify. The intent . . . is to establish one database."¹²⁹

Bringing the new electronic list on line, though, is not simply a matter of purchasing a new computer. As the CalTech/MIT Voting Technology Project noted:

Registration is a large database management problem. As in any database, errors can occur many ways. Voter registration databases suffer from typographical errors, dropped registrants, and outdated information.¹³⁰

The first stage of moving to the computerized registration list requires the immense quantity of information in each local board's records to be transferred to the new computerized statewide list. Depending on the medium in which the local board stores its information, it may be possible to electronically transfer the information. Some manner of quality control will need to be implemented to ensure that error or fraud does not pervade the transfer process. At the very least, this means having more than one person review the material. For example, a Democrat and Republican could each enter the data (with an automated alert for records that do not match) or have to approve the data as it is transferred.

As the CalTech/MIT Voting Technology Project Report notes, though, security concerns do not stop when the data is transferred.¹³¹ It must be "difficult or impossible to create fraudulent registrations."¹³² Furthermore, HAVA mandates that appropriate measures must be taken to prevent unauthorized access to the list.¹³³ Ultimately, therefore, if the currently existing security issues haven't already created the need, the legislature now may

need to hire, or direct the chief state elections official to hire, an independent company that can provide the necessary expertise on security of electronic databases.

HAVA is explicit that every voter on the list must have a “unique identifier,” but it says nothing with regard to what that unique identifier should be. There is nothing immediately apparent in the statute that even requires this to be a number. The conference report accompanying HAVA, though, states that § 303 requires the use of a “unique identification number.”¹³⁴ A potential source of confusion is the relationship between this unique identification number and the requirement, discussed elsewhere, that new registrants provide the last four digits of their Social Security number or their driver’s license number and, if the registrant has neither of those, that the state assign the applicant a unique identifier. The unique identifier for the statewide voter registration list need not necessarily be based on the last four digits of the voter’s Social Security number or the voter’s driver’s license number (though for registration purposes these numbers would still be required), but it can be if the state so chooses. Conversely, if the new registrant has neither a Social Security number nor a driver’s license number and the state must provide the registrant a unique identifier, that identifier must be the same as the one used on the computerized statewide voter registration list.¹³⁵ That said, since New York has already assigned each currently registered voter a “registration serial number,”¹³⁶ one way to shift to a computer system would be to use those serial numbers as the unique identifier.¹³⁷

Another possibility is, once all of the voter information is entered, to have the computer assign all voters a new number. Going forward, this process would be relatively uncomplicated. The driver’s license number or the last four digits of a registrant’s Social Security number¹³⁸ could be the basis of the registrant’s unique identifier. The same privacy concerns discussed elsewhere, though, pervade this approach. Accordingly, it might be more appropriate for the Board of Elections simply to continue assigning

people numbers in the same manner that the old registration serial numbers were assigned. However, it is the driver's license and Social Security numbers that enable the Board to match with other databases.

Another source of confusion is with regard to the requirement, in § 303(a)(1)(A)(vi), that election officials in the state (including local officials) be able to obtain "immediate electronic access to the information contained in the computerized list."¹³⁹ Unfortunately, the statute defines neither "election officials" nor "immediate access." Potentially, this language could be interpreted to mean that everyone from the DMV officer who receives a registration, to the poll workers, to the Chief Election Officer must be provided with the hardware and software necessary to enter the database and make changes at any time. Such widespread ability to make database changes is also an invitation for fraud. A more natural reading of this provision however is that "state election officials" are the members of the state and local boards of elections and their employees.¹⁴⁰ This reading would still require that the hardware and software necessary to enter the list be provided to the appropriate people (though with the proper security measures, it could be accessible through a web browser). "Access" though does not necessarily imply the ability to alter the list, though it could be read to mean that, especially when read in conjunction with the requirement that the list be "interactive."¹⁴¹ While it may be desirable to allow local election officials to alter the list, it may also be both strategically and technologically simpler to make it only readable, except for a few statewide officials who are authorized to make changes. Furthermore, making it largely readable only would reduce error or fraud. So long as more than a few people have the ability to alter the last, it would be prudent to create a mechanism for recording who entered the list and what changes that person made.

HAVA requires that the computerized registration list serve as the official voter registration list for the conduct of all federal elections.¹⁴² This requirement is relatively simple to comply with. As is frequently the case now, the computerized list could be printed and transmitted to the appro-

priate polling place. In selecting the computer technology used to maintain the list, though, legislators should be mindful that, in the future, the potential exists for this list to serve as the backbone of a powerful new voting system. In the first instance, polling places could be networked to the computerized list (or depending on the system developed, merely given access to the Internet), allowing poll workers to access or download the registration information via laptop computer. Then, the registration deadline could be moved closer to the date of the election, and voters who became interested in the election process at the last minute would still be able to vote. Furthermore, if a voter showed up at the wrong polling place, poll workers would have the information to direct him or her to the correct one. Similarly, poll workers could electronically mark the on-line list when a person votes. Then, if he or she tried to vote again, the poll worker would immediately know.¹⁴³ In the near future, the voting booth could even identify the voter (e.g., through a pin number, a Social Security number, or a voter identification card¹⁴⁴), access the computerized list via a digital link, and present the voter with the appropriate candidate choices, in much the same way that people now enter a PIN into an ATM, find out their balance, and then conduct transactions. This would not only be simpler and reduce the possibility of discrimination at the polling place, it could enable voters to cast their ballot from anywhere in the State. Ultimately, such a list could even facilitate Internet voting. Careful planning with computer technology now, could smooth the progress of such developments in the future.

LIST MAINTENANCE [SECTION 303]

List maintenance really involves two aspects, adding new registrants and removing—“purging”—those who are no longer eligible for one reason or another, both of which are daunting tasks. HAVA outlines a few broad points in this regard: List maintenance must be performed in such a manner that “the name of each registered voter appears in the computerized list,”¹⁴⁵

“only voters who are not registered or not eligible to vote are removed from the computerized list,”¹⁴⁶ and “duplicate names are eliminated from the computerized list.”¹⁴⁷ Furthermore, a “reasonable effort,”¹⁴⁸ consistent with the National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) (“NVRA”), must be made to remove ineligible voters, but “safeguards” must be in place to ensure that eligible voters are not removed in error.¹⁴⁹ Fortunately, some states have already developed computerized registration systems and they can serve as a model. In Kentucky, for example:

From local terminals, county election officials access a statewide database located in the statehouse, and state election officials regularly update the database by comparing voter lists with lists of [ineligible voters]. Local election officials can update records and receive confirmation from state officials within a day. Soon, they will be able to access the database at the precincts on Election Day via the Internet.¹⁵⁰

Similarly, until recently,¹⁵¹ Michigan’s Qualified Voter File (QVF) worked by allowing two-way access between localities and centralized servers:

