BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
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AGENDA
COMMISSIONERS MEETING
TUESDAY, APRIL 7, 2009
AT 1:30 PM

1. Minutes
   a) 03/17/09
   b) 03/24/09
   c) 03/31/09
2. Marcus Cederqvist
   a) HAVA Update
      - Report on NYS HAVA Task Force Meeting – Friday, April 3, 2009
3. Rosanna Rahmouni
   a) Distribution of Poll Site Designation Lists
4. John Ward
   a) Comparative Expenditures
5. Executive Session
   a) Litigation

For Your Information

- NYS Board of Elections Weekly Status Report for the Week of March 27, 2009 Through April 2, 2009
- Letter Concerning NYC Special Elections – File No. 2007-0266
- Letter to Matthew Nelson, Senior Vice President of Sales, Election Systems and Software
- Letter to Peter McManemy, Vice President and Chief Financial Officer, Sequoia Voting Systems
- Seeking Hamilton County Leadership and Support for Fiscal Responsibility: Save our Lever Voting System
- Schumer Pushes for Full Funding for Voting Rights Legislation
- U.S. Election Assistance Commission, Voting System Testing and Certification Program re: Accreditation Renewal

Marcus Cederqvist

From: DONNA MULLAHEY [DMULLAHEY@elections.state.ny.us]
Sent: Thursday, April 02, 2009 11:15 AM
To: Marcus Cederqvist
Subject: RE: HAVA Task Force Meeting


Help America Vote Act 2009 Tas...


HAVA ementation Plan 20(

Marcus -

I am sorry. I sent it to your other e-mail address at the boe. Attached is the information. If you can't make it up, here is the call in numbers. Again I apologize. I will change your e-mail address to this one.

The call-in number is : 1-866-699-3239
>
> Attendee's access code: 56931451
>

Donna S. Mullahey
New York State Board of Elections
40 Steuben Street
Albany, New York 12207
(518)474-8100
(518)486-4068 (fax)
dmullahey@elections.state.ny.us

>>> "Marcus Cederqvist" <cede@boe.nyc.ny.us> 4/2/2009 11:06 AM >>>
This is the first I am hearing about the meeting - can you send me the details?

m

-----Original Message-----
From: DONNA MULLAHEY [mailto:DMULLAHEY@elections.state.ny.us]
Sent: Thursday, April 02, 2009 9:36 AM
To: Marcus Cederqvist; Marcus Cederqvist; Steven Carbo; Sharon Shapiro
Subject: HAVA Task Force Meeting

Just checking to see if you will be attending tomorrow's meeting either in person or by phone. Please let me know. Thank you.

Donna S. Mullahey
New York State Board of Elections
40 Steuben Street
Albany, New York 12207
(518)474-8100
(518)486-4068 (fax)
dmullahey@elections.state.ny.us

New York State Help America Vote Act 2009 Task Force

April 3, 2009

AGENDA

10-10:30 A.M. - Pre-Meeting Public Comments[1].

10:30 A.M. – NYS HAVA 2009 Task Force Meeting

A. Opening Remarks and Overview
B. Updating the State Plan
    1. New Voting Systems and Affidavit Voting
    2. Improving Voter Access: Voter Education; Poll Worker Training; and Poll Site Access
    3. Statewide Voter Registration List
    4. Administrative Complaint Procedure

LUNCH BREAK 45 minutes

C. Discussion to identify any gaps in implementation
D. Implementation of State Plan

[1] A public comment time limit of 3 minutes per speaker will occur for 30 minutes before each meeting. Individuals interested in submitting written comments may direct them to: HAVATF@elections.state.ny.us

Style Definition: TOC 3: Indent: Left: 0.4", Tab stops: 0.61", Left + 6.49", Right

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~~*NEW YORK STATE*~~ *HELP AMERICA VOTE ACT*

STATE IMPLEMENTATION PLAN

NEW YORK STATE BOARD OF ELECTIONS

March 11~~January 12~~3, 2009

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New York State HAVA State Plan Introduction

For the first time in the history of the United States, the federal government has committed to ~~fund~~ sweeping election reforms which enhance the voting process in this country. The Help America Vote Act of 2002 (HAVA) , requires all states to meet minimum standards for voting systems and for the administration of the electoral process, from voter registration to the casting of the ballot.

HAVA is the result of 18 months of negotiations between congressional representatives and members of the elections community, advocates for persons with disabilities, and members of ethnic and language minority groups. The problems surrounding the 2000 Presidential election were the catalyst for this legislation. In order to guarantee the intended results, HAVA leaves very little discretion to the states in enacting the changes mandated by the legislation. For example, while _states~~s~~ may decide which voting system(s) it wishes to use, the system selected must meet the stringent minimum standards set out in the federal legislation.

The implementation- of HAVA in New York State requires~~d~~ -several changes which would~~ill~~ improve the conduct of elections and our voter registration procedures. Among the major changes required by HAVA are:

- replacement of 19,843 lever machines used in 15, 571 election districts in the November 2000 election with voting system(s) which increases the accessibility for persons with disabilities; provides alternate language accessibility as required by the Voting Rights Act of 1965; and gives all voters an opportunity to assure the accuracy of their vote before it is cast;
- establishment of a single, interactive computerized statewide voter registration list, maintained by the state, which will enable the elimination of duplicate registrations;
- verification of voter identification information, enhancing New York's ability to maintain complete and correct voter registration lists;
- creation of a state-based administrative procedure for hearing and resolving citizen complaints involving violations of HAVA provisions, and
- use of provisional ballots.

HAVA provides significant federal funding for the many mandates placed upon the states, including replacement of lever machines and punch card voting devices, the training of election officials and workers, the education of the general public, and the creation of a statewide voter registration system. The statute requires each State intending to use these funds to apply for and certify that the funds will be used for the purposes outlined in the statute. Additionally, the law requires the submission of a plan which outlines how the State will use the funds to meet the requirements of the law, and how it will monitor and disperse those funds. The procedure for developing the state plan, as well as the contents of the plan, are set out in detail in the statute.

Because federal money was appropriated in FY2003, ~~has been appropriated in the 2002-2003 federal fiscal year budget which ends in September of 2003,~~ New York ~~needs to~~ submitted its plan before the end of that fiscal year to ensure our fair share of federal money. New York is meeting the requirements of HAVA through the development of this plan through the HAVA Task Force. The Task Force, through five public meetings, where an open and free discussion ~~of~~between members and the public ensued, defined issues, posited alternative methods for resolving those issues and established priorities for the State in implementing HAVA.

This State Plan is the result of the work of the Task Force and the supplemental groups which provided information and advice to the Task Force. It provides a framework within which the State of New York will work to meet the statutory requirements of HAVA. That framework includes goals and a time frame for meeting them, as well as standards for determining the success of our progress. While this plan provides the framework to allow New York access to its fair share of federal money, it is not intended to provide definitive answers to all of the questions which need to be addressed for the implementation of HAVA. The federal law provides for a three-year implementation period, and ongoing discussions and decisions in New York are needed to fully implement this important piece of legislation. We are committed to engaging in these discussions with all interested parties, as we have done throughout this initial process.

Outline of the State Plan

Section 254 of the Help America Vote Act of 2002 outlines the required elements for the State Plan. New York's State Plan follows the 13 subsections found in Section 254 and uses them as a series of questions which the State Plan then addresses in detail.

The State Plan contains a description of each of the following:

Section (1): How the State will use the requirements payment to meet the requirements of title III; (Voting Systems Standards (§301); Provisional Voting and Information Requirements (§302); Computerized Statewide List and Voters who Register by Mail (§303), and to carry out other activities to improve the administration of elections.

Section (2): How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in Section (1), including a description of—

– The criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

– The methods to be used by the State to monitor the performance of the units or entities to which the payment is distributed, consistent with the performance goals and measures adopted under Section (8).

Section (3): How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

Section (4): How the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

Section (5): How the State will establish a fund for the purposes of administering the State's activities under this part, including information on fund management.

Section (6): The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on —

– The costs of the activities required to be carried out to meet the requirements of Title III;

– The portion of the requirements payment which will be used to carry out activities to meet such requirements; and

– The portion of the requirements payment which will be used to carry out other activities.

Section (7): How the State, in using the requirements payment, will maintain the expenditures

of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

Section (8): How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

Section (9): A description of the uniform, nondiscriminatory state-based administrative complaint procedures in effect under Section 402.

Section (10): If the State received any payment under Title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

Section (11): How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change —

– is developed and published in the Federal Register in accordance with Section 255 in the same manner as the State plan;

– is subject to public notice and comment in accordance with Section 256 in the same manner as the State plan; and

– takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register.

Section (12): In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

Section (13): A description of the committee which participated in the development of the State plan in accordance with Section 255 and the procedures followed by the committee under such Section and Section 256.

Section 1: How the State Will Use the Requirements Payment

OBJECTIVE:

Describe how the State will use the requirements payment to meet the requirements of Title III (Voting Systems Standards (§301); Provisional Voting and Information Requirements (§302); Computerized Statewide List and Voters who Register by Mail (§303)), and to carry out other activities to improve the administration of elections.

GOAL:

The Help America Vote Act of 2002 (HAVA), public law 107-252, establishes minimum election administration standards for states. It specifically requires the State of New York to:

- Replace all lever machines and punch card voting devices used by counties for elections;
- Certify new and existing voting systems according to national standards;
- Improve voting equipment accessibility, to include physical and language accessibility;
- Enhance existing provisional voting system requirements;
- Establish a statewide complaint system;
- Provide training for election officials and poll workers;
- Increase voter education for new voting systems; and,
- Create a new uniform statewide voter registration list.

PRESENT STATUS:

The State of New York, continues to face significant challenges in upgrading its voting systems, but despite the difficulties encountered with the certification process, New York continues to pursue voting system certifications that are commensurate with the degree of testing New York feels is necessary to ensure the goals of HAVA. The selection of a new voting system was directed by the State Legislature to rest with each County Board of Elections, to ensure that local needs which are best understood by local election administrators, are met. Uniformity across New York will be achieved through specific regulations which govern the use, deployment, storage and maintenance of our new voting systems. Other state statutes and rules and regulations continue to cover topics surrounding elections, including: voter ~~identification~~ ;identification; voting system certification; what constitutes a vote; election official and poll worker training; alternative language requirements; uniform provisional ballot procedures; procedures for military and absentee ballots; and tabulating and reporting of votes cast. The State continues to be in compliance with the National Voter Registration Act of 1993, and therefore already has sound procedures for voter registration and maintenance of the voter registration rolls, though the performance of list maintenance tasks becomes easier with the creation and use of the state-wide voter registration list.

PROPOSED PLAN:

~~A. Voting Systems Standards (§301)~~

In 2006, the State Board of Elections certified five ballot marking devices~~,~~ to serve as an interim solution to provide access for voters with disabilities. As mentioned elsewhere in this plan, a copy of the federal court order ~~by~~ which New York was ~~governed~~ subject to at that time, is attached. Compliance with the order required the placement of at least one such ballot marking device in each county, though counties could provide more access than just a single device for their entire county~~,~~ if they so chose. Rules for the use of these interim systems, and the manner in which ballots would be cast and canvassed, were adopted. As New York's efforts at obtaining full certification for lever replacement voting systems were abruptly halted in 2007~~,~~ due to significant deficiencies in the certification testing effort, the interim certification of ballot marking devices was extended. Another significant change in the realm of voting ~~systems,~~systems was the transfer of the ownership of voting systems from each of New York's cities, towns, and villages, to each respective County Board of Elections. Prior to this change in statute, only the City of New York and the counties of Monroe, ~~Nassau and~~Nassau and Suffolk, owned their own the voting machines. In the federal election of November 2000, there were 15, 571 election districts in New York State. With the exception of voters in ~~some~~ 30 election districts, the vast majority of voters in those districts voted on one of the 19,843 lever machines in use at that time. Absentee voting systems are owned by the local boards, and in 2005, in compliance with HAVA, the State Legislature banned punch card absentee systems, which reduced the number of certified absentee systems from three, to one – that one being an optical-scan absentee system. At present, ten counties and all five boroughs constituting the City of New York, use the op-scan absentee voting system.

New York successfully established a procurement effort which required that new, interim certified ballot marking devices be purchased by county boards, said ballot marking devices being an eventual~~ultimate~~ component of a complete lever machine replacement program. T-he~~is~~ 2008 procurement effort, in compliance with a new federal court order ~~of the court~~ (attached) placed~~s~~ a ballot marking device in each polling place in the State of New York. This newest program of compliance will ensure that voting accessibility standards for persons with disabilities are better met.

