

**Testimony of Tova Andrea Wang, Senior Program Officer
and Democracy Fellow, The Century Foundation**



Before the New York State Board of Elections
Hearings on the Draft Plan to implement the Help America Vote Act in New York State
New York City, July 10, 2003

My name is Tova Andrea Wang and I am Senior Program Officer and Democracy Fellow at The Century Foundation, a nonpartisan research institution. I am testifying today on behalf of former Attorney General Robert Abrams, elections expert Arthur Fried, Professor Ron Hayduk, myself and others who worked on a Century Foundation report entitled “The Help America Vote Act: Impact and Potential for New York.”

Thank you for the opportunity to comment on the task force’s draft plan for implementing the Help America Vote Act in New York. The way in which the law is implemented could have profound implications for how New Yorkers register, vote and have their votes counted. Implemented well, the law could mean an expansion of voting rights not seen since 1965. Done poorly, greater disenfranchisement becomes a risk.

Unfortunately, the report fails to provide the guidelines for improving elections that New Yorkers need and deserve. It is vague and almost entirely devoid of specifics as to how election reform will be carried out in New York. We believe that in producing such a plan, the task force has squandered the opportunity to show New York State how to move into the forefront of leadership in registering new voters, training those who administer elections and providing the citizens of New York with the best voting machines.

In contrast to the task force’s report, we examined every provision of the federal legislation, analyzed its legal implications, and detailed what specific action New York’s elected leaders and election administrators should take to best comply with the new law. I recommend the public review our report as a model for what the task force’s report could have and should have been.

There are many issues vital to the future of elections that the report fails to address.

The Machines

- The plan refers to three DRE (ATM-style) systems that have been certified by the state, without describing which ones they are, their features, or the advantages and disadvantages of any of them. The plan does not make clear whether the state is limited to those three machines or is open to certifying new technology. We strongly recommend the Board consider voting machines not currently certified, as some of those are the most accessible and effective of the new voting technologies.
- The plan states that the Board intends to spend \$140 million on new voting machines without detailing how it arrived at that figure, which is higher than it might need to be. Every dollar spent on machines is a dollar that cannot be spent on things like voter education and poll workers.
- The plan makes no recommendation with respect to the state’s requirement that all of the races be on one page – the “full face ballot” requirement. This requirement imposes tremendous limitations on the state’s voting technology options, ensures the continued use of a confusing ballot, requires more money be spent on voting machines than necessary, and ensures discrimination against the disabled.
- While the state board of elections takes responsibility for machine replacement, it is unclear whether that means the state will be contracting for one single type of voting machine for the entire state. We

strongly recommend that all voters in New York use the same voting technology to ensure fairness, economies of scale and maximum efficiency in educating voters and poll workers.

- There is little description of what the procurement process will involve, including whether it will be open and transparent to the public. There is also no discussion of any role for representatives of such groups as the disabled and language minorities, and other particularly affected communities, in the technology review process. This is important because it is only through public participation and openness that the public will have confidence in our new voting system and take active part in it. Already, the process has provoked a strong measure of skepticism and cynicism, and it would be helpful to expressly provide for a public element in the process to remedy this and move forward in a most productive manner.
- There is nothing in the report about how the Board intends to interpret the requirement that there be a verifiable paper audit trail, i.e. whether it means for each voter or a total paper tally. We recommend that the machines chosen have the capacity to provide a paper audit for each individual vote cast.
- There are no real measures identified for evaluating the technology's performance. Among the measures we suggest are convenience for voters, ease of use, accuracy of recording, reliability, speed of voting, ability to reduce voter error, need for poll worker assistance, and system security.
- The plan only contemplates accessibility for language minorities who reach the Voting Rights Act threshold of 5% of the jurisdiction's population. Current technologies make it easy to provide information and ballots in an unlimited number of languages. We therefore recommend that the Board employ this technology to serve language minorities who do not reach the VRA threshold.

Poll Workers

- Commendably, the plan calls for increased funding for poll worker training, with the curriculum devised at the state level, and a program that includes dealing with the disabled properly. However, all of the elements of the state curriculum are voluntary. There is no provision for implementing statewide poll worker training requirements, for example, setting a minimum number of hours of education that must be provided or requiring that workers actually pass the already legally mandated test in order to work on election-day.
- The plan for improving poll worker training is generally vague. In The Century Foundation report, we make a number of specific poll worker training suggestions, including developing a training video; providing more hands-on training, especially with new machines; focusing on special situations in training sessions, such as when machines break down and emergency ballots are required; and re-writing training manuals in clearer, more accessible language.
- There is no discussion of the need for language translators at the polls and how the shortfall in such workers will be addressed. This is a major oversight. In 2001, New York City was short 122 Chinese interpreters out of a total of 483 positions, 256 Spanish interpreters out of a total of 779 positions, and 19 Korean interpreters out of a total of 32 positions.
- The report is totally silent on the critical issue of poll worker recruitment except to say the Board will "explore new and innovative" programs and the HAVA college program. The Century Foundation report recommends expanding the ways in which poll workers are recruited by working more intensively with community groups, re-examining the practice of only hiring poll workers registered as Democrats or Republicans, creating split shifts, and making working the polls a substitute for jury duty.

Voter Registration

- The plan states that the Board will seek access to other statewide databases for verifying voter registration identification. Given the new voter ID requirements, including requiring voters to supply their drivers license or social security number on the registration form, this is potentially a very useful tool in preventing inadvertent disenfranchisement through voter error in completing the application. Yet the plan does not discuss what agencies it is referring to (other than DMV and the Social Security databases) or what voter information would be checked on those databases for the purposes of identifying the voter so that he or she is able to vote. We suggest that the database access data from such additional entities as NVRA agencies and the public universities. This data should further be employed to correct and supplement incomplete information provided by the voter. It can also be used to prevent improper removal from the rolls due to such errors as mismatching a name with a felon list or erroneously treating people with similar names as one person.
- There is no discussion whatsoever of what additional forms of ID the state will accept as fulfilling the new ID requirements of HAVA. The Century Foundation report recommends expanding the definition of identification to include documents other than those explicitly enumerated in HAVA.
- The plan does not specify what will be deemed a “mail-in registration” and therefore subject to identification requirements. Will the Board’s definition include applications delivered to the Board by voter registration groups? We believe it should not and that HAVA can and should be interpreted as imposing the ID requirement only on those applications sent through the U.S. postal system.

Voter Education

- Plans for voter education are very generally and vaguely described. For example, the plan says the State Board will develop a Voter’s Bill of Rights to be posted at poll sites, along with other voting information. This is the minimum HAVA requires. The Voter’s Bill of Rights must not only be available at the site (which is when it is least useful, because the voter is just about to vote), but also be more widely disseminated, such as through mailings, along with a variety of other voter education materials, most importantly a sample ballot.
- The Century Foundation report also suggests that 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.

Administrative Complaint Procedure

- There are few details as to how the administrative complaint procedure will work. This includes who exactly will administer and make determinations in the alternative dispute resolution stage of the process, whether the complaint procedures will be made language and disabled accessible, and whether judicial review in state court will be available.

Thank you again for hearing my thoughts and suggestions today. I am happy to provide additional copies of The Century Foundation report for your further review. It is also available on our election reform website, www.reformelections.org.