New information is communicated from local QVF offices to Lansing and updated data are communicated back in less than an hour. . . . Voter registration records and motor vehicle records are fully integrated. Michigan turned the driver’s license number into the registration ID number and changed its motor vehicle license code so that the voter registration address became the driver’s license address. Changes to one record automatically cause changes to the other.¹⁵²

These systems are instructive, but New York cannot simply transfer them wholesale without a careful review. First, as discussed above, there are

potentially multiple ways to comply with HAVA and another approach may be more appropriate for New York's situation. Second, in New York City especially, there are a large number of people who do not have driver's licenses. Any system that depends on them too heavily could have a discriminatory impact. Third, inherent in any computer system are privacy concerns, about which New York will have to make its own policy judgments.¹⁵³ As New York Attorney General Eliot Spitzer wrote in his report on election law reform:

Registration lists may be used for purposes unrelated to enhancing the electoral system. For example, private businesses that currently use registration lists, in combination with other data, to furnish political candidates detailed information about voters, are exploring

using such lists to serve non-political customers. In addition, individuals can use voter data to harass others. For example, a convicted killer reportedly obtained the address of a former acquaintance he blamed for his predicament from the New York City Board of Elections so that he could stalk her.¹⁵⁴

Finally, a recent audit of Michigan's system reveals there are still inaccuracies in it.¹⁵⁵

With regard to new registrants, HAVA requires that "information obtained by any local election official . . . be electronically entered into the computerized list on an expedited basis." The simplest, though most expensive, method of accomplishing this task would be to equip each locality with the computer hardware and software necessary so that the information could be periodically batch-uploaded to the list. This would also permit a system administrator to check for fraud. Alternatively, the State could provide each locality where registrations are received with computer terminals equipped to interface with the list, so that the appropriate people could enter the information live themselves.¹⁵⁶

However, “expedited” does not necessarily mean “immediately.” New York may be able to comply with HAVA simply by ensuring that the local election officials immediately mail or otherwise deliver the information to the State Board of Elections, which would in turn enter the information. In this regard, it may make sense to have the voter or the local election official use the familiar “bubble” forms in which circles filled in with a pencil are read by relatively inexpensive electronic devices. The downside to this approach, though, is that it may add weeks or months to an already lengthy process. Indeed, The New York State Ad Hoc Task Force on Implementing the National Voter Registration Act (NVRA) recommended that the DMV electronically transfer voter registration data to the boards of elections, which was contemplated to be faster and likely to be more accurate.

Regardless of the method chosen, legislators should be mindful of what happened in one Congressional election in 2002: Approximately “5,000 potential voters, out of 100,000 [votes] cast, claim they were turned away from the polls. . . . Further investigation reveal[ed] that the local election supervisors had not processed a backlog of registration forms that arrived well before Election Day.”¹⁵⁷ States have also reported difficulty in transmitting information from their motor vehicle departments to election officials.¹⁵⁸ Thus, in the first instance, effective list maintenance requires sufficient personnel to accomplish the task.

Regarding purges, it goes without saying that voters move,¹⁵⁹ die, become inactive, or become ineligible to vote. As the National Commission on Federal Election Reform noted, “significantly inaccurate voter lists add millions of dollars in unnecessary costs . . . [and] invite schemes that use ‘empty’ names on voter lists for ballot stuffing, ghost voting, or to solicit ‘repeaters’ to use such available names.”¹⁶⁰ A static list is useless and prohibited by HAVA, which mandates “regular” removals in accordance with the NVRA,¹⁶¹ “coordinat[ion] with State agency records on felony status,”¹⁶²

and “coordinat[ion] with State agency records on death.”¹⁶³ The procedures of the NVRA need not be disturbed by the existence of an electronic list. To the extent that removals are conducted now, the same mechanisms could be applied to the statewide computer list as are currently applied to the local records¹⁶⁴ (though presumably the State Board of Elections would have to standardize them).

In addition to purging ineligible voters, New York’s computerized voter list should also take into account what happens when citizens need to be “de-purged” after becoming re-eligible to vote. New York should establish clear guidelines to handle voters who have finished their prison or parole sentences and are no longer disenfranchised under State law. The felon list of blocked names should be updated regularly to allow citizens who regain their voting rights to register as soon as they become eligible.

Nevertheless, what the precise meaning of words such as “regular” and “coordinate,” as used in HAVA, is unclear. How often must the NVRA procedures regarding removals due to a known change of address have to be followed? Must the State felony and death records also be computerized? Must information be transferred automatically and instantaneously between the lists? If not, how often do they have to be compared? In what manner? HAVA leaves all of these questions open. Theoretically, if the other lists are computerized in the same manner as the registration list, they could all automatically synchronize. This option bears the virtues of being the fastest and has the least possibility of fraud. It is not, however, free from error. Errors in the voter registration list or in the information received from the agencies that maintain the relevant records could lead to inaccuracies.¹⁶⁵ Moreover, “two records for the same person might have slight differences, such as middle initials or spelling variations, making them appear to refer to separate people.”¹⁶⁶ For example, a “John Doe” might appear on the registration lists, and a “John A. Doe” might appear on the list of people convicted of felonies. Programmed to find an exact match, the computer might treat these as two different records,

allowing “John Doe” to vote. If the rules for matching listings are liberalized, however, the computer might confuse two people with similar names and information. Sound matching protocols will be needed. Consider the anecdote relayed by electionline.org: In Washington State, the matching of felony lists with voter rolls was greatly complicated by the fact that the state prison records included aliases.¹⁶⁷ Moreover, when Florida hired a private company to eliminate ineligible voters from the list, the result was disastrous: A disproportionate amount of qualified African American voters were erroneously removed from the list.¹⁶⁸ On the other hand, if the relevant records are not computerized or not capable of interfacing with the registration list, the new registration list will have to be updated manually. Either way, the legislature will have to allocate sufficient money and resources to ensure that the list is continually updated in a rapid and accurate way. In this regard, a strong model for creating an effective matching system is provided by the Social Security Administration, which has developed sophisticated protocols for matching money it receives from employers to its wage earners’ records.

Furthermore, it would be prudent to integrate into the list information obtained from other State systems, such as state and city universities, the Department of Motor Vehicles, disability services, and other public assistance or social service agencies. Doing so would make the list more accurate by allowing new information to be assimilated into it. For example, a voter may not, as a matter of course, inform the relevant board of elections when he or she moves or changes names. But, the voter might inform another agency or another agency might detect the change on its own. For example, if a college-age registered voter’s address changes, he or she would likely inform the university. If the university’s records were integrated into the electronic registration list, it could be used to update the information on the list or begin the process of removing a newly ineligible voter. Finally, the accuracy of the list could be improved if the voter was able to review his or her record and independently confirm the accuracy of the

information or advise the state of necessary changes.