~~-~~ The State Legislature has provided for the appointment of a Citizens' Advisory Committee, charged to assist the State Board in its voting system certification program, with a focus directly on the ability of systems seeking certification to meet the needs of voters with a variety of disabilities. This committee, known as CEMAC – Citizens' Election Modernization Advisory Committee~~,~~ has participated in the review of interim ballot marking devices, and awaits further progress in the certification of lever-replacement voting systems. In further enhancing accessibility, the State has engaged in statewide efforts to ensure that polling places and voting systems are fully accessible. The State has accomplished this task through interactive education and training programs. These efforts are discussed elsewhere in this plan.

To ensure that HAVA reform is sustained, the State Board will also extend current reporting requirements to gauge performance of county election officials. These reports will continue to be

the foundation for determining the need for any modifications required in State law, the State Board's regulations, ~~state law~~ or in recommended best practices. .

To meet these efforts, the State Board has and will continue to incur administrative costs associated with the coordination, planning, operations and reporting on this voting system conversion program. In addition, the State Board has expanded its voting system certification efforts and will be engaged in election official training programs.

~~B.~~ Provisional Voting and Information Requirements (§302)

- ~~(i)~~ **Provisional Voting**

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Provisional ballots, called affidavit ballots in New York, were already provided for in state statute, long before the passage of HAVA. These ballots are a fail-safe option for voters whose names do not appear in a poll book, ~~for those voters who were required to provide ID on election day, but did not do so,~~ or for those who have moved but not yet notified their respective board of elections.~~, or I~~in Primary elections they are available to ~~for~~ voters ~~for whom their~~ whose stated enrollment does not match the enrollment specified in a poll book. Affidavit ballots which are researched and determined to be valid by the county Election Commissioners, will be canvassed, and the information provided on the envelope in which the voted affidavit ballot was placed, will be used to update respective voter records. ~~The current~~ Sstatute requires that county boards of elections send a notice, and ~~with~~ a registration form~~,~~ to each person who casts an affidavit ballot which was deemed invalid and was thus, not canvassed.

~~Provisional ballots, called affidavit ballots in New York, have long been provided for in statute. They are a fail-safe option for any voter whose name does not appear in a poll book, for those who have moved but not yet notified their respective board of elections, or in Primary elections, are available to voters for whom their stated enrollment does not match the enrollment specified in their respective poll book. The current statute requires that a notice, with a registration form, be sent to each person who cast an affidavit ballot which was deemed invalid by the county board of elections and was thus, not canvassed.~~

New York has enhanced existing statutory requirements for provisional (affidavit) ballot voting, to encompass offering said ballot to those voters for whom identification must be provided at the time one votes, but who fail to present identification. ~~Additionally, the affidavit ballot envelope has been amended to reflect this additional selection by the voter as the reason for the casting of the affidavit ballot.~~

~~New~~Additionally, New York's affidavit ballot envelope has been amended~~,~~ to allow a voter to reflect the additional, ID-related reason for casting an affidavit ballot. New York's NOTICE TO VOTERS has also been amended~~,~~ to reflect the availability of an affidavit ballot for resolution of an ID-related scenario.

- ~~(ii)~~ **Information Requirements**

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~~The State Board will expand its existing~~ 1-800-458-3453 (option 4) is the State Board's toll free HAVA Administrative Complaint information line. It implements the initial call-in element of the statewide complaint procedure. ~~voter information hotline to include opportunities for voters to make an initial HAVA complaint.~~ The statewide complaint procedure~~system~~ ~~will~~ allows for the comprehensive coordination of response by the State Board and county election officials, with the initial complaint inquiry handled by phone call, and ~~with~~with progression to a written ~~an avenue for a written~~ process when needed.

The State Board has developed a "Voter's Bill of Rights", which is required to be posted in each polling place. The poster describes: information regarding the hours during which polling places will be open; instructions on how to vote, including how to cast a vote and when and how to cast a provisional ballot; general information on voting rights under applicable Federal and State laws, including information on how to contact the appropriate election officials if these rights are alleged to have been violated; and general information on Federal and State laws regarding prohibitions on acts of fraud and misrepresentation. ~~(see attached copy)~~

~~C.~~ Computerized Statewide List, Voters who Register by Mail and Voter Identification (§303)

~~(i)~~ New York Voter Registration List

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The State Board has implemented a statewide voter registration list. The State Board's goal has been to meet the requirements of HAVA while maintaining the current level of election services at the local level, and at the same time enhancing the administration of voter registration and the election process for the citizens of New York. Working with the county boards of election, the State Board has defined functional requirements, and the roles and responsibilities of carrying out the functions of voter registration to enhance the operations of these offices. In order to comply with the requirements of Title III of HAVA, the State Board implemented, in a uniform and non-discriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list.

Pursuant to the State Constitution, Article II, §6, a voter's registration is ~~is~~ valid as long as the voter ~~they~~ resides in the jurisdiction where he/she registered. There are 62 county boards of elections which have responsibility for the registration of voters in their respective counties. One central board of elections serves the City of New York, with offices in each of the five boroughs (counties). Each board is responsible for, among other things: keeping the registration list accurate and current; removing individuals who are no longer eligible to vote in their jurisdiction; and notifying voters of the dates and times of all elections and the location of their polling place. The voter registration list maintained by the county boards is also used by school districts, villages, towns and other special districts for their particular elections.

In 2005, the New York State Legislature amended the State Election Law to implement the requirements of HAVA pertaining to ~~the statewide~~the statewide voter registration list. The

statute also required that the State Board of Elections create the statewide list bye integrating with the current county voter registration systems, creating a "bottom up" system.

In December of 2005, the Commissioners of the State Board of Elections decided to use the voter registration system developed in the State of Washington as a model. ~~NYSBOE~~The State Board of Elections arranged for the transfer from the State of Washington to New York of the voter registration system code and documentation. In 2006~~m, NYSBOE~~New York contracted with Saber Corporation to perform the system modifications to make the Washington model meet New York's needs.

Using the basic design model from the Washington solution, New York and Saber redesigned the system to meet New York's requirements, including the significantly larger number of voters to be supported by the system. Additional and more robust technology was incorporated to address the number of transactions anticipated in New York.

The statewide voter registration list, NYSVoter, was fully implemented in the summer of 2007. NYSVoter was developed on a Microsoft platform, using Microsoft SQL Server 2005 as the database engine, while employing MSBiz~~/~~Talk to handle messaging between systems using Extensible Markup Language (XML). All county-based voter registration systems are now able to communicate with the NYSVoter over a secure, encrypted virtual private network (VPN).

Local Voter Registration/Election Management Systems (VR/EMS) use the VPN to transmit XML packets containing new voter registrations, updates to voters, global updates and audit requests to NYSVoter, and receives messages for processing in near real time. In the event that there is a break in the communication line, both the local interface and the NYSVoter interface are designed to hold the messages in a queued state until communication is reestablished, thu~~s~~ allowing uninterrupted work flow on both ends.

For voter applicants, for whom~~m~~ identification is required, and who have provided a DMV client ID number, or the last four (4) digits of their Social Security Number (SSN), NYSVoter communicates with DMV in near real time and relays verification results back ~~(within seconds) and collects information which is then relayed~~ to the local VR/EMS system.

Where the voter identification information is able to be confirmed, the c~~C~~ounty b~~B~~oard accordingly updates the record indicating whether or not the ID~~S~~ requirement has been met. The process to verify SSN~~'~~s consists of DMV confirming that information through the American Association of Motor Vehicle (AAMVA) to the Social Security Administration, and receiving appropriate responses. Records that cannot be verified due to communication errors are re-sent nightly in a batch file, until they are positively or negatively verified.

NYSVoter performs a statewide matching of potential duplicate voters, and also matches voter information against felon and death records provided by New York State's Office of Court Administration and the Department of Health. In order to perform these list maintenance tasks, a secure web site is provided where local election officials can access the information and take appropriate steps to update voter records. Local election officials can also query the statewide

list and create reports.

NYSVoter provides the public with an opportunity, through a web-based link, to review their voter registration information and locate their designated polling place. An added feature is the ability to print a map with directions to their polling place.

(ii) Voters who Register by Mail and Voter Identification

HAVA's identification requirements are accomplished, in the first instance, via the verification of an applicant's NY Department of Motor Vehicles client ID number (driver's license or non-driver ID issued by DMV), or the verification of the last four digits of their social security number~~,~~ when no DMV client ID is provided. ~~.~~ If an applicant's ID cannot be verified via the interactive and real-time process now enabled by the functionality of New York's statewide database, the voter may provide alternative forms of identification such as a current and valid photo id or a copy of a current utility bill, bank statement, government check, paycheck or government document that shows the name of the voter. ~~, follow, F~~follow-up mail to the applicant is provided for in New York's ~~regulations and~~ Election Law and State Board regulations to notify the voter as to the status of their id verification and to request id verification information when the county board is unable to complete verification activities. If a county board ~~of elections~~of elections receives no response to such mailings, ID must be presented at the time the voter casts their first vote. New York remains ~~strongly~~ committed to minimizing~~diminishing~~ the number of persons required to provide ID when they vote. Towards that end, county boards are encouraged to contact those voters more than once, prior to election day, to remind voters to submit identification information, and advising them of election day resolution options.

New ~~York 's~~York's registration system vendors, in cooperation with the State Board and their respective county board customers, have developed a~~n~~ method of election day -notification to election day workers and voters of ID issues.

New York currently provides for a voter to sign in when they vote, in a designated box which appears next to a facsimile of their signature, in digitized poll books. These poll books can now display a message in the election day signature box, indicating to the inspector that the voter must provide ID prior to voting, and also provides space for a notation by the inspectors that the ID requirement has been met. Voters who were 'flagged' as having to provide such ID on election day, but did not do so, may cast an affidavit ballot. Inspectors are provided with a list of acceptable forms of identification, and a Voter's Bill of Rights, to assist them in serving these voters.

New York State is required to prepare a statewide election inspector training curriculum and training materials. The on-line training, materials, handbooks, and companion interactive training components of New York's training initiatives have all been updated with information relative to election day ID issues and possible solutions.

- **Voting Equipment Accessibility**

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Improving voting equipment accessibility, as required by HAVA, includes accessibility for individuals with disabilities and alternative language accessibility as determined in HAVA and the Voting Rights Act of 1965. The measure of success for both elements is the successful acquisition and deployment of accessible voting machines following their certification.

The State Board will encourage private-public partnerships to enhance the voting participation of all voters with disabilities in coordination with the Help America Vote Foundation established by HAVA. While beyond the scope of this state plan, activities of such groups may be incorporated into performance reporting to complement physical accessibility goals.

County reports on poll site accessibility include data from on-site inspections of polling places, the number of polling places that are accessible, and continue to include data on measures which may be taken to bring inaccessible polling places into compliance. Beginning in 2005, the responsibility to designate and inspect poll sites for accessibility was transferred from cities and towns, to county boards of elections. This transition will help ensure monitoring and more uniform methods of addressing physical accessibility in the polling place. Success will be measured by compliance with the federal and state ~~and federal~~ laws and regulations on physical accessibility.

~~Process used to develop the criteria~~	~~Establish number of counties using accessible devices in the 2000 Federal election.~~
~~Description of the criteria used to measure performance~~	~~All 62 New York counties will require alternative voting accessibility devices in the 2006 Federal election.~~
~~Performance measure~~	~~Number of counties using voting accessible compliant devices in the 2006 Federal election~~
~~Timetable~~	~~January 1, 2003 to Federal election 2006~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~The State Board is responsible for the certification of HAVA compliant voting equipment in the state.~~

- **Alternative Language Accessibility**

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The State's goal of providing useful and ample language accessibility has always been and continues to be, compliance with the Voting Rights Act of 1965. Counties designated by the Department of Justice as 'covered' counties, continue to comply with the requirements of the

Act. ~~The State~~The State Board, and respective counties~~,~~ provide, throughout the entire election process, from voter registration to casting the ballot, products and/or services which assist and enfranchise alternative language accessibility.

~~Process used to develop the criteria~~	~~The state and counties already provide language accessibility as required by the Voting Rights Act of 1965. In 2006, the State Board created general and specific guidelines for use by county boards of elections to access a portion of the requirements payments to develop, publish and distribute alternative language instruction materials..~~
~~Description of the criteria used to measure performance~~	~~Counties will provide the State Board with quarterly reports of alternative language capabilities with reference to ballots, publicity pamphlets, voter registration forms and voter education materials, until such time as the existing grant program is completed.~~
~~Performance measure~~	~~With respect to each county, information will be collected to measure the steps taken to meet alternative language accessibility via inter alia, publicity pamphlets, ballots, voter registration forms and voter education materials.~~
~~Timetable~~	~~Federal election 2007 and annually thereafter.~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~The county boards are responsible for ensuring each performance goal is met, with the assistance and cooperation of the State Board.~~

~~• Provisional Ballots~~

~~Provisional ballots, called affidavit ballots in New York, were already provided for in state statute, long before the passage of HAVA. These ballots are a fail-safe option for voters whose names do not appear in a poll book, for those voters who were required to provide ID on election day, but did not do so, for those who have moved but not yet notified their respective board of elections, or in Primary elections for voters for whom their stated enrollment does not match the enrollment specified in a poll book. Affidavit ballots which are researched and determined to be valid by the county Election Commissioners, will be canvassed, and the information provided on the envelope in which the voted affidavit ballot was placed, will be used to update respective voter records. The current statute requires that county boards of elections send a notice, with a registration form, to each person who casts an affidavit ballot which was deemed invalid and was thus, not canvassed.~~

~~New York's affidavit ballot envelope has been amended, to allow a voter to reflect the~~

~~additional, ID-related reason for casting an affidavit ballot. New York's NOTICE TO VOTERS has also been amended, to reflect the availability of an affidavit ballot for resolution of an ID-related scenario.~~

• Centralized Statewide Voter Registration List

The State Board has implemented a statewide voter registration list. The State Board's goal has been to meet the requirements of HAVA while maintaining the current level of election services at the local level, and at the same time enhancing the administration of voter registration and the election process for the citizens of New York. Working with the county boards of election, the State Board has defined functional requirements, and the roles and responsibilities of carrying out the functions of voter registration to enhance the operations of these offices. In order to comply with the requirements of Title III of HAVA, the State Board implemented, in a uniform and non-discriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list.

Process used to develop the criteria	Evaluation of the legislation, Task Force sessions, in-house work sessions with appropriate staff, consultation with other state agencies having related expertise, and on-site visits to other states and county boards to review voter registration systems.
Description of the criteria used to measure performance	Implementation of a single, uniform, statewide voter registration list accessible to all counties and having appropriate verification capabilities.
Performance measure	The State Board has identified three stages for the creation of the statewide list. Stage 1: Planning: - Completion of business analysis. - Establishment of database architecture. Stage 2: Development: - Development of the database model. - Determination of hardware and software components of the database architecture. - Acquisition of the requisite hardware and software components of the database. - Development of a single statewide uniform user interface. - Development of the necessary computer network with local boards of elections. - Testing with regards to all of the above. Stage 3: Implementation: - Migration of local voter registration data into statewide list. - Training of appropriate personnel. - Rollout of the system to local boards of elections. - Troubleshooting with regards to items outlined in Stage 2. - Establishment of fully operational system. - Testing with regard to all of the above.
Timetable	January 1, 2003 to the 2007 Primary election

~~Description of official to be held responsible for ensuring each performance goal is met~~	~~The State Board is responsible for implementing and operating the statewide voter registration list.~~

- **State Board Administrative Complaint Procedure**

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The State Board has ~~implemented~~ established and is maintaining a statewide HAVA Administration complaint procedure, addressing all areas from initial inquiry relative to a complaint through potential Alternative Dispute Resolution. The Board is working with an Alternative Dispute Resolution Agency (ADRA) relative to the HAVA complaint procedures at the Board, and the requirements that apply to the ADRA function. The Board has educated county election boards by way of providing written procedures and in person discussion of procedures for those boards to follow in addressing a HAVA complaint. . Measurement of the success of the statewide procedure will be based on the experience of the voter as well as a number of points of information: total number of complaints received, the number of complaints resolved, the number of complaints resolved within the mandated time frame, and the reason the complaint is not resolved within the mandated time frame.~~the availability and performance of the system, as well as the experience for the voter~~.

~~Process used to develop the criteria~~	~~Evaluation of the legislation, Task Force sessions, in-house work sessions, with appropriate staff.~~
~~Description of the criteria used to measure performance~~	~~Measurement of successes of the statewide complaint system will be the availability and performance of the system, as well as the experience for the voter.~~
~~Performance measure~~	~~The State Board will review the total number of complaints received and resolved. The following information will be collected to objectively measure performance:~~ ~~• Number of complaints received~~ ~~• Number of complaints resolved~~ ~~• Number complaints resolved in 60 days~~ ~~• Number of complaints resolved in 90 days~~ ~~• Number of complaints unresolved~~ ~~• Description of reason complaint is left unresolved~~
~~Timetable~~	~~January 1, 2004.~~
~~Description of official to be held responsible for ensuring each~~	~~State Board of Elections.~~

~~performance goal is met~~

- ~~**Administrative Complaint Procedure**~~

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~~OBJECTIVE:~~
~~Provide a description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under Title IV.~~

~~GOAL:~~

~~New York has developed a procedure for the processing of any complaints for alleged violations of Title III of HAVA.~~

~~PRESENT STATUS:~~

~~The State Board currently provides the opportunity for any person to file a complaint about provisions of the Election Law, election day procedures, election administration and voter registration. This includes complaints relating to the National Voter Registration Act. In addition, complaints may be also made to any county board of elections.~~

~~PROPOSED PLAN:~~

~~Initially, any complaints made at the local level may be resolved there in an informal manner. Thus, the officials closest to the problem may correct it in the most efficient and timely way possible.~~

~~The State Board will expand its existing 1 – 800 voter information hotline to include opportunities for voters to make an initial HAVA complaint. This statewide procedure will allow for the comprehensive coordination of response by the State Board and county election officials with the initial complaint handled in person or by phone call, and progressing to a written process when needed.~~

~~The State Board has set up a method for processing written complaints received in compliance with HAVA requirements. The State Board and County Boards will assist any person with disabilities in making a complaint.~~

~~As required by HAVA, the process provides for an opportunity for any complainant to request a hearing on the record. The procedure also provides that the State Board will make a final determination of a complaint within the mandated timeframe, unless the time limit is waived by the complainant. If the State Board fails to meet this deadline, an alternative dispute resolution procedure will be used to resolve the complaint within 60 additional days, unless the time limit is waived by the complainant.~~

Section 2: How the State will Distribute and Monitor Requirements Payments

OBJECTIVE:

Describe how the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in Section (1), including a description of:

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to which the payment is distributed, consistent with the performance goals and measures adopted under Section (8).

GOAL:

To have the State Board centrally manage initiatives funded by requirements payments for the purpose of maintaining uniformity of voting equipment purchases and other expenditures.

PRESENT STATUS:

Prior to HAVA, the State of New York ~~does~~id not provide any funding to county boards of elections. Currently, NYSBOE administers several grant programs to the county boards of elections. These programs reimburse the county boards of elections for actual approved expenses for voter education and poll worker training services based on an allocation formula set by the State Legislature. New York successfully established a procurement effort which provided for the purchase by county boards of HAVA compliant voting systems.

PROPOSED PLAN:

The State Board administers the resulting contracts and disbursements consistent with state budget plan described in Section 6 of this plan. The commitments under Title III will be based on federal and state funds deposited in the state election fund.

Funds ~~are~~ were allocated by the State Legislature ~~distributed~~ based on availability and the priorities established in this state plan, ~~proportional to c~~County voter registration statistics as of December 31, 2004 ~~may be taken into consideration for any proportionate distribution of funds to counties for which they qualify under the various elements of distribution~~. County boards of elections submitted their county budgets that contain the 2000 election cycle maintenance of effort, to establish baseline amounts for efforts already in practice. Allowable expenditures beyond the maintenance of effort will be coordinated with statewide efforts, ~~to be eligible for reimbursement of such efforts.~~

For purchases made pursuant to the statewide procurement explained elsewhere in this report, counties access their apportioned HAVA funds for this purpose by submitting requisitions to New York State's Office of General Services (OGS), which manages the State's voting system contracts. Counties may purchase voting systems, election management systems, system peripherals, disability access devices and accessories, and other items such as support services, training, and privacy booths.

Purchase orders are subsequently processed and vendors are paid directly by OGS on each county's behalf. The State Board of Elections will develop a program to reimburse counties for allowable expenses incurred in the furtherance of federal elections, using any remaining HAVA funds after certification is provided which attests to the State's compliance with Title III of HAVA.

The performance measures detailed in Section 8 of this state plan will be used to evaluate participation and effectiveness of disbursements. Monitoring performance measures will be completed ~~quarterly~~ during the filing of detailed reports required by the State Board. The reports will include specific data to disclose each county's performance as it relates to the implementation of HAVA.

Section 3: Voter Education, Election Official and Poll Worker Training

OBJECTIVE:

Describe how the State will provide programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of Title III.

GOAL:

The goal of providing voter education has always been foremost with the State Board, as well as with county boards of elections. The State Board views education of the voter as a key component in the entire election process. Voter education is particularly important in the implementation of HAVA which includes the introduction of new voting systems. The State anticipates devoting significant resources available under HAVA to voter education efforts. The proposed plan delineated below provides initial components of a voter education program necessary to successfully implement HAVA in New York. Additionally, New York recognizes the value of and intends to develop a uniform, statewide comprehensive training program for poll workers and election officials.

PRESENT STATUS:

The county boards of elections administer local, county, state and federal elections. They recruit, hire and train election inspectors and voting machine custodians. Local election officials administer their own training for staff and poll workers. The State Board provides each county with a "Guide to Operating a Board of Elections" for training of board staff. The State Board supplies county boards with Election Inspector Handbooks for use in their training and on Election Day. The State Board supplies local boards of elections with educational brochures for the public on various aspects of the voting process. Voting system vendors are required to provide training for election officials, voting machine custodians and election day workers, as part of their contractual obligations.

The State Board takes pride in the working relationship it has with the county boards of elections. The Board has been successful in launching new forms and procedures, due to its policy of ~~empaneling~~empanelling focus groups of election commissioners, who assist in evaluating all aspects of the concept or form being discussed. Additionally, the State Board includes other experts, such as postal officials, literacy and forms experts, and others who lend their skills and talents to the discussion and production phases of these efforts. The State Board intends to continue to utilize all the expertise available to it, to ensure a full analysis of any initiative and/or any forms which are a result of that initiative.

The State Board is committed to effective election official and poll worker training which will result in positive voter experiences and fair and orderly elections. Poll workers will be trained in new procedures and the operation of new voting equipment. Significant HAVA resources will be devoted to the training of poll workers and election officials to ensure the

successful introduction of new voting systems and procedures in New York. Poll worker training is essential to the successful implementation of HAVA in New York State. Each person should be provided with sufficient knowledge and information to intelligently perform their role in the process whether as a voter or election worker.

PROPOSED PLAN:

• State-level Voter Education and Poll Worker Training:

In 2007, the State Board selected a company to design and implement a web-based, accessible and interactive Voter Education program as well as a Poll Worker Training program that may be utilized in all counties. This program is provided at no additional expense to the counties. Our selected solution provider, SOE Software (SOE), has completed the development of each program~~ortal~~.

The instructional material included in the training and education programs~~portals~~ provide for a uniform and~~n~~ nondiscriminatory treatment of voters in determining: a) who is offered a provisional ballot, b) whose provisional ballots are counted, c) who may provide assistance to voters in the polling booth, d) who is asked for identification at the polls, e) what forms of identification are accepted upon registration, f) how registration applications are processed and approved, g) how voters' names are removed from the list because of ineligibility or duplication, and h) how voter education requirements are carried out. Further, the instruction materials address the use of the new voting machines, sensitivity in dealing with voters with disabilities, the elderly, and those voters with accessibility issues.

The voter education program~~portal~~ was completed in August 2008 and can be accessed at www.VOTE-NY.com. Information is available to the public on the use of voting systems available in their community as well as information on how to use such equipment in an election. All material and content is provided in written format that is able to be recognized by screen readers and the font size adjusted by the viewer. Audio instruction is also provided with closed captioning information.

The poll worker training ~~portal~~program was completed in September 2008 and it provides a uniform statewide curriculum for use by county boards of elections to train poll workers in the use of the voting systems, and other election day requirements, as well as instruction on meeting voter access needs. A county-level poll worker training manual was developed in both a student's edition as well as an instructor's edition. Also a county-level administrator manual was developed and county board of elections designated staff members were trained through a series of regional training sessions conducted in 2008.