COST ISSUES

It is inherently difficult to estimate the cost of setting up an electronic registration list because computers vary significantly in terms of their cost and their capabilities. Another issue relates to economies of scale. Thus, once the system is up and running, increasing its size may not significantly affect the overall cost. Obviously, comparisons to other states are of limited usefulness given the great disparities in population and the fact that New York may not adopt a system exactly the same as the state to which it is being compared. That said, Michigan, with approximately, 6.8 million citizens,¹⁶⁹ appropriated \$7.6 million for the development of the QVF program and appropriates \$1.4 million each year for its upkeep.¹⁷⁰

VOTER REGISTRATION REQUIREMENTS [SECTION 303]

Throughout American history, registering to vote has been used as a method to prevent fraud but often it disenfranchises people and alters election outcomes. Whether it has been requiring certain education standards to vote or requiring that a person be a certain gender, race, or have a certain economic standing, the ability to register voters has been fraught with problems. These prior prerequisites have not been the only obstacles to successful registration. Voter registration has also been hampered by bureaucratic inefficiencies, such as ensuring that people easily understand how to register to vote, are given a convenient opportunity to register, and that their registration is efficiently completed and recorded. In an effort to combat these problems, states like New York have enacted statutes, regulations, and guidelines outlining how voter registration is to occur and what is required of each voter when registering. These laws have been put in place in an attempt to try to eliminate or at least minimize the disenfranchisement of citizens who go through the registration process. It is imper-

ative that people are able to freely and efficiently register to vote.

One of the most significant aspects of HAVA is that it changes the method of voter registration. These changes will directly affect New York State. This section analyzes New York's current law on voter registration and what New York will need to implement in order to be in compliance with HAVA.

One major difference between New York law and HAVA is that HAVA has established an identification process that first-time voters must follow in order to register to vote. HAVA requires that first-time voters use an approved form of identification when registering to vote. In addition, voters who are currently registered will now have to use identifying information when re-registering to vote because of a recent move or the decision to change party affiliation, but will not have to show identification when voting.¹⁷¹ It should be underscored that this identification requirement when voting only applies to first-time voters and voters who are first registering in the State.

Section 303 of HAVA now sets forth specific types of identification requirements that a first-time voter must possess in order to register.¹⁷² For example, HAVA specifically states that in order for a voter to register to vote, that person must include a valid driver's license number on the registration form, or if the voter does not have a driver's license, the voter must use the last four digits of his or her Social Security number. If a voter has neither of these pieces of information, then the State will assign the voter a unique identification number.¹⁷³

Currently, under New York law these types of identification are not required to register to vote. New York law only requires a voter to affirm that he or she is qualified to vote on the voter registration form, that is, that he or she is a citizen of the United States, 18 years of age, and is a resident in the county or city to which the application is made. As a result, New York law will need to be altered and its voter registration form must be changed. Article 2, § 5 of New York Constitution provides the legislature with the ability to incorporate the HAVA requirements into law.¹⁷⁴ The New York

Constitution, however, may also need to be amended because currently it states that:

The legislature shall provide for identification of voters through their signatures in all cases where personal registration is required and shall also provide for the signatures, at the time of voting, of all persons voting in person by ballot or voting machine, whether or not they have registered in person, save only in cases of illiteracy or physical disability.¹⁷⁵

HAVA requires more than just the signature. New York law, however, currently states that:

Statewide application forms shall be designed by the state board of elections, which shall conform to the requirements for the national voter registration form in the rules and regulations promulgated by

the federal election commission and shall elicit the information required for the registration poll record.¹⁷⁶

This section allows for New York State's registration form to be amended to include the required information of HAVA.

These HAVA requirements will have a dramatic impact on New York City, where 52.1% of city residents have driver's licenses as compared to the rest of the state where 91% of individuals have driver's licenses.¹⁷⁷ In addition, if one does not have his or her Social Security number memorized, or carry it on his person, then this requirement will be an impediment to first-time registrants. There is, however, another option under HAVA when one does not have either a driver's license or Social Security number. Section 303(a)(5)(ii) provides that if an applicant does not have either form of identification, then the State shall assign the applicant a number, which will serve to identify the applicant. This number should coincide with the

computerized list number.

New York will also have a special responsibility to ensure that these requirements do not have a chilling affect on voter registration. New York must make sure that all steps are taken to ensure that its voting laws are fair and that there is an evenhanded application and enforcement of the law. New York has a substantial immigrant population, many of whom have come from oppressive regimes where identification cards were used as part of a common form of intimidation. It is essential that these groups of individuals feel comfortable when registering to vote. New York State will need to have a well-planned and implemented education drive to inform voters about these changes and also ensure that people trust the system.¹⁷⁸ Since HAVA requires that the DMV, the Social Security Administration and the penal system¹⁷⁹ coordinate during the registration process,¹⁸⁰ the legislature should enact legislation that limits the use of the information solely to the registration process and not allow it to be cross-referenced for other types of computer searches. Otherwise, qualified voters may decide to exclude themselves from the voting process.

VOTER REGISTRATION BY MAIL [SECTION 303]

In addition to making changes to the personal registration process, HAVA also amends the process for first-time voters who register by mail. Being able to register by mail has had a positive effect on voter registration. It can be done in the privacy of the home and done at a person's leisure. The convenience of this form of registration has facilitated individual registration. A person no longer has to travel to a central board of elections to register or go to a designated polling place on a certain day. Currently, New York law allows a person to register by mail.¹⁸¹

Like New York, HAVA allows registration by mail but creates additional requirements for first-time voters registering through the mail. The HAVA requirements apply to voters who are voting in a federal election for the first

time or voting in that jurisdiction for the first time. Thus, HAVA requires all first-time voters registering by mail to show identification at the polls. If a first-time voter does not want to show identification at the time of voting (in person), he or she must submit in the mail with the registration form a copy of either a driver's license, valid photo identification, utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.¹⁸² If a voter registers by mail and votes by mail, he or she would also need to include a copy of either a driver's license, valid photo identification or utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter with his or her mail-in vote.¹⁸³ If, however, the voter registers by mail and includes a driver's license number or last four digits of the Social Security number, as HAVA requires of all registrants, then the State is required to confirm that the information provided is correct. Once confirmed, no identification will need to be shown when voting.¹⁸⁴ One other ambiguity pertaining to the mail registration provision is whether it requires identification to be shown if the registration is hand delivered to the board of elections by a third party. The language could be interpreted to mean that the identification requirement only applies if the registration is actually mailed, that is, sent by the care of the United States Post Office.