In addition to the online voter education program~~portal~~ and the poll worker training program~~ortal~~, the State Board provided CD copies of the education and training material for use by county boards of elections in providing education and instruction programs when internet access is not available.

The State Board provides through this statewide training process that the same procedures are used in all polling places.

The State Board is ~~will~~ working with voting system vendors to enhance and deliver required training programs on the web and with companion training manuals to election officials, voting machine custodians, election day workers and voters.

The State Board has ~~develop~~developed and begun to deliver a voter outreach/education campaign, via media to every registered voter, with information on the use of new voting machines and election day processes. Information material is provided in written and audio formats in all of the required languages and the font sizes may be adjusted. Further, online content may be translated to audio by use of ~~an interval's~~ screen reader. Outreach efforts shall include ample opportunities for voters to become familiar with new voting machines. The provision of the education outreach material via the web facilitates access by a wide range of individuals and organizations such as schools, community groups, libraries, government agencies, television, radio, and links with other websites.

The State Board continues exploring new and innovative poll worker recruitment programs, including the utilization ~~of the~~of the "Help America Vote College Program."

Each county board of elections is urged to have a website that provides information and which links voters to comprehensive, useful and downloadable election information and forms. The State Board will develop a model website which would be available for utilization by county boards of elections.

• County-level Voter Education and Poll Worker Training:

In 2006, the State Board developed general and specific guidelines for use by county boards of elections to access a portion of the requirements money to develop and implement county-based voter education and poll worker training programs. Each county board of elections, and in the City of New York, the Board of Elections in the City of New York, may be reimbursed for actual expenses made based on approved vouchers for education and training services completed in accordance with a written plan.

Section 4: Voting System Guidelines and Processes

OBJECTIVE:

Describe how the State will adopt voting system guidelines and processes which are consistent with the requirements of Section 301.

GOAL:

New York intends to replace all lever voting machines used in the state, which numbered 19,843 at the 2000 Presidential Election, with voting systems which are HAVA-compliant.,

New York is currently under a federal court order, which has two main focus points. In 2008, New York ~~must~~ provided voters with disabilities the opportunity to vote and verify their ballot selections independently and privately. This wa~~is~~ being accomplished via the certification, delivery and use of one ballot marking device in each polling place in the State of New York. The second focus of the order is to provide for complete lever replacements throughout the state, no later than the 2009 Primary election. Details of the order of the court are found elsewhere in this document, and a copy of the order itself can be found in the Appendix.

New York has replaced its two remaining county-based punch-card, absentee voting systems.

PRESENT STATUS:

- The State Board worked with and through the State's Office of General Services, and with its consultant, New York State Technology Enterprises Corporation ,(NYSTEC)-to develop procurement documents, review proposals and select an independent testing facility to conduct certification testing.

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- The State Board, as directed in statute, worked with and through the State~~'s~~ Office of General Services~~,~~ to develop procurement documents, develop a corresponding contract, and participated in negotiation sessions which brought voting system vendors into the certification process.

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- The State Board of Elections has incorporated the 2005 Voluntary Voting System Guidelines into its own voting system requirements, as P~~p~~art 6209 of NYCRR. These regulations and ~~and~~ its companion sections of Election Law, address issues of accessibility, secrecy, prevention of over votes, notification of under votes, review of one's ballot prior to casting, and the accurate counting of every vote cast.

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- New York's voting system certification program is accomplished within the State Board's Election Operations Unit, in consultation with its~~an~~ independent testing consultant, NYSTEC.

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- New York's ~~s current~~ statute defines what constitutes a vote. The statute now has companion regulations, known as NYCRR Part 6210, which further define what constitutes a vote.

- The State Board has developed in regulation, Part 6209, a method to review and decertify voting systems that no longer meet the requirements of New York's statute and regulations.

- The performance of logic and accuracy tests is required before each election, and is conducted at the county level, pursuant to formulas and procedures developed and distributed by the State Board, thus ensuring accurate ballot configuration and consistent correct vote counts for all offices, and uniformity throughout the state. Draft procedures have been developed to ensure tasks match the new voting technologies to be used in New York.

- Current statute and regulations require the conduct of an acceptance ~~testing~~test on ~~of~~ each piece of voting equipment purchased in the State, prior to its~~their~~ use. For the ballot marking devices required for compliance with the ~~New York's~~ federal court order, acceptance testing was~~is~~ being conducted centrally, in Albany, New York~~.~~. County Board personnel have been present at testing, when counties so choose to participate. At the conclusion of successful acceptance testing, voting systems were~~are~~ re-packed by vendor representatives and shipped to respective county boards of elections.~~,~~ H~~h~~owever, counties may opt to pick-up their own ballot marking devices.

PROPOSED PLAN:

- The State Board will continue to work with county election officials~~,~~ to ensure that ballot marking devices and all companion peripherals are purchased, acceptance tested and deployed.
- The State Board will continue to work with county election officials, to ensure that fully-compliant lever replacement voting systems are purchased, acceptance tested and deployed throughout the State, once such replacement voting systems have been certified.
- The State Board will develop procedures to facilitate the review and decertification of systems that no longer meet adopted Voting System Standards, as provided for in regulation.

PERFORMANCE GOALS AND MEASURES: (also repeated in Section 8)

- Replacement of lever voting machines and punch card voting devices.

New York has undertaken a statewide effort to facilitate replacement of voting systems in counties where lever machines are used. The procurement effort will also ensure that voting accessibility standards for persons with disabilities are met. This effort will comply with all state

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procurement rules and laws. The measure of success is the replacement of all lever machines and punch card voting devices.

~~Process used to develop the criteria~~	~~Establish the number of counties using lever voting machines and punch card voting devices in the 2000 Federal election.~~
~~Description of the criteria used to measure performance~~	~~62 New York counties had qualifying precincts in the 2000 Federal election according to HAVA descriptions for replacing voting systems.~~
~~Performance measure~~	~~Number of counties using lever machines and punch card voting devices in the 2006 Federal election.~~
~~Timetable~~	~~January 1, 2003 to January 1, 2006.~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~Each county board of elections is responsible for implementing the replacement voting system in their county, however, the State Board is leading the statewide effort for replacement and is therefore ultimately responsible for meeting this performance measure. The State Board is responsible for the certification of all new voting equipment.~~

Section 5: How the Election Fund will be Established and Managed

OBJECTIVE:

Describe how the State will establish an Election Fund for purposes of administering the State's activities under this part, including information on fund management.

GOAL:

To establish a state fund for the purposes of administering the receipt and distribution of funds under HAVA.

PRESENT STATUS:

The Legislature established a separate appropriation, which is the basis for our certification under Section 253(b) of HAVA, with regards to the five (5) percent matching funds. ~~Section 253(b)(5) requires that:~~

~~"The State has appropriated funds for carrying out the activities for which the requirements payment is made in an amount equal to five (5) percent of the total amount to be spent for such activities (taking into account the requirements payment and the amount spent by the State) and, in the case of a State that uses a requirement payment as a reimbursement under Section 251(c)(2), an additional amount equal to the amount of such reimbursement."~~

An ~~The~~ appropriation ~~s~~ was ~~ere~~ included ~~made~~ in the Fiscal Year 2005-2006 Executive Budget, ~~as well as~~ and it was ~~the~~ reauthorized ~~ation~~ in each consecutive Fiscal Year since then, ensuring that the appropriation continueds to be available.

~~Five (5) Percent Matching by Counties in New York State:~~

~~The New York State Office of General Services (OGS) has established purchase contracts with the voting system manufacturers.~~

PROPOSED PLAN:

There were no funds appropriated in 2003/04. In **2005,** the Legislature appropriated the following funds:

$190,000,000 in Aid to Localities for services and expenses related to the purchase of new voting machines and voting systems for use by the local boards of elections.

$10,000,000 in Aid to Localities for Poll Worker Training and Voter Education

$20,000,000 in State Operations for implementation of HAVA throughout New York State.

In **2006,** the Legislature appropriated $12,000,000 in **earned interest** for services and expenses related to the implementation of HAVA, including the purchase of new voting

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machines and disability accessible ballot marking devices for use b the local boards of elections.

In **2007**, the Legislature appropriated $15,000,000 in **earned interest** for services and expenses related to the implementation of HAVA, including the purchase of new voting machines and disability accessible ballot marking devices for use by the local boards of elections. The Legislature also appropriated $5,000,000 in **earned interest** for services and expenses related to testing and certification contracts for voting machines.

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In **2008**, the Legislature appropriated $10,000,000 in **earned interest** for services and expenses related to the implementation of HAVA including the purchase of new voting machines and disability accessible ballot marking devices for use by the local boards of elections. Of that, $700,000 may be transferred by the state operations account for the State Board of Elections for the development of curriculum for use by local boards of elections for poll worker training and voter education with respect to using each approved voting machine and voting system.

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~~As part of the Governor's 2003-2004 proposed budget, over $70 million was earmarked for the State Board. Of that money, $3 million was targeted for the preliminary development of a statewide voter registration list, and $65 million was to be placed in a separate fund in anticipation of federal monies for HAVA-related implementation of new voting systems and related administrative initiatives. The State will establish the mechanism to distribute the money as outlined in Section 2 of this plan.~~

Section 6: Budget for Title III Requirements

OBJECTIVE:

Describe the State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on -

(A) the costs of the activities required to be carried out to meet the requirements of Title III;
(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and
(C) the portion of the requirements payment which will be used to carry out other activities.

GOAL:

Provide for effective and efficient use of available federal funds, to implement election reforms required by HAVA.

PRESENT STATUS:

Separate funds are established in New York by legislation which allows state agencies overseeing the program to establish guidelines for access to such funds by ~~distribution of monies to~~ local governments. Since neither the State nor the Federal government has previously ~~ever~~ distributed funds to localities for election purposes, no such program ~~currently~~ had existed~~s~~. The State Board established a statewide procurement effort for use by county boards of elections to purchase new voting systems and accessible ballot marking devices; and created programs to improve poll site accessibility, and to develop and implement voter education and poll worker training services. ~~A process is underway to replace lever voting machines with HAVA-complaint voting machines.~~

PROPOSED PLAN:

New York's proposed budget outlined below, subject to federal funding of HAVA, includes funding for programs to conform the State to the requirements of Title III. In order to qualify for funding, the State must: meet the requirements of Title III; provide the same maintenance of effort for election operations as in the budget year prior to the 2000 general election; and provide matching funds of five percent of the federal dollars. Funding under HAVA also provides funding under Section 101 for the Administration of Elections and under Section 102 for Lever Machine and Punch Card Replacement. All of the funds provided under HAVA are "no year" money, meaning that they are not required to be expended by the close of the specific federal fiscal year.

Proposed Budget for State Plan for Fiscal Years 2003-2009

A total of $63 million from Title I and $160.7 million from Title II is Projected.						
Program Area	**Total Proposed Budget**	**Title I Section 101**	**Title I Section 102**	**Title II Section 251**	**Title II Section 261**	**NY State Funds**
Voting Accessibility - Lever Machine Replacement Program	198,000,000	-	50,000,000	140,000,000	-	8,000,000
New York State Voter Registration List	13,705,000	7,000,000	-	6,705,000	-	-
Physical Accessibility	8,410,000	-	-	-	3,700,000	4,710,000
Provisional Balloting	0	-	-	-	-	-
Poll Worker Training and Voter Education	10,500,000	-	-	10,000,000	-	500,000
Complaint Dispute Resolution	25,000	25,000	-	-	-	-
Election Administration Grant Program	0	-	-	-	-	-
HAVA Administration	8,975,000	8,975,000	-	-	-	-
Totals	239,615,000	16,000,000	50,000,000	156,705,000	3,700,000	13,210,000

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Proposed Budget for State Plan for Fiscal years 2003-2009(dollars in millions)						
A total of $55 million (Sections 252 and 257 for fiscal year 2003 only) and $67 million as early monies (Sections 101 and 102) is projected.						
Program Area	Total Proposed Budget	From Section 101	From Section 102	From Sections 252 & 257*	% of Title I money ($101, 102)	% of Title II money ($252, 257)
Voting Accessibility - Lever Voting Machine Replacement program	140		50	90	75.8	53
New York State Voter Registration List	20	3		17	4.5	10
Physical Accessibility	10			10		6
Provisional Balloting	0					
Voter Education	20	9		11	14	6
Poll Worker and Election Official Training	2.5	0.9		1.6	1	1
Statewide Complaint System	0.1	0.1			0.2	
Election Administration Grant Program	40			40		24
Administration costs	3	3			4.5	
TOTALS	235.6	16	50	169.6	100**	100**

* subject to 5% matching funds
** some rounding is necessary to equal 100%

Voting Accessibility

New York is facilitating a procurement program, to enable the replacement of lever voting machines. The State Board will work with county election officials to ensure that all needs are met, including but not limited to: device acquisition; device tracking for chain of custody and audit purposes, system maintenance; election preparation services; and election tabulation services.