Under the HAVA provisions, any first-time voter who registers by mail will be required to show identification at the polling place in order to vote if he or she did not provide the above documentation when mailing in their registration form. The type of documentation provided for in HAVA, however, simply does not adequately take the poor or married people into account. For example, it is not unusual that only one spouse is listed on household bills or that the low-income people, senior citizens, people with disabilities, and students who do not have driver's licenses, bank accounts, paychecks, or other forms of identification. Unless New York State clarifies other types of "documentation," disenfranchisement will occur. Therefore, New York could provide a voter registration card or other documentation with a voter's

name and address that would identify a person for the purposes of HAVA.¹⁸⁵ Furthermore, New York should recognize other forms of identification as valid for the registration process.¹⁸⁶

Section 303(b)(2)(B)(i) of HAVA, however, does provide that if a voter appears at the polls and does not have the required identification, then the voter is allowed to cast a provisional ballot. In addition, a voter who mails in a ballot without the proper identifying information will also have the ballot be treated as provisional.¹⁸⁷ It is essential that poll workers are aware of this provision, so that voters will not be turned away if they do not have the proper identification.¹⁸⁸ New York must ensure that poll workers do not misinterpret HAVA to mean that when a voter does not have identification or does not appear to be registered that they are unable to vote. All potential voters must be given a provisional ballot. New York must also ensure that poll workers and election officials are aware of the many documents other than a driver's license that satisfy HAVA's identification requirements.

Section 254 of HAVA requires the states to institute a plan to measure the performance of HAVA. In regard to voter registration, New York could analyze data from prior years to compare whether the implementation of HAVA has affected voter registration. In addition, New York should require that any voter whose registration is rejected after being compared to government lists should be contacted and informed of the rejection and given a chance to re-register. More importantly, New York should have laws that ensure that if a voter's registration is rejected, that he or she is not precluded from re-registering based on the 25-day time limit to register to vote.

ESTABLISHMENT OF STATE-BASED ADMINISTRATIVE COMPLAINT PROCEDURES [SECTION 402]

Assuming New York chooses to receive funds under HAVA, the state will be required to establish and maintain administrative complaint procedures. The procedures must be uniform and nondiscriminatory, and must allow

any person to file a complaint for alleged violations of Title III of HAVA. These alleged violations may have already occurred, be in the process of occurring, or be about to occur. If requested by the complainant, this formal complaint process must include a hearing on the record. HAVA requires this process to be completed within 90 days of the initial filing of the complaint. Otherwise, New York has 60 days to resolve the complaint under alternative dispute resolution procedures. New York is required to determine if there has been a violation of the Act and, if so, to make the appropriate findings and order a remedy.¹⁸⁹

In establishing these procedures, New York could also implement measures to address and resolve violations that occur immediately prior to an election or on Election Day, such as a voter hotline with sufficient staffing and accessible election officials at each poll site. These violations, such as the failure to provide a voter with a provisional ballot, are best addressed immediately to ensure that eligible voters are able to cast a ballot.

It is recommended that all aspects of New York's complaint procedures be open for public review. The procedures should be simple enough for voters to navigate themselves, but also allow complainants to have advocates assist them if they choose. Consistent with the Voting Rights Act, the process should provide alternative language accessibility, with all forms and instructions necessary to file a complaint available in English and additional languages. New York must make voters aware of the procedures for filing a complaint and notify them that they are entitled to a full hearing on the record. When filing a complaint, voters should be notified about the alternative dispute resolution procedures in the event the agency does not respond within 90 days. As with other administrative action, any final decisions made under the complaint procedures could be subject to judicial review.

It is also recommended that New York establish an independent agency to be in charge of the complaint procedures. It should not be the

same agency that carries out any of the substantive provisions of HAVA, but rather a separate, independent, and nonpartisan state agency that reports directly to the governor, similar to New York City's Independent Budget Office. This agency should issue an annual report to the governor and the public, reporting the number and nature of the complaints filed, and the details of their disposition.

It may be beneficial for both the voting public and election administrators to endow this agency with the responsibility for developing the performance measures mentioned elsewhere in this report and seeing to their annual evaluation.

UNIFORMED AND OVERSEAS VOTERS [TITLE VII]

Sadly, one of the demographic groups the current system of registration and vote counting has caused problems for is uniformed voters. As they are away from their home voting communities defending American democracy, members of the military should still be able to fully participate in voting, which is the cornerstone of our democratic form of government. To that end, even the earliest drafts of the HAVA contained provisions designed to ease the burden on uniformed and overseas voters.¹⁹⁰ The language that eventually emerged from Congress is not all directed at the states, but requirements directed at the states are relatively simple to meet.

First, § 702 requires New York to designate a "single office which shall be responsible for providing" uniformed services voters with information "regarding voter registration procedures and absentee ballot procedures."¹⁹¹ The logical choice would be the chief state election official.

Second, § 703(a) requires that 90 days after an election "each state and unit of local government which administered the election shall . . . submit a report to the federal Election Assistance Commission . . . on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of

such ballots which were returned by such voters and cast in the general election, and shall make such report available to the general public.”¹⁹² Thus, both the state and local boards of elections will have to ensure that this information is gathered, recorded, and transmitted to the Election Assistance Commission.

Third, § 704 of HAVA amends §104 of the Uniformed and Overseas Citizens Absentee Voting Act, which is codified at 42 U.S.C. 1973ff-3.¹⁹³ That law requires states to accept an official postcard form, created by a presidential designee, for simultaneous voter registration and absentee ballot application.¹⁹⁴ New York law treats this as a “permanent personal registration.”¹⁹⁵ However, the new HAVA amendment requires that, “if the military voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office . . . the State shall provide an absentee ballot to the voter for each such subsequent election.”¹⁹⁶ However, New York Election Law § 10-106(7-a) states that such a postcard application “shall be treated in all respects as an application for . . . a military ballot pursuant to the provisions of this article.”¹⁹⁷ Election Law § 10-108, in turn, states that “[b]allots for military voters shall be . . . distributed . . . to each military voter who applies for a ballot . . . in such year . . . or who registered as a military voter after the previous general election.”¹⁹⁸ In other words, New York sends military voters ballots only if they request one that year or registered after the last general election. Thus, in order to comply with HAVA, New York must amend its law to ensure that, when requested on the postcard, ballots are sent to all military voters for the next two general elections after the request

is made.

Fourth, HAVA requires that the states accept a standard oath, created by a presidential designee, for the registration, application for ballots, and actual ballots of military voters.¹⁹⁹ As Election Law § 7-123 provides for a specific oath, here too changes will have to be made to New York law.²⁰⁰ More specifically, this provision concerning the oath will have to be repealed, amended to emulate the oath created by the presidential designee, or be made unnecessary if the voter takes the oath created by the presidential designee.

Fifth, HAVA mandates that no state refuse to accept or process a registration application or absentee ballot application of any absent military voter on the grounds that it was received prior to the date on which the State otherwise accepts or processes such applications.²⁰¹ Put another way, any rule or regulation that states that absentee ballots or mail registrations will not be processed if they are received too early cannot apply to absent military voters. New York law states that an absentee ballot request received more than 30 days prior to the election is not valid,²⁰² but it seems to say nothing about military voters in this regard.²⁰³ Even if the applications of military voters are not, in practice, rejected because they were sent too early, New York should amend its law to make it clear that such a practice is prohibited.

Finally, § 707 of HAVA requires that, if the state rejects the registration application or absentee ballot request of an absent uniformed services or overseas voter, it notify that person as to the reason. No such mechanism exists in New York law, so one must be developed. To that end, it would seem that the simplest way to comply with this requirement is to expand the system, discussed elsewhere in this report, for notifying those people who cast provisional votes whether their vote was counted, to also include military voters.

PART 3

ADDITIONAL POTENTIAL REFORMS

Although the following subjects are not directly mentioned in HAVA, New York should consider these potential elections reforms, many of which already exist in other states and facilitate increased voter participation.

1. Election Day Registration—Six states: Idaho, Maine, Minnesota, New Hampshire, Wisconsin, and Wyoming allow individuals who are not registered or need to update their registration to register and vote on Election Day. Since citizen interest is highest on Election Day, this provision of law allows individuals who have not been previously registered to not only register but also vote on Election Day. Anti-fraud provisions protect the integrity of the process. The effectiveness of this concept is demonstrated by the fact that these states lead the nation in voter turnout, with roughly 10% higher participation than the national average.
2. If Election Day registration is not enacted, move the registration deadline to 10 days prior to an election, the minimum permitted by the New York State Constitution. The present law preventing registration during the 25 days prior to an election prevents large numbers of New Yorkers from voting.
3. Improve implementation of the NVRA to ensure that government agencies and disability services offices provide registration forms, encourage registration, and assist in filling out the forms. Virginia and Florida have established NVRA coordinators who have effectively streamlined pro-

cedures and ensured full and fair implementation of the law.

4. Increase the use of absentee ballots by providing for unrestricted absentee voting, whereby those who sign up for it are automatically sent an absentee ballot each year without having to give a reason for using an absentee ballot. Seventeen states now permit “no fault” absentee voting. New York’s current law is restrictive by requiring voters to provide a detailed reason for voting absentee.
5. Permit online registration using e-signatures or some other unique qualifier.
6. Increase the professionalism of New York’s administration of elections. Professionalizing the process of administering elections would be advanced if New York eliminated bi-partisan boards of elections and replaced them with nonpartisan boards of elections.
7. Equalize and liberalize voting hours throughout the state by establishing a single uniform standard of 6:00 A.M.–9:00 P.M. This is an issue of significance for rural voters who have to travel great distances to work.
8. Make local registration days presently mandated by New York State election law, where registration facilities must be made available in communities throughout the State, an effective vehicle to induce citizens to register to vote. At present, inadequate promotion and advertising of the availability of these facilities cause the effort to be a failure. Training in the use of new voting machines and voter education make this program more necessary than ever.

These changes, if adopted in New York State, would facilitate registration and voting and ensure the efficient administration of elections.

NOTES

1 Benjamin B. Bederson, Bongshin Lee, Robert M. Sherman, Paul S. Herrnson, and Richard G. Niemi, *Electronic Voting System Usability Issues*, ACM Conference on Human Factors in Computing Systems, at 1 (2003).

2 See U.S. General Accounting Office, *Elections: Perspectives on Activities and Challenges Across the Nation*, 2001, GAO-02-3, at 7.

3 Sheila R. Cherry, *High Tech Voting Raises Questions*, *Insight on the News* (2003), at <http://www.insightmag.com/news/343233.html> (citing R. Doug Lewis, Director of the Election Center, a service association for election officials).

4 See Report of the CalTech/MIT Voting Technology Project, *Voting: What Is, What Can Be* (2001), at 21.

5 Five voting systems were predominant during the 2000 election: Punch card—31%; optical scan—31%; mechanical lever—17%; direct recording electronic—12%; mixed systems—8%; and unscanned paper—1%. See U.S. General Accounting Office, *supra* note 2, at 261.

6 See Report of the CalTech/MIT Voting Technology Project, *supra* note 4, at 21.

7 See *Inside Politics, E-Balloting Debate, Campaigns & Elections* (February 2002), p. 9.

8 New York State's full-face ballot requirement, described above, places significant limitations on the types of ballot presentations made possible by modern technology. Apparently, only two voting system manufacturers produce machines capable of handling New York's full-face ballots. They are essentially electric versions of the current lever machines.

9 See HAVA § 101.

10 See HAVA § 102(a).

11 See HAVA § 102(a).

12 See New York State Task Force on Election Modernization, *Voting in New York in the 21st Century* (2002) at 2. It was also strongly recommended that counties produce plans for transition to new technology by June 30, 2003, with implementation to begin no later than December 2003. *Id.* at 19.

13 See HAVA § 102(b)(1).

14 See HAVA § 102(b)(2).

15 New York State has approximately 14,000 precincts.

16 As this report was being prepared for print, Congress had appropriated funds that equated to approximately \$3,280 per precinct for machine replacement (slightly under \$46 million for New York State).

17 See HAVA § 102(c)(1).

18 Section 104 of HAVA authorized a total of \$650,000,000, half designated for election administration and half designated for replacement of lever and punch card machines.

19 See HAVA §§ 221, 222.

20 See HAVA § 231.

21 U.S. General Accounting Office, *supra* note 2, at 7.

22 See HAVA §§ 241, 243, 245.

23 See Bederson et al., *supra* note 1.

24 See The Center for American Politics and Citizenship, University of Maryland, *An Evaluation of Maryland's New Voting Machines* (2002), at 1.

25 These standards, issued on April 30, 2002, set a maximum acceptable error rate in the test process of 1 in 500,000 ballot positions.

26 See Federal Election Commission, *Voting System Standards* (2002), at Appendix C.

27. *Id.* at Appendix C, C.2, C.6. Other usability design guidance includes: The design should ensure compatibility with human physiological and cognitive characteristics and limitations, including: visual and auditory perception, information processing and memory, anthropometry and biomechanics, *Id.* at C.2; the system should provide clear and explicit instructions on what procedures the user should follow throughout the voting process. The system should check user inputs for acceptability, e.g., check for inputs that seem to be in error (such as putting an Arabic number in a name field) and alert the voter when such a situation exists. *Id.* at Appendix C.8.

28 Using this particular benchmark, without others, would fail to distinguish among differing rates of “roll off” of various types of systems and voter interfaces as one proceeds down the ballot.

29 The voting system standards contemplate that states will add their own requirements to those already found in the standards. See Federal Election Commission, *supra* note 26, at Appendix C, C.2.4.3.1, C.1.6.2.

30 There is compelling statistical evidence that a substantial number of voters in Palm Beach County failed to successfully cast votes the way they intended to. See Jonathan N. Wand, Kenneth W. Shotts, Jasjeet S. Sekhon, Walter R. Mebane, Michael C. Herron, and Henry E. Brady, *The Butterfly Did It: The Aberrant Vote for Buchanan in Palm Beach County, Florida*, *American Political Science Review* 95:793–810 (2001).

31 See Susan King Roth, *Disenfranchised by Design: Voting Systems and the Election Process*, November 2000, at <http://www.informationdesign.org/pubs/roth1998.html> (Originally published in *Information Design Journal*, 9(1) (U.K. 1998), at 1–8).