The plan proposes, and statute now requires that ~~that~~ counties own and operate these new systems. The State will work with county boards of elections and vendors to develop procedures for the conduct of and methods to monitor required maintenance tasks and the various other aspects associated with the new voting systems and the consolidation of the control of all

election services at the county level.

New York State Voter Registration List

The State Board has implemented a statewide voter registration list that complies with HAVA Title III. The State Board has established rules and regulations which define procedures and roles and responsibilities for enabling county boards to uniformly carry out the functions of voter registration.

The State Board developed, and implemented a "bottom-up" system which communicates with local voter registration systems in near real time. County Boards are responsible for the local hardware,~~,~~ software and communications infrastructures necessary for synchronizing the statewide list.

The State Board maintains and supports the statewide list as the official voter registration list. County boards remain responsible for all aspects of election administration, including but not limited to: a) voter registration, b) poll site management, c) registration list information, d) provisional balloting, e) voter education and training, f) ballot access filings, and g) improved access to the voting process.

Physical Accessibility

In June 2006, the State Board created a grant program to administer $5 million in state funds, to be used by localities to improve the physical accessibility of polling places. Also, federal grant awards provide an additional $3~~.7~~7 million from Health and Human Services (HHS) to improve accessibility of poll sites, to train poll workers to meet voter access needs and to train voters in the use of new voting equipment to ensure that every voter that wants to vote can vote and that their vote is counted. In order to access these funds, counties are required to survey all poll sites and prepare a written plan to provide temporary or permanent improvements, if necessary.

Provisional Balloting

Provisional balloting is already a county board responsibility, and is included in the maintenance of effort of the county election officials as prescribed in law.

Voter Education, Poll Worker and Election Official Training

Voter education is already a county board responsibility, and included in the maintenance of effort of county election officials. Because all jurisdictions will be changing voting technology, there will be costs associated with voter education above the current maintenance of effort. The State Legislature has appropriated $10 million from the HAVA election fund for use by county boards of elections to develop and implement education and training programs to train voters, poll workers and election officials in the use of new voting systems. The State Board established and administers a grant program whereby county boards of elections may access their portion of

the grant fund, subject to a local five (5) percent match. County boards are reimbursed for actual expenses ~~made~~ based upon approved vouchers for education and training services completed in accordance with a written plan. Quarterly status reports are required during the duration of the grant program to monitor compliance with the grant fund goals.

Poll worker training is already a county board responsibility, and included in the maintenance of effort of county election officials. Because all jurisdictions will be changing voting technology and election day procedures, there will be costs associated with poll worker training above the current maintenance of effort.

Election official training is already a State Board responsibility, and included in the maintenance of effort of the State Board. Due to changes in voting technology and election day procedures, there will be costs associated with election official training above the current maintenance of effort.

Statewide Complaint System

The State Board has ~~will~~ implemented a statewide complaint system to comply with HAVA Title IV, in order to qualify for Title III funding. Working with the county election officials, the State Board has~~will~~ defined functional requirements, roles and responsibilities of complaint procedures as defined in Section 9 of the State Plan.

Subject to federal funding of HAVA, the complaint procedure will be funded for development and additional efforts for maintaining the system.

Election Administration Grant Program

The State Legislature has determined how HAVA funds distributed to New York~~,~~ should be appropriated at both the State and County Board levels. The State Legislature has appropriated funds in ~~the following manner:~~

~~I~~in order to facilitate the mandate of the Legislature in this ~~regard, the~~regard. The Election Administration Grant Program which was described in our initial Implementation Plan, has been abandoned

Administration Costs

To fulfill the requirements of Title III, the State Board provides for the coordination, planning, operation and reporting on these programs. Subject to federal funding of HAVA, the State Board will use funds to administer the implementation of HAVA above the Fiscal Year 2000 maintenance effort.

Section 7: Maintenance of Effort

OBJECTIVE:

Describe how the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

GOAL:

Meet statutory mandate for maintenance of effort.

PRESENT STATUS:

Prior to the implementation of HAVA, the State Board did not provide funds for any activities identified in Title III. Costs for voting systems, provisional balloting, voting information requirements, voter registration lists, and registration by mail were and still are borne by county boards of election.

PROPOSED PLAN:

County boards shall continue to provide maintenance of effort in providing election and voter education as required in HAVA.

Section 8: Performance Goals and Measures

This section represents a consolidation of performance goals and measures found in other parts of this plan.

OBJECTIVE:

Describe how the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in carrying out the plan. This plan includes timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

GOAL:

The Help America Vote Act of 2002 (HAVA), public law 107-252, establishes minimum election administration standards for states. It specifically requires the State of New York to:

- Replace all lever machines and punch card voting devices used by counties for elections;
- Certify new and existing voting systems according to national standards;
- Improve voting equipment accessibility, to include physical and language accessibility;
- Enhance existing provisional voting system requirements;
- Establish a statewide complaint system;
- Provide training for election officials and poll workers;
- Increase voter education for new voting systems; and,
- Create a new uniform statewide voter registration list.

~~GOAL:~~

~~HAVA establishes minimum election administration standards for states. It specifically requires New York to:~~

- ~~Replace all lever machines and punch card voting devices used by counties for elections;~~
- ~~Certify new and existing voting systems according to national standards;~~
- ~~Improve voting equipment accessibility, to include physical and language accessibility;~~
- ~~Enhance existing provisional voting system requirements;~~
- ~~Establish a statewide complaint system;~~
- ~~Provide training for election officials and poll workers;~~
- ~~Increase voter education for new voting systems; and,~~
- ~~Create a new uniform statewide voter registration list.~~

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~~PROPOSED PLAN:~~

~~The State~~ Board ~~is ultimately responsible for ensuring the success in meeting each~~

~~performance goal. Each county election office also has a substantial responsibility in meeting performance goals in that the counties will monitor performance measures and will report to the state annually.~~

~~The State Board and the counties will enhance current reporting requirements to include specific data to disclose the successes and failures of their jurisdiction as it relates to the implementation of HAVA. The State Board will compile the data in the reports, and create and distribute a statewide report on the programs on an annual basis.~~

- ~~Replacement of lever voting machines and punch card voting devices.~~**Voting Systems Standards (§301)**

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Process used to develop the criteria	Establish the number of counties using lever voting machines and punch card voting devices in the 2000 Federal election.
Description of the criteria used to measure performance	62 New York counties had qualifying precincts in the 2000 Federal election according to HAVA descriptions for replacing voting systems.
Performance measure	Number of counties using lever machines and punch card voting devices in the 2006 Federal election.
Timetable	January 1, 2003 to January 1, 2006.
Description of official to be held responsible for ensuring each performance goal is met	Each county board of elections is responsible for implementing the replacement voting system in their county, however, the State Board is leading the statewide effort for replacement and is therefore ultimately responsible for meeting this performance measure. The State Board is responsible for the certification of all new voting equipment.

~~New York will undertake a statewide effort to facilitate replacement of voting systems in counties where lever machines are used. The effort will also ensure that voting accessibility standards for persons with disabilities are met. This procurement effort will comply with all state procurement rules and laws. The measure of success is the replacement of all lever machines and punch card voting devices.~~

~~Process used to develop the criteria~~	~~Establish the number of counties using lever voting machines and punch card voting devices in the 2000 Federal election.~~
~~Description of the criteria used to measure performance~~	~~62 New York counties had qualifying precincts in the 2000 Federal election according to HAVA descriptions of replacement voting systems.~~
~~Performance measure~~	~~Number of counties using lever machines and punch card voting devices in the 2004 Federal election.~~
~~Timetable~~	~~January 1, 2003 to January 1, 2006.~~

~~Description of official to be held responsible for ensuring each performance goal is met~~	~~Each county board of elections is responsible for implementing the replacement voting system in their county, however, the State Board is leading the statewide effort for replacement and is therefore ultimately responsible for meeting this performance measure. The State Board is responsible for the certification of all new voting equipment.~~

- **Provisional Voting and Information Requirements (§302)**

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Process used to develop the criteria	The State Board will review the current statutes and county board procedures and make any changes needed for provisional (affidavit) balloting.
Description of the criteria used to measure performance	Modify the current notice to voters to: add an explanation of instances where failure to present ID can be overcome by the casting of an affidavit ballot; add the phone number of county board of elections to ensure toll-free access for voters to follow-up on their ballots; and create a voter's bill of rights for distribution and posting in all poll sites.
Performance measure	Each county board will report the following information: • The distribution of revised notices in election day supplies. • The addition of revised procedures to any state or local inspector and voter education initiatives. • A review of amended processes added to inspector training curriculum.
Timetable	Notices to be modified and documents to be distributed by May 2004, to inaugurate the process and to ensure full implementation by the 2004 Federal election.
Description of official to be held responsible for ensuring each performance goal is met	County election officials are responsible for provisional ballot distribution verification and compliance with procedures established by the State Board. The State Board is responsible for reviewing compliance reports submitted by counties.

- **Computerized Statewide List, Voters who Register by Mail and Voter Identification (§303)**

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Process used to develop the criteria	Evaluation of the legislation, Task Force sessions, in-house work sessions with appropriate staff, consultation with other state agencies having related expertise, and on-site visits to other states

	and county boards to review voter registration systems.
Description of the criteria used to measure performance	Implementation of a single, uniform, statewide voter registration list accessible to all counties and having appropriate verification capabilities.
Performance measure	The State Board has identified three stages for the creation of the statewide list. Stage 1: Planning: - Completion of business analysis. - Establishment of database architecture. Stage 2: Development: - Development of the database model. - Determination of hardware and software components of the database architecture. - Acquisition of the requisite hardware and software components of the database. - Development of a single statewide uniform user interface. - Development of the necessary computer network with local boards of elections. - Testing with regards to all of the above. Stage 3: Implementation: - Migration of local voter registration data into statewide list. - Training of appropriate personnel. — Rollout of the system to local boards of elections. — Troubleshooting with regards to items outlined in Stage 2. — Establishment of fully operational system. - Testing with regard to all of the above.
Timetable	January 1, 2003 to the 2007 Primary election
Description of official to be held responsible for ensuring each performance goal is met	The State Board is responsible for implementing and operating the statewide voter registration list.

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- **Voting Equipment Accessibility**

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~~Improving voting equipment accessibility, as required by HAVA, shall include accessibility for individuals with disabilities and alternative language accessibility as determined in HAVA and the Voting Rights Act of 1965. The measure of success for both elements is the successful acquisition and deployment of accessible voting machines by the 2004 Federal election.~~

~~The State Board will encourage private-public partnerships to enhance the voting participation of all voters with disabilities in coordination with the Help America Vote Foundation established by HAVA. While beyond the scope of this state plan, activities of such groups may be incorporated into performance reporting to complement physical accessibility goals.~~

~~Cities and towns currently designate and inspect all polling places for physical accessibility. Beginning with the 2004 Federal election, and with an eye toward monitoring and uniformly addressing physical accessibility in the polling place, the inspection results will be added to a report that counties already file with the State Board. Success will be measured by compliance with the state and federal laws and regulations on physical accessibility. County reports on accessibility will include data from on-site inspections of polling places, the number of polling places that are accessible, and will describe measures taken to bring inaccessible polling places into compliance.~~

Process used to develop the criteria	Establish number of counties using accessible devices in the 2000 Federal election.
Description of the criteria used to measure performance	All 62 New York counties will require alternative voting accessibility devices in the ~~2004~~ 2006 Federal election ~~according to HAVA~~.
Performance measure	Number of counties using voting accessible compliant devices in the ~~2004~~ 2006 Federal election.
Timetable	January 1, 2003 to Federal election ~~2004~~2006.
Description of official to be held responsible for ensuring each performance goal is met	The State Board is responsible for the certification of HAVA compliant voting equipment in the state.