32 For example, precertification testing of a touch-screen system in Virginia indicated that voters tended to bypass the governor's and attorney general's races because the biggest display on the page was a “button” indicating “next,” which some voters pressed before casting a vote on that screen. See T. Whitley, *Researchers Study Voting Machines*, *Richmond Times-Dispatch*, November 4,

2001.

33 The current voting system standards provide for continued operation for two hours and for recovery of data (votes already cast) upon interruption of power. See Federal Election Commission, *supra* note 26, at Appendix C, C.2.4.3.1, C.3.2.2.4.

34 U.S. General Accounting Office, *General* *supra* note 2, at 9.

35 See Bederson et. al., *supra* note 1, at 2.

36 See New York State Task Force on Election Moderization, *supra* note 12, at 3.

37 The State Task Force recommended the development of “uniform and objective performance measures for both central board and Election Day operations.” See *Id.* at 3.

38 See HAVA §§ 271–273.

39 See HAVA §§ 261(b), 264.

40 See Demos: A Network for Ideas & Action, Help America Vote Act: Federal Funding Update, *Democracy Dispatches* Number 31 (2003).

41 See Half the Planet: The Disability Resource, National Voter Independent Project (2002), at <http://www.halftheplanet.com/departments/vote/intro.html>.

42 See HAVA § 265(a).

43 See Office of Attorney General Eliot Spitzer, *Voting Matters in New York: Participation, Choice, Action, Integrity* (February 12, 2001), at 36.

44 It appears that Congress actually intended to amend 42 USC 1973ff-3.

45 It appears that Congress actually intended this to be Section “d” and not “c.”

46 An overvote occurs when the voter attempts to vote for a number of candidates for a particular office that exceeds the maximum number of candidates allowable in that race.

47 However, there is no machine interface that informs the voter of the ballot choices he or she has made and asks the voter to confirm or change them, as many DREs are capable of doing.

48 An undervote occurs when a voter fails to vote for the maximum number of candidates that can be selected in a particular race.

49 See Roger Roy, Michael Griffin, “Poll Workers Blew Votes,” *Orlando Sentinel*, February 4, 2001.

50 See N.Y. Elec. Law § 9-102.

51 H.R. 3295, 107th Cong. § 233(a)(3) (2002).

52 See H.R. Conf. Rep. No. 107-730 (2002).

53 See Federal Election Commission, *supra* note 26, at Appendix C, C.2.2.2.2, C.2.2.4.2.

54 See Cherry, *supra* note 3 (citing Brian Hancock, *Federal Election*

Commission). Georgia and Maryland's largest counties have since implemented DRE systems. *Id.*

55 New York City's current lever machines use an antiquated, but nonetheless relatively effective, system of protection against tampering. The machines require the correct physical attachment of straps and metal bands for the votes to register for the intended candidate. The machines must be set up and certified jointly by a Republican and a Democratic employee of the Board of Elections. Because of this partisan method of setup, as well as the laborious task of setting up the numerous machines that are used in most races, the likelihood and impact of tampering is considered to be small.

56 "Editorial," *San Jose Mercury News*, January 23, 2003.

57 <http://verify.stanford.edu/evote.html>.

58 Associated Press, *Silicon Valley wary about paperless voting machines*, February 25, 2003.

59 See Cherry, *supra* note 3 (citing R. Doug Lewis, Federal Election Commission).

60 See *Id.*

61 *Id.*

62 See *Id.*

63 See Holli Riebeek, "Brazil Holds All-Electronic Election," *IEEE Spectrum Magazine* (2002), at <http://www.spectrum.ieee.org/WEBONLY/resource/nov02/nbraz.html>.

64 See *Business Wire*, *Electronic Voting Solution Combines the Best of Old and New; "Digital Ballot Box" Earns Voter Trust by Providing Printed Paper Record* (2003), at www.businesswire.com.

65 See Report of the Caltech/MTI Voting Technology Project, *supra* note 4, at 15.

66 See Susan King Roth, *Human Factors Research on Voting Machines and Ballot Design: An Exploratory Study*, Section 2: Human Interfaces with Election Technology; U.S. General Accounting Office, *supra* note 2, at 261.

67 Language assistance, including ballot translation, is required when the Census reports that a county has 5% or more than 10,000 voting-age (over 18 years old) citizens who speak the same Hispanic, Asian, or Native American language, have limited English proficiency, and, as a group, have a higher illiteracy rate than the national illiteracy rate. After Census 2000, in New York, language assistance is required under the Voting Rights Act, and now also HAVA, in the following languages and counties: Korean, Chinese, Spanish—Queens County; Chinese, Spanish—New York County (Manhattan), Kings County (Brooklyn); Spanish—Bronx, Nassau, Suffolk, Westchester Counties.

68 See Federal Election Commission, *supra* note 26, at Appendix C, C.3.2.1.

69 Demonstrating how difficult it is to evaluate the efficacy of voting systems without extensive human factor testing is a recent paper suggesting that there is a significant difference between the rate of invalid ballots cast by Caucasians and

African Americans when an optical scanning system is used. See Michael Tomz and Robert P. Van Houweling, "How Does Voting Equipment Affect the Racial Gap in Voided Ballots?" *American Journal of Political Science*, Volume 47, Issue 1 (2003), at 46–60.

70 See *Inside Politics, E-Balloting Debate*, supra note 7, at 9.

71 See Report of the CalTech/MIT Voting Technology Project, supra note 4.

72 The scanner divided the oval into 16 segments, called pixels. For each of the segments that had the voter's mark in it, one pixel was credited.

73 One can imagine the outcome of a closely contested race coming down to the counting of votes that do not satisfy the technical standard but are counted using the intent of the voter standard. Whether to tolerate this outcome rests upon the value that is placed on counting the votes of as many voters as possible in the ordinary course.

74 See Wand et al., supra note 30.

75 See Paul S. Herrnson, Richard G. Niemi, and Scott Richman, *Characteristics of Optical Scan and DRE Voting Equipment: What Features Should be Tested?* at 1, at http://www.capc.umd.edu/rpts/MD_EVote_HerrnsonNiemi.pdf.

76 Brendan Kirby, *Voting Snafu Answers Elusive*, *Mobile Register*, January 28, 2003, at http://www.al.com/news/mobileregister/index.ssf?/xml/story.ssf/html_standard.xml?base/news/104374962627050.xml.

77 See Jessica Fagen, "Firm Audits Errors in Counting Votes for Hawaii, Venezuela," *Honolulu Star Bulletin*, *Hawaii News*, June 7, 2000.

78 See HAVA §§ 302(a), 303(b)(2)(B)(i).

79 HAVA § 302(c).

80 See HAVA §§ 302(a)(1–2), 302(a)(5)(A–B).

81 See HAVA § 302(a)(2)(A).

82 See HAVA § 302(a)(4).

83 The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process* (2001) at 36.

84 *Id.* at 37.

85 Doug Chapin, *electionline.org* (September 11, 2002), which cites various press coverage.

86 Doug Chapin, *electionline.org*, (September 13, 2002).

87 Jim Drinkard and Peter Eisler, "Weakest Part of Any Voting Machine: People," *USA Today* (March 1, 2001) at 13A. To be sure, other factors, such as power outages, and busy telephone lines, contributed to election problems. Still, at some level, these problems reflect a lack of sufficient planning and backup.

88 Report of the CalTech/MIT Voting Technology Project, supra note 4, at 33.

89 Thad Hall, *L.A. Story: The 2001 Election*, *The Century Foundation*, at xix,

(citing The National Commission on Federal Election Reform, *supra* note 83, at 52).

90 See HAVA § 302(b)(2)(A–F).

91 See N.Y. Elec. Law § 4-104(2), 4–122.

92 New York State Task Force on Election Modernization, *supra* note 12, at 38.

93 See Office of Attorney General Eliot Spitzer, *supra* note 43, at 16.

94 See Ronald Hayduk, *The 2001 Elections in New York City*, The Century Foundation (2002).

95 The National Commission on Federal Election Reform, *supra* note 83, at 49.

96 Report of the CalTech/MIT Voting Technology Project, *supra* note 4, at 33.

97 Office of Attorney General Eliot Spitzer, *supra* note 43, at 16.

98 Report of the CalTech/MIT Voting Technology Project, *supra* note 4, at 34.

99 *Id.*

100 See Georgia Secretary of State Press Office, *Voter Education: Multi-Tiered Campaign Critical to Success of Georgia’s New Electronic Voting System Deployment* (2002).

101 New York State Task Force on Election Modernization, *supra* note 12, at 37.

102 See HAVA §§ 101(b)(1)(C–D), 251(b)(2).

103 See New York State Task Force on Election Modernization, *supra* note 12, at 37.

104 *Id.* at 47.

105 Telephone interview with Conny McCormack, Registrar-Recorder/County Clerk of Los Angeles County (February 11, 2003).

106 Report of the CalTech/MIT Voting Technology Project, *supra* note 4, at 35.

107 See *Demos: A Network for Ideas & Action*, *supra* note 40.

108 See Office of Attorney General Eliot Spitzer, *supra* note 43, at 50–51.

109 The National Commission on Federal Election Reform, *supra* note 83, at 48–49.

110 Report of the CalTech/MIT Voting Technology Project, *supra* note 4, at 34.

111 See telephone interview with G. G. Collins, Suffolk County election official (February 10, 2003).

112 HAVA § 303(a).

113 See HAVA § 303(a)(1)(A)(viii).

114 HAVA § 303(a)(1)(A)(i).

115 HAVA § 303(a)(1)(A)(ii). See also HAVA § 303(a)(2)(B)(i).

116 HAVA § 303(a)(1)(A)(iii).

117 See HAVA § 303(a)(1)(A)(iv). See also HAVA § 303(a)(2)(A)(ii).

118 HAVA § 303(a)(1)(A)(vi).

119 See HAVA § 303(a)(1)(A)(vii).

120 HAVA § 303(a)(1)(A)(v).

121 See The National Commission on Federal Election Reform, *supra* note 83, at 28.

122 See HAVA § 303(a)(1)(A).

123 Office of New York State Attorney General Eliot Spitzer, *supra* note 43, at 12.

124 See New York State Task Force on Election Modernization, *supra* note 12 at 2.

125 See Election Law §§ 5-500, 5-504, 506.

126 See Office of New York State Attorney General Eliot Spitzer, *supra* note 43, at 12; New York State Task Force on Election Modernization, *supra* note 12, at 22.

127 HAVA § 303(a)(1)(A).

128 *Id.*

129 H. Rep. No. 107-329 Part I (2002), at 36. It should be noted, however, that this report is based on language far different than what was eventually enacted. See *Id.* at 23.

130 Report of the CalTech/MIT Voting Technology Project, *supra* note 4, at 27.

131 *Id.*

132 *Id.*

133 See HAVA § 303(a)(3).

134 H.R. Conf. Rep. No. 107-730, *supra* note 52, at 75 (emphasis added).

135 Compare HAVA § 303(a)(1)(A) with HAVA § 303(a)(5)(A)(ii).

136 N.Y. Elec. Law § 5-500.

137 Still, the potential exists for this to be complicated: If counties use numbers of the same length, there may be overlap, and for counties that use numbers of differing lengths, there may be confusion.

138 The last four digits of a voter's Social Security number by itself cannot be used because it would not necessarily be unique. However, the driver's license number would be theoretically unique. This would, as discussed elsewhere in this report, not be the recommended course.

139 HAVA § 303(a)(1)(v).

140 This conclusion is buttressed by the model legislation recently released by various legal groups working together. Section 7(a)(5) of that model bill states that local election officials "shall have access to the central database" and goes on

to say that the local election officials “shall provide each precinct . . . with access to the statewide voter registration list in hard or electronic copy.” This suggests a division can be made between local election officials and poll workers.

141 Alternatively, “interactive” could simply mean that the person using the list can manipulate, restrict, and control the manner in which information is sorted and presented.

142 See HAVA § 303(a)(1)(A)(v).

143 The National Commission on Federal Election Reform, *supra* note 83, at 3.

144 New York law already provides for such a thing. See N.Y. Elec. § 5-214.

145 HAVA § 303(a)(2)(B)(i).

146 HAVA § 303(a)(2)(B)(ii).

147 HAVA § 303(a)(2)(B).

148 HAVA § 303(a)(4)(A).

149 See HAVA § 303(a)(3).

150 Demos, A Network for Ideas & Action, *An Overdue Reform: The Need For Statewide Computerized Voter Registration Systems* (2002), at 6.

151 Recently passed legislation required this system be replaced with a “statewide system.” See *Id.* at 6.

152 The National Commission on Federal Election Reform, *supra* note 83, at 2.

153 See Demos: A Network for Ideas & Action, *supra* note 150, at 8.

154 See Office of New York State Attorney General Eliot Spitzer, *supra* note 43, at 13–14.

155 See Michigan Office of the Auditor General, Report Number 23-235-01, *Performance Audit of the Bureau of Elections* (2003), at 17–21.