- **Alternative Language Accessibility**

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~~The goal of providing useful and ample language accessibility has always been, and continues to be, compliance with the Voting Rights Act of 1965. Voters requiring alternative languages are represented in percentages based on census figures. The entire election process, from voter registration to casting the ballot, is enhanced with providing alternative language accessibility as required by the Voting Rights Act of 1965. Success will be determined by the~~

~~provision of types and quantities of materials available in required alternative languages.~~

Process used to develop the criteria	The state and counties already provide language accessibility as required by the Voting Rights Act of 1965. In 2006, the State Board created general and specific guidelines for use by county boards of elections to access a portion of the requirements payments to develop, publish and distribute voter education and poll worker training materials in alternative ~~language~~languages, where applicable. ~~instruction materials.~~ ~~The state and counties already provide language accessibility as required by the Voting Rights Act of 1965. By the 2004 Federal election, the State Board will ascertain that jurisdictions identified by U.S. Department of Justice requiring alternative language accessibility are in compliance.~~
Description of the criteria used to measure performance	Counties will provide the state with ~~a~~ quarterly reports of alternative language capabilities with reference to ballots, publicity pamphlets, voter registration forms and voter education materials, until such time as the existing grant program is completed. ~~The data provided will allow the State Board to determine if the uniform procedures for providing alternative language accessibility have been successful.~~
Performance measure	With respect to each county, information will be collected to measure the ~~number of languages~~steps taken to meet alternative language accessibility via inter alia, ~~required and the number of languages provided for alternative language accessibility for~~ publicity pamphlets, ballots, voter registration forms and voter education materials.
Timetable	Federal election ~~2004~~ 2007 until the funds are depleted. ~~and annually thereafter.~~
Description of official to be held responsible for ensuring each performance goal is met	The county boards are responsible for ensuring each performance goal is met, with the assistance and cooperation of the State Board.

~~• Provisional Ballots~~

~~Provisional ballots, called affidavit ballots in New York, are currently provided for in statute. They are a fail-safe option for voters whose name does not appear in a poll book, for those who have moved but not yet notified their respective board of elections, or in Primary elections for~~

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~~voters for whom their stated enrollment does not match the enrollment specified in a poll book. The current statute requires that a notice, with a registration form, be sent to each person who cast an affidavit ballot which was deemed invalid and was thus, not canvassed.~~

~~New York intends to enhance existing statutory requirements for provisional (affidavit) ballot voting, to encompass offering said ballot to those voters for whom identification must be provided at the time one votes, but who fail to present identification. The notification process will be amended to provide for notice of the disposition of each affidavit ballot cast to those respective voters. Additionally, the affidavit ballot envelope will be amended to reflect appropriate selection by the voter as to the reason for the casting of the affidavit ballot.~~

~~Process used to develop the criteria~~	~~The State Board will review the current statutes and county board procedures and make any changes needed for provisional (affidavit) balloting.~~
~~Description of the criteria used to measure performance~~	~~Modify the current notice to voters to: add an explanation of instances where failure to present ID can be overcome by the casting of an affidavit ballot; add the phone number of county board of elections to ensure toll-free access for voter to follow-up on their ballots; and create a voter's bill of rights for distribution and posting in all poll sites.~~
~~Performance measure~~	~~Each county board will report the following information:~~ ~~• The distribution of revised notices in election day supplies.~~ ~~• The addition of revised procedures to any state or local inspector and voter education initiatives.~~ ~~• A review of amended processes added to inspector training curriculum.~~
~~Timetable~~	~~Notices to be modified and documents to be distributed by May 2004, to inaugurate the process and to ensure full implementation by the 2004 Federal election.~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~County election officials are responsible for provisional ballot distribution verification and compliance with procedures established by the State Board. The State Board is responsible for reviewing compliance reports submitted by counties.~~

- **State Board Administrative Complaint Procedure**

Process used to develop the criteria	Evaluation of the legislation, Task Force sessions, in-house work sessions, with appropriate staff.
Description of the	Measurement of successes of the statewide complaint procedure

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criteria used to measure performance	~~system~~ will be the ~~availability and~~ performance of the system, as well as the experience for the voter.
Performance measure	The State Board will review the total number of complaints received, processed ~~and~~ resolved. The following information will be collected to objectively measure performance: • Number of complaints received • Number complaints resolved • Number of complaints resolved within the mandated timeframe • ~~Number complaints resolved in 60 days~~ • Reason complaint is not resolved within the mandated timeframe~~Number of complaints resolved in 90 days~~ • ~~Number of complaints unresolved~~ • ~~Description of reason complaint is left unresolved~~
Timetable	November 1, 2006~~January 1, 2004~~.
Description of official to be held responsible for ensuring each performance goal is met	State Board of Elections.

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~~The State Board will implement a statewide complaint procedure. Measurement of the success of the statewide procedure will be the availability and performance of the system, as well as the experience for the voter.~~

~~Process used to develop the criteria~~	~~Evaluation of the legislation, Task Force sessions, and in-house work sessions with appropriate staff.~~
~~Description of the criteria used to measure performance~~	~~Measurement of success for the statewide complaint procedure will be the availability and performance of the system, as well as the experience for the voter.~~
~~Performance measure~~	~~The State Board will review the total number of complaints received and resolved. The following information will be collected to objectively measure performance:~~ ~~• Number of complaints received~~ ~~• Number of complaints resolved~~ ~~• Number complaints resolved in 60 days~~ ~~• Number of complaints resolved in 90 days~~ ~~• Number of complaints unresolved~~

~~• Description of reason complaint is left unresolved~~

~~Timetable~~	~~January 1, 2004.~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~State Board of Elections.~~

- **Voter Education, Election Official and Poll Worker Training**

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- **Election Official and Poll Worker Training**

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~~The State Board is committed to effective election official and poll worker training which will result in positive voter experiences and fair and orderly elections. Poll workers will be trained in new procedures and the operation of new voting equipment. Significant HAVA resources will be devoted to the training of poll workers and election officials to ensure the successful introduction of new voting systems and procedures in New York. Poll worker training is essential to the successful implementation of HAVA in New York State. Each person should be provided with sufficient knowledge and information to intelligently perform their role in the process whether as a voter or election worker.~~

Process used to develop the criteria	Evaluate existing training programs and corresponding instructional materials~~manuals~~ in conjunction with new HAVA requirements.
Description of the criteria used to measure performance	Analyzing the number of election officials/poll workers trained in each county will allow the State Board and county boards to determine whether the uniform training as implemented, was successful.
Performance measure	With respect to each county, the following information will be collected to measure election official/poll worker training performance: • The number of election officials to be trained in each county. • The total number of poll workers to be trained in each county. • The number of election officials that are trained in each county. • The total number of poll workers that are trained in each county.

Timetable	Spring 20048 training on new election day processes; training on new equipment when acquired by locality.
Description of official to be held responsible for ensuring each performance goal is met	County election officials are responsible for poll worker training and reporting, however, the State Board is responsible for establishing the guidelines, reporting requirements and ultimately the success of this performance measure.

- **Voter Education**
- ~~Voter Education~~

~~The goal of providing useful and ample voter education has always been a priority of the State Board and county election officials. Measuring the success of voter education, however, is complicated and includes variables such as uncontested races, controversial ballot measures, and complicated ballot layouts. The State Board views the entire election process, from voter registration to casting the ballot, as voter education. Therefore, success will be determined by the subjective inspection of many factors revolving around the voter.~~

Process used to develop the criteria	The counties and certain community/political groups already provide voter education opportunities. By the 20064 Federal election, additional steps will be taken to ensure voter knowledge of changes in voting systems and election day procedures required by this Act. The counties will include details of their efforts in the annual reports they file with the State Board.
Description of the criteria used to measure performance	The assimilation by the voter of new election day processes will be determined by the number of problems occurring on election day.

Performance measure	With respect to each county, the following information will be collected to measure performance:
	• Number of public service announcements,
	• Number of locations where voting equipment is on public display,
	• Number of other voter education and voter outreach initiatives, including:
	  • Description
	  • Estimated costs
	  • Participation
	• Number and nature of problems on election day.

Timetable	September 2006 Primary Election ~~January 1, 2004~~ and annually thereafter, until grant funds depleted.

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Description of official to be held responsible for ensuring each performance goal is met	The State Board and the county boards are all responsible for ensuring the success of voter education; however, the State Board is responsible for the success of all statewide coordinated efforts for voter education.

~~• Centralized Statewide Voter Registration List~~

~~The State Board will implement a statewide voter registration list. The State Board's goal is to meet the requirements of HAVA, while maintaining the current level of election services at the local level, and at the same time enhancing the administration of voter registration and the election process for the citizens of New York. Working with the county boards of elections, the State Board will define functional requirements, roles and responsibilities of carrying out the functions of voter registration to enhance the operations of these offices. In order to comply with the requirements of Title III of HAVA, the State Board "shall implement, in a uniform and non-discriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list."~~

~~Process used to develop the criteria~~	~~Evaluation of the legislation, Task Force sessions, in-house work sessions with appropriate staff, consultation with other state agencies having related expertise, and on-site visits to other states and county boards to review voter registration systems.~~
~~Description of the criteria used to measure performance~~	~~Implementation of a single, uniform, statewide voter registration list accessible to all counties and having appropriate verification capabilities.~~
~~Performance measure~~	~~The State Board has identified three stages for the creation of the statewide list.~~ ~~Stage 1: Planning~~ ~~Completion of business analysis~~ ~~Establishment of database architecture~~ ~~Stage 2: Development~~ ~~Development of the database model~~ ~~Determination of hardware and software components of the database architecture~~ ~~Acquisition of the requisite hardware and software components of the database~~ ~~Development of a single statewide uniform user interface~~ ~~Development of the necessary Wide Area Network (WAN) with local boards of elections~~ ~~Testing with regards to all of the above~~ ~~Stage 3: Implementation~~ ~~Migration of local voter registration data into statewide list~~ ~~Training of appropriate personnel~~

	~~Rollout of the system to local boards of elections~~ ~~Troubleshooting with regards to items outlined in Stage 2~~ ~~Establishment of fully operational system~~ ~~Testing with regard to all of the above~~
~~Timetable~~	~~January 1, 2003 to Federal election, 2004~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~The State Board is responsible for implementing and operating the statewide voter registration list.~~ —

Section 9: Administrative Complaint Procedure

OBJECTIVE:

Provide a description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under Title IV.

GOAL:

New York has ~~shall~~ developed a procedure for the processing of any complaints for alleged violations of Title III of HAVA.

PRESENT STATUS:

The State Board currently provides the opportunity for any person to file a complaint about provisions of the Election Law, election day procedures, election administration and voter registration. This includes complaints relating to the National Voter Registration Act. In addition, complaints may be also made to any county board of elections.

PROPOSED PLAN:

Initially, any complaints made at the local level may be resolved there in an informal manner. Thus, the officials closest to the problem may correct it in the most efficient and timely way possible.

1 - 800 -458-3453 (option 4) ~~- FOR VOTE~~ is the State Board's current toll-free HAVA Administrative Complaint information line. ~~election information line (with TDD capability).~~ It implements the initial call-in element of a Statewide Complaint procedure. ~~This system will be expanded to implement the initial call-in element of a statewide complaint procedure~~. The statewide procedure ~~will~~ allows for the comprehensive coordination of response by the State Board and county election officials, with the initial complaint inquiry handled in person or by phone call, and progressiong to a written process when needed.

The State Board has~~will~~ set up a method for processing written complaints received in compliance with HAVA requirements. The State Board and county boards will assist any person with disabilities to~~in~~ make ~~ing~~ a complaint.

As required by HAVA, the process ~~will~~ provides for an opportunity for any complainant to request a hearing on the record. The procedure ~~will~~ also provides that the State Board will make a final determination of a complaint within the mandated timeframe~~90 days~~, unless the time limit is waived by the complainant. If the State Board fails to meet this deadline, an alternative dispute resolution procedure will be used to resolve the complaint within 60 additional days, unless the time limit is waived by the complainant.