156 For example, Michigan’s QVF works as follows: “Each ‘motor/voter’ registration transaction executed by a Secretary of State branch office, by mail, or on-line is electronically forwarded to the appropriate local election official; a paper copy of the transaction follows within days to confirm the electronic notification and supply the election official with the voter’s signature.” See *Id.*

157 See Report of the CalTech/MTI Voting Technology Project, *supra* note 4, at 27.

158 Electionline.org, *Election Reform Briefing: Statewide Voter Registration Databases* (2002) at 6.

159 In fact, the National Commission on Federal Election Reform estimates that one-sixth of the population moves ever year. See The National Commission on Federal Election Reform, *supra* note 83, at 29. However, they also estimate that “three-quarters of all moves are within the same state.” *Id.*

160 See *Id.*, at 27.

161 See HAVA §§ 303(a)(2)(A), 303(a)(2)(A)(i), 303(a)(4), 303(a)(4)(A).

162 HAVA § 303(a)(2)(A)(ii)(I).

163 HAVA § 303(a)(2)(A)(ii)(II).

164 This would almost certainly constitute the “reasonable effort” required by HAVA § 303(a)(4)(A).

165 See Electionline.org, *supra* note 158, at 7.

166 *Id.*

167 See *Id.*

168 See *Id.* at 4.

169 The National Commission on Election Reform, Task Force Reports to Accompany the Report of The National Commission on Federal Election Reform: To Assure Pride and Confidence in the Electoral Process (2001) at 2.

170 See Demos, A Network for Ideas & Action, *supra* note 150, at 9.

171 Issues of jurisdiction may affect when a voter would have to re-register to vote.

172 States must comply by January 1, 2004, though states may obtain a waiver to extend the deadline to January 1, 2006. See HAVA § 303(a)(5)(d).

173 See HAVA §§ 303(a)(5)(i)(I), 303(a)(5)(i)(II). These changes only apply to new voters. Currently registered voters will not have to reapply.

174 See N.Y. Const. Art. 2, § 5. That section states that “Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law.”

175 N.Y. Const. Art. 2, §7.

176 N.Y. Elec. Law § 5-210(5). “The form shall include such other information as the state board of elections may reasonably require to enable the board of elections to assess the eligibility of the applicant and to administer voter registration and other parts of the election process and shall also include the following information:

- (a) Notice that those voters currently registered do not need to reregister unless they have moved outside of the city or county in which they were registered.
- (b) Instructions on how to fill out and submit the form and that the form must be received by any county board of elections at least twenty-five days prior to the election at which the applicant may vote.
- (c) Notice that registration and enrollment is not complete until the form is received by the appropriate county board of elections.
- (d) Notice of a voter’s right to register locally.
- (e) A warning that it is a crime to procure a false registration or to furnish false information to the board of elections.
- (f) Notice that political party enrollment is optional but that, in order to vote in a primary election of a political party, a voter must enroll in that political party.

- (g) Notice that the applicant must be a citizen of the United States, is or will be at least eighteen years old not later than December thirty-first of the calendar year in which he or she registers and a resident of the county or city to which application is made.
- (h) Notice that a voter notification form will be mailed to each applicant whose completed form is received.
- (i) The telephone number of the county board of elections and a toll free number at the state board of elections that can be called for answers to registration questions.
- (j) A space for the applicant to indicate whether or not the voter is willing to serve on election day for a board of elections as an election inspector, poll clerk, interpreter or in other capacities.
- (k) The form shall also include space for the following information, which must be contained on the inside of the form after it is folded for mailing:
 - (i) A space for the applicant to indicate whether or not he has ever voted or registered to vote before and, if so, the approximate year in which he last voted or registered and his name and address at the time.
 - (ii) The name and residence address of the applicant including the zip code and apartment number, if any.
 - (iii) The date of birth of the applicant.
 - (iv) A space for the applicant to indicate whether or not he is a citizen of the United States.
 - (v) The gender of the applicant (optional).
 - (vi) A space for the applicant to indicate his choice of party enrollment, with a clear alternative provided for the applicant to decline to affiliate with any party.
 - (vii) The telephone number of the applicant (optional).
 - (viii) A place for the applicant to execute the form on a line which is clearly labeled 'signature of applicant' preceded by the following specific form of affirmation:

AFFIDAVIT: I swear or affirm that:

 - * I am a citizen of the United States.
 - * I will have lived in the county, city, or village for at least 30 days before the election.
 - * I meet all the requirements to register to vote in New York State.
 - * This is my signature or mark on the line below.
 - * All the information contained on this application is true. I understand that if it is not true I can be convicted and fined up to \$5,000 and/or jailed for up to four years.which form of affirmation shall be followed by a space for the date and the

aforementioned line for the applicant's signature.”

177 See U.S. Census Bureau, United States Census 2002; New York State Department of Motor Vehicles, DMV Statistical Summaries at <http://www.nydmv.state.ny.us/stats.htm>.

178 It is important that New York continue its high school registration program. Therefore, it will be important that students are not confused by the fact that the form states that one must be 18 years of age to vote. Seventeen-year-old students can register as long as they are 18 at the time of election.

179 The penal system will determine if a voter is a convicted felon.

180 See HAVA § 303(a)(5)(B)(i).

181 See N.Y. Elec. Law § 5-210. N.Y. Elec. Law § 5-210(5)(l) states that “The mail voter registration application form developed by the federal election commission pursuant to the provisions of section nine of the National Voter Registration Act of 1993 42 USC 1973gg-7 shall be deemed to meet the requirements of this section. Any application for registration received on such an application form shall be accepted if the applicant is otherwise eligible to register to vote pursuant to the provisions of this article.”

182 See HAVA § 303(b)(2)(ii)(I), (II).

183 See HAVA § 303(b)(3). This assumes that the voter did not provide this information at the time of registration.

184 See HAVA §§303(b)(3)(B)(I), 303(b)(3)(B)(II), and 303(b)(3)(B)(II)(ii).

185 New York law already provides that voter registration cards can be issued.

186 New York could designate the Electronic Benefit Card, Section 8 rent statement, Social Security check statement, student ID card, out-of-state driver's license, Medicare or Medicaid card, credit card, or ATM card with photograph, senior discount transportation card, homeless shelter ID card with photograph, or other government documents showing the name and address of voter (possibilities include government bills, tuition bills from state or city universities and community colleges, IRS correspondence, etc.) as proper forms of identification.

187 See HAVA § 303(b)(2)(B)(ii).

188 See HAVA § 302(a)(1).

189 See HAVA § 402(a)(A-I).

190 See H. Rep. No. 107-329, *supra* note 129.

191 HAVA § 702(2).

192 HAVA § 703(a).

193 Though the text of HAVA refers to 42 U.S.C. 1973ff-1, in fact, it appears that Congress intended to amend 42 U.S.C. 1973ff-3.

194 See 42 U.S.C. 1973ff-1.

195 Office of Attorney General Eliot Spitzer, *supra* note 43, at 58.

196 42 U.S.C. § 1973ff-3(a), as amended by Pub.L. 107-252.

197 N.Y. Elec. Law § 10-106(7-a).

198 N.Y. Elec. Law § 10-108(1).

199 HAVA § 705.

200 N.Y. Elec. Law § 7-123.

201 HAVA § 706.

202 N.Y. Elec. Law § 8-400(d).

203 Note, however, that § 10-122 states that “Any military voter may vote by absentee ballot rather than military ballot provided that he complies with the provisions of this chapter relating thereto.”

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