~~PERFORMANCE GOALS AND MEASURES: (also repeated in Section 8)~~

~~The State Board will implement a statewide complaint procedure. Measurement of the success of the statewide procedure will be the availability and performance of the system, as well as the experience for the voter.~~

~~Process used to develop the criteria~~	~~Evaluation of the legislation, Task Force sessions, and in-house work sessions with appropriate staff.~~
~~Description of the criteria used to measure performance~~	~~Measurement of success for the statewide complaint procedure will be the availability and performance of the system, as well as the experience for the voter.~~
~~Performance measure~~	~~The State Board will review the total number of complaints received and resolved. The following information will be collected to objectively measure performance:~~ ~~• Number of complaints received~~ ~~• Number of complaints resolved~~ ~~• Number complaints resolved in 60 days~~ ~~• Number of complaints resolved in 90 days~~ ~~• Number of complaints unresolved~~ ~~• Description of reason complaint is left unresolved~~
~~Timetable~~	~~January 1, 2004.~~
~~Description of official to be held responsible for ensuring each performance goal is met~~	~~State Board of Elections.~~

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Section 10: Title I Payments

OBJECTIVE:

Describe how any payment under Title I will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

GOAL:

Provide for effective and efficient use of available federal funds.

PRESENT STATUS:

The Federal Funds received under Title I, Section 101 have been partially expended to support State Operations associated with the Implementation of HAVA including the development of a statewide voter registration database and the procurement of accessible Ballot Marking Systems and supplies and programming to support such systems.

PROPOSED PLAN:

~~Pursuant to HAVA and in anticipation of receiving full funding for Title I, money will be distributed to provide for lever machine replacement for each county where a lever machine system is in use. Section 6 details how the federal funds will be spent to meet the requirements of Section 301 of HAVA.~~ Title 1, Section 102 funds will be used to replace lever voting systems. The following requirements must be met before these funds can be used:

- The State will use the payment to pay vendors directly for the costs of replacing a lever voting system by the required deadline of the first federal election after March 31, 2008.

New York will initiate a program to facilitate voting system replacement. Every county in the State will require new voting systems. The State Board will explore a procurement effort to acquire these systems. The scope of the program will be the replacement of voting systems. The State Board will work with county election officials to ensure that all needs are met, including but not limited to: system acquisition; system maintenance; election preparation services; and election tabulation services.

This Plan proposes that counties own and operate the systems and work with vendors to maintain the new voting systems and retain control of election services at the county level.

The State Board will implement a statewide voter registration list to comply with the HAVA

Title III. Working with the county election officials, the State Board will define functional requirements and roles and responsibilities of carrying out the functions of voter registration. The State Board will define, maintain and administer at the state level "the single, uniform, official, centralized, interactive computerized statewide voter registration list."

The remainder of Title I , Section 101 funds will be used to support the implementation of Voting Systems throughout New York State.

Any remaining funds will be used for the other programs described in Title I, Section 101 (b) (1). Section 6 of the State Plan details how such funds will be allocated.

Section 11: Management of the State Plan

OBJECTIVE:

Describe how the State will conduct ongoing management of the plan except that the State may not make any material change in the administration of the plan unless suchthe change: is developed and published in the Federal Register in accordance with Section 255 in the same manner as the State Plan; is subject to public notice and comment in accordance with Section 256 in the same manner as the State Plan; and takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register.

GOAL:

The State Board will ensure proper management of obligations set forth in HAVA.

PRESENT STATUS:

Presently the State Board has oversight responsibilities for all 62 county boards of elections. The various mechanisms used at the present time, for conducting related monitoring and educational activities, include the following:

- on-site board visits, followed by written reports (to the State Board, County Board, and local legislative leaders, as appropriate)
- annual report statistical review, encompassing a quantitative summary of board activities
- extensive subject-specific surveys regarding procedures, processes or events
- certifications by county boards on the performance and outcome of certain statutory tasks (such as required mailings to voters, polling place evaluations, etc.)
- presentation of an annual conference, for all election officials in the state (usual attendance exceeds over 200 participants), including a Professional Practices component
- participation in two statewide conferences sponsored by the New York State Election Commissioners Association, at which the State Board presents workshops on specific topics
- creation and distribution of a "Guide to Operating a Board of Elections", to assist election officials in standardizing and professionalizing day-to-day and election-specific operations
- numerous memos on procedure and performance suggestions, to assist county boards in the development of operational procedures
- creation and distribution of model procedures which are task-specific, and serve as an easy reference and guide for the conduct and anticipated outcome of certain procedures (such as the NVRA-related List Maintenance Directory)

PROPOSED PLAN:

All of these existing components will be enhanced to include reviews, assessments, reporting

and certification of HAVA requirements, to ensure the uniform, professional and consistent implementation of all aspects of this federal legislation

If the State Board determines the State Plan requires material change, the State Board shall: a) propose the recommended changes to the Chief State Election Official; b) allow for public comment for not less than 30 days; and c) publish in the Federal Register upon submitting the revised plan to the Election Assistance Commission.

Section 12: Changes to State Plan from Previous Fiscal Year

OBJECTIVE:

Describe how the Plan reflects changes from the State Plan for the previous fiscal year and how the State succeeded in carrying out the State Plan for such previous fiscal year.

GOAL:

To establish a mechanism to address changes in subsequent years of the state planning process pursuant to HAVA.

PRESENT STATUS:

As the State was out of compliance with HAVA at a very early point in this process, and that failure to comply resulted in federal litigation *(United States of America vs. New York State Board of Elections, et al,*, 06-cv-0263in the United States District Court for the Northern District of New York, the State has been operating pursuant to two separate Remedial Orders outlining and directing the State's compliance with HAVA court orders, thus no previous amendments have been filed.

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PROPOSED PLAN:

This State Plan will be updated annually demonstrating ~~????, as~~ progress ~~continues~~ in implementing the order of the federal court, ensuring New York's ultimate HAVA compliance.

Section 13: The Planning Committee and its Procedures

OBJECTIVE:

Provide a description of the committee which participated in the development of the State Plan in accordance with Section 255 and the procedures followed by the committee under such Section and Section 256, including the membership of the committee and its activities, such as hearings or other forms of public input, publications, notices, comments, and actions taken as a result of comments.

DESCRIPTION OF THE DEVELOPMENT OF THE STATE PLAN:

Pursuant to Section 255, on February 7, 2003, the Chief State Election Official, Stanley L. Zalen ~~Peter S. Kosinski, Deputy~~Co- Executive Director of the New York State Board of Elections, appointed a task force to advise in the development of the State Plan, designated the Help America Vote Act State Implementation Plan Task Force (Task Force). The group included persons who provided expertise and meaningful input to the formation of the Plan, as well as representatives of groups mandated by HAVA.

Representatives of various government groups were appointed, including the Governor's Office; the New York State Senate and Assembly; the New York State Department of Motor Vehicles; New York State Office for Technology; the Secretary of State's Office and the Division of the Budget. The Secretary of State's Office and the Division of the Budget assisted with local government interaction issues and budgetary concerns, respectively.

Also mandated by HAVA and included on the Task Force, were representatives from the boards of elections of the two largest jurisdictions in the state, New York City and Suffolk County. Representatives from two upstate county boards of elections and an official representing county government also served as Task Force members.

In light of the provisions of HAVA concerning persons with disabilities, a representative of disability groups, as well as New York's Advocate for Persons with Disabilities, were appointed. A representative of each of the major state political parties and the New York State League of Women Voters also served on the panel.

The Chief State Election Official designated a portion of the State Board of Election's website at www.elections.state.ny.us as a place for the public to view the Task Force's composition, meeting schedule, minutes of meetings, and back-up resource for the State Plan.

The Task Force held open, public meetings on February 26, March 5, 12, 19, and 26, 2003 and advised and provided feedback to the Chief Election Official on elements for the State Plan.

Member	Organization

Composition of Task Force

Member	Organization
Aimee Allaud ~~Laurence Adamczyk~~	League of Women Voters ~~Commissioner of the Erie County Board of Elections~~
~~Aimee Allaud~~	Governor's Office ~~League of Women Voters~~
~~Maggie Brooks~~Steven Carbo	~~Monroe County Clerk~~DEMOS
Thomas Ferrarese~~Randy Daniels~~	Commissioner of Monroe County Board of Elections~~New York Secretary of State~~
Margaret Fung~~Member of Assembly RoAnn Destitio~~	Asian-American Legal Defense~~New York State Assembly~~
Ronald Hayduk~~James Dillon~~	~~Chief Information Officer for New York State~~City University of New York
Christopher Hilderbrant~~John Haggerty, Jr.~~	Center for Disability Rights~~New York State Republican Party~~
Anita S. Katz ~~Peter James Johnson, Jr.~~	Commissioner of the Suffolk County Board of Elections ~~Governor's Office~~
Helen M. Kiggins ~~Anita S. Katz~~	Commissioner of the Onondaga County Board of Elections ~~Commissioner of the Suffolk County Board of Elections~~
~~Douglas Kellner~~June O'Neill	New York State Democratic Party
David Previte~~Helen M. Kiggins~~	New York State Republican Party~~Commissioner of the Onondaga County Board of Elections~~

Neil Rosenstein~~Raymond Martinez~~	New York Public Interest Research Group~~Commissioner NYS Department of Motor Vehicles~~
Sharon Shapiro~~Jerry Minot-Scheuermann~~	Jewish Disability Empowerment Center, Inc.~~New York State Division of the Budget~~
Esmeralda Simmons~~Senator Thomas Morahan~~	Center for Law & Social Justice – Medgar Evers College~~New York State Senate~~
Brad Williams~~John Ravitz~~	New York State Independent Living Counsel~~Executive Director for the NYC Board of Elections~~
~~Senator Nicholas A. Spano~~	New York State Assembly ~~New York State Senate~~
~~Richard Warrender~~	New York State Assembly ~~New York State Advocate for Persons with Disabilities~~
~~Brad Williams~~	New York State Senate ~~New York State Independent Living Centers~~
~~Member of Assembly Keith Wright~~	New York State Senate ~~New York State Assembly~~

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~~Representatives of the following groups attended and participated at the Task Force meetings:~~

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~~Accenture~~
~~Asian Legal Defense Fund~~
~~Office of Assemblyman Peter Rivera~~
~~Associated Reporters~~
~~Brennan Center for Justice~~
~~Center for Independence~~
~~Citizen's Union~~
~~Citizens for Instant Runoff Voting~~
~~Common Cause/NY~~
~~DEMOS~~
~~District Council 37~~
~~Eastern Paralyzed Veterans Association~~
~~Election Systems and Software~~
~~Gannett News Service~~

~~Green Party~~
~~Liberty Election Systems~~
~~NTS Data Services~~
~~NY Immigration Coalition~~
~~NY Statewide Senior Action~~
~~NY Public Radio~~
~~NY Public Interest Research Group~~
~~NYC Mayor's Office~~
~~NYS Senate Minority Counsel~~
~~NYS Commission on Quality of Care~~
~~NYS Office of General Services~~
~~NYS Association of Community & Residential Agencies~~
~~NYS Independent Living Center~~
~~Orange County Board of Elections~~
~~Patricia Lynch Associates~~
~~Schenectady County Board of Elections~~
~~SENSES~~
~~Sequoia Pacific Voting Systems~~
~~The Century Foundation~~
~~Western NY Independent Living Program~~

The Drafting Committee did extensive research and utilized a variety of resources from inside and outside the agency to create the plan.

The Drafting Committee was composed of :

Stanley L. Zalen~~Peter S. Kosinski~~, Chief Election Officer
Todd D. Valentine, ~~homas Wilkey~~Co- Executive Director, NYSBOE
Robert A.Brehm~~ Lee Daghlian~~, Deputy Public Information Officer
~~Tim Mattice, Special Projects Coordinator~~
~~William McCann, Special Deputy Counsel~~
Paul M. Collins~~tricia Murray~~, First Deputy Counsel
George Stanton, Director of Information Technology
Anna E. Svizzero, Director of Election Operations
~~Todd Valentine, Special Counsel~~
Elizabeth C. Hogan~~ Stanley Zalen~~, Enforcement Counsel
Gregory Fiozzo,

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Section 14: Public Comments

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~~To comply with Section 256 of the Help America Vote Act, New York State made a preliminary version of the state implementation plan available for public inspection and comment on June 20, 2003. The Plan was made available through the State Board of Elections' web site and at every public library throughout the state.~~

~~Three public hearings were conducted throughout the state during the public comment period affording interested persons and groups an opportunity to present comments to the chief election official, State HAVA Task Force members and staff of the State Board of Elections. Comments were also received by e-mail and regular mail. The public comment period extended to July 23, 2003. Each of the comments was thoroughly reviewed by the State and considered in the final plan. The following is a list of the most common comments that were presented with a response to each comment.~~

~~Public Comment:~~

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~~The Plan should provide more specificity on issues such as types of identification first-time voters present, databases intended to be used to verify voters, the voting machines the state intends to purchase, and other HAVA mandates.~~

~~Response:~~

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~~The Plan is intended to be a broad and living document, pursuant to the intent and spirit of HAVA's provisions. The Plan, as drafted, creates a series of avenues which the State can follow to implement all of HAVA's requirements once legislative and other related issues are identified and resolved. Specific answers can only be provided after an analysis of the results of that debate. The Plan, therefore, is an ongoing process, also acknowledged by HAVA legislation, which allows the State to update its Plan as changes in state statute or policies necessitate.~~

~~Public Comment:~~

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~~The Plan did not provide for sufficient detail of accessibility standards for voting systems or polling places.~~

~~Response:~~

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~~Accessibility for voting machines is anticipated under HAVA to be a national issue. The Election Assistance Commission is to set voting machine accessibility standards with the assistance of the voting systems standards advisory group. New York's existing regulations on voting machine standards already require voting machines to meet the federal standards. These standards are not a state-by-state criteria and therefore are not appropriate for the State Plan.~~

~~Accessibility for polling places is addressed through HAVA by the establishment of a separate fund to be administered by the Department of Health and Human Services. The State has submitted a proposal to access federal funds administered by the Department of Health and Human Services. To augment this fund the plan did provide for additional monies that could be used to improve polling place accessibility.~~

~~Public Comment:~~

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~~The Plan does not adequately address the security of new voting systems.~~

~~Response:~~

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~~HAVA's intent is to have in place national standards for the integrity and performance of voting systems in use throughout the country. HAVA requires the use of DRE (direct electronic recording) voting systems to maximize access for persons with disabilities. In order to facilitate these concepts, HAVA provides for a national certification program for voting equipment, which may be complemented at the state level with additional testing processes. Technical and scientific professionals will be responsible for creating thorough and stringent national security standards and for identifying testing facilities for the execution of tasks related to ensuring same, through the certification process. In addition, advocacy and other groups representing the sciences and accessibility communities are represented in those debates at the national level, to ensure that all concerns are addressed. These issues, therefore, need not be addressed separately in a State Plan.~~

~~Public Comment:~~

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~~The Plan does not address New York's full-face ballot requirement.~~

~~Response:~~

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~~Present statute requires that all voting systems support a full-face ballot layout. Some public hearing comments expressed an interest in exploring options for systems that do not. New York's State Plan was written from the perspective of the current statute, as it relates to ballot~~

~~layout. The Plan was not meant to select any certain system, nor was there any intent, desire or ability to foresee actions the Legislature might choose to take with regard to voting systems or ballot layout. The Plan does provide however, an overall concept for the acquisition and implementation of any voting equipment which will reflect any modifications attributed to Legislative consideration of changes to existing ballot layout requirements.~~

~~Public Comment:~~

~~The Plan should include a comprehensive list of identification cards which will be acceptable under HAVA for verification purposes.~~

~~Response:~~

~~One of the underlying purposes of HAVA is the prevention of voter registration fraud through the verification of a voter's identity. Voter identification is one of the methods that may be used for this purpose. There are hundreds of agencies, both public and private, which issue identification documents. In order to accept identification, the State must be reasonably assured that they were issued only after the issuing agency verified the individual's identity. Certainly identifications issued by government agencies are among those that will satisfy HAVA. However, there is not sufficient information available at this time for the Plan to include a comprehensive list of issuing agencies whose identification documents will qualify for HAVA verification purposes.~~

~~Public Comment:~~

~~The Plan should include implementation of a training program for poll workers and election officials relative to persons with disabilities.~~

~~Response:~~

~~The Plan provides that the State Board of Elections will be collaborating with a professional training organization to develop a statewide training program for all county boards of elections. In the development phase of this program, the training professionals will be consulting with the community of individuals with disabilities. This consultation will result in a training program which include how to professionally and appropriately succeed in guaranteeing an independent, positive and smooth process for the voter with a disability. This process will include, but not be limited to, dealing with the person who is blind, persons using a wheelchair, the hearing impaired, persons with developmental disabilities, individuals with language barriers, and the elderly. The goal of the training program will be that ALL voters who arrive at their polling place will not have to overcome barriers to exercise their right to vote~~.

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BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
www.vote.nyc.ny.us

DATE: April 07, 2009

TO: Commissioners

FROM: John J. Ward
Finance Officer

RE: Comparative Expenditures

FY09	P.S. Projection through 4/03/09 Payroll:	$15,600,000
FY09	P.S. Actual through 4/03/09 Payroll:	$20,799,051
	Difference	($ 5,199,051)

Overtime pays two weeks ending 3/20/09

OVERTIME USAGE

General Office		22,559
Brooklyn		16,170
Queens		5,869
Bronx		1,366
New York		196
Staten Island		114
	Total	$46,274

Respectfully submitted,

Finance Officer

State of New York
STATE BOARD OF ELECTIONS

40 STEUBEN STREET
ALBANY, N.Y. 12207
Phone: 518/474-6367 Fax: 518/486-4546
website: www.elections.state.ny.us

April 3, 2009

Honorable Gary L. Sharpe
United States District Court
for the Northern District of New York
James T. Foley U.S. Courthouse
445 Broadway, Room 441
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Status Report of the Defendant New York State Board of Elections for the week ending April 2, 2009.

Respectfully submitted,

s/_____
Kimberly A. Galvin (505011)
Special Counsel

s/_____
Paul M. Collins (101384)
Deputy Special Counsel

HAVA COMPLIANCE UPDATE

Activities & Progress for the Week 3/27/09-4/2/09

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

PLAN A

Overall Compliance Status Summary

Overall, activities and progress toward HAVA compliance are in jeopardy and behind schedule per the project timeline for Plan A.

Contracting with Voting System Vendors

Status of tasks in this category: on schedule.

- Updated contract amendments for ES&S and Sequoia Dominion were sent by OGS to SBOE on 4/1/09.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: in jeopardy and behind schedule.

- Overall progress of testing:
  - NYSTEC and SysTest have completed the remaining test cases. GenSec, Data Accuracy and Volume and Stress Test cases were provided to the vendors on 3/31/09.
  - SysTest has submitted an RFI requesting SBOE interpretation of "closed network" NYSTEC has provided feedback which SBOE is reviewing.
  - ES&S and Dominion continue to review the completed test cases in detail and are discussing them via email and conference calls with NYSTEC for clarification where needed.
  - Weekly routine conference calls continue between NYSTEC, SysTest, SBOE and vendors.

Delivery and Implementation of Voting Systems & Devices

Status of tasks in this category: in jeopardy and behind schedule.

- NYSTEC and SBOE continued working on policy and procedure documents for county implementation. The April ECA conference is targeted as a distribution dates.

HAVA COMPLAINT PROCESS

NYC has not as yet responded to the communication from SBOE previously referenced

Comms Fyi

Steven H. Richman

From: Steven H. Richman
Sent: Tuesday, March 31, 2009 5:12 PM
To: *Commissioners; *ExecutiveManagement; *Legal Department; Joseph LaRocca
Subject: FW: Letter Concerning NYC Special Elections -- File No. 2007-0266

Scan001.PDF (469 KB)

Attached for your information, review and files is a copy of the letter sent by the NYC Law Department to the US Department of Justice regarding their recent inquiry into the applicability of the requirements for pre-clearance of several 2007 Special Elections.

STEVEN H. RICHMAN
General Counsel
Board of Elections in the City of New York
32 Broadway, 7th Floor
New York, NY 10004-1609
Tel: (212) 487-5338
Fax: (212) 487-5342
E-Mail: srichman@boe.nyc.ny.us

-----Original Message-----
From: Fisher, Spencer [mailto:sfisher@law.nyc.gov]
Sent: Tuesday, March 31, 2009 4:47 PM
To: Steven H. Richman
Subject: FW: Letter Concerning NYC Special Elections -- File No. 2007-0266

Steve, The attached letter was sent by e-mail to the Department of Justice today, following a conversation I had with them. I am also sharing it with the Mayor's Office and others in the Law Department. Spencer

-----Original Message-----
From: Fisher, Spencer
Sent: Tuesday, March 31, 2009 4:13 PM
To: 'vot1973c@usdoj.gov'
Subject: Letter Concerning NYC Special Elections -- File No. 2007-0266

I am sending the attached letter (with its own accompanying attachments) to Mr. Coates by e-mail as discussed with Mr. Edris Rodriguez. Please respond to this e-mail to confirm receipt. Thanks very much.

Spencer Fisher
Senior Counsel
Division of Legal Counsel
New York City Law Department
100 Church Street, 6th Floor

New York, New York 10007
(212) 788-1083
FAX 212-571-4600

MICHAEL A. CARDOZO
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

SPENCER FISHER
Senior Counsel
Phone: (212) 788-1083
Fax: (212) 571-4600
sfisher@law.nyc.gov

March 31, 2009

Christopher M. Coates, Esq.
Chief, Voting Section
Voting Section – NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Letter Concerning Special Elections – File No. 2007-0266

Dear Mr. Coates:

I write in response to your letter (signed by Ms. Riordan on your behalf), dated March 4, 2009, concerning special elections conducted by the New York City Board of Elections during the first part of 2007. I am also following up on a conversation with Mr. Edris Rodriguez earlier today, in which he suggested that the City explain in writing its position on the scheduling of special elections. I very much appreciate the opportunity to provide such an explanation.

Your letter refers to elections conducted on three dates (February 20, April 24 and June 5), and attaches a letter by John Tanner, dated January 24, 2007, concerning the first of those elections. It is my understanding that Steven H. Richman, counsel to the New York City Board of Elections, wrote to you on March 16, 2009 concerning your letter and referred generally to provisions of state law and the New York City Charter, while also providing contact information for City and State officials. I write to follow up on that letter and describe the basis for the special election in relation to a City Council vacancy in Kings County that was conducted on February 20 and the special election for a vacancy in the same district that was conducted on April 24. As described in detail below, while a special election date may result from a limited exercise of discretion in certain circumstances, that was not the case with these two elections. The dates of both of them were set ministerially in accordance with the directions set forth in City Charter section 25(b), which had been previously precleared. It is my understanding that the June 5 election was conducted under provisions of State law in connection with a vacancy in the State Legislature, and no City agency (other than the New York City Board of Elections acting in a ministerial fashion) was involved with any decision made in relation to the June election.

At the outset, it is important to note that, when the New York City Board of Elections received the letter of Mr. Tanner, dated January 24, 2007, inquiring about the February 20 special election, it promptly referred the letter to me. I spoke to Ms. Yvette Rivera of the Voting Section shortly thereafter. We discussed this matter and I explained the existing statutory basis for the proclamation scheduling the February 20 special election, as well as the general system under which the City conducts vacancy elections for local elected offices. She indicated to me that I could assume the Department's concerns had been resolved unless I heard from her shortly thereafter, and, consistent with our discussion, I confirmed with a follow-up e-mail to her, dated February 1, 2007. I attach to this letter a copy of that e-mail and the attachments to it (Exhibit A). I did not hear from her again concerning this matter, and I believed that the matter had been resolved amicably until I was apprised of the letter sent on March 4 of this year. This letter seeks to clarify and resolve this matter, but we are of course always open to discussing it further or providing further information if you believe such discussions or information would be useful to the Department of Justice.

The provisions for filling vacancies in New York City's elected offices are found in several sections of the New York City Charter and read essentially identically in relation to the scheduling of special elections (except that there are some differences in the mayoral vacancy scheme). Section 25(b) of the Charter, which concerns Council vacancies, was precleared by letter dated October 11, 1988. That letter also covered procedures for filling vacancies in the offices of borough president (§81(e)) and Comptroller (§94(c)). Essentially identical procedures concerning vacancies in the office of Public Advocate (§24(c)) and a slightly different provision concerning vacancies in the office of Mayor (§10(c)) were precleared by letter dated March 24, 2003.

In general, section 25(b), like the vacancy provisions for all elected officials other than the Mayor, provides, with specified exceptions, for a special election to fill the vacancy on an interim basis, about 45 days after the vacancy, with nominations by independent nominating petitions rather than by party. Subsequently, except in the case of certain vacancies late in the term, the vacancy is filled for the remainder of the term through the regular party primary and general election process. Paragraph 1 of the subdivision requires the Mayor to proclaim the date for an election required by the subdivision within three days of an occurrence of a vacancy. Paragraph 6 of the subdivision provides that, where a special election is to be held pursuant to paragraph 4 or 5, it is to be held "on the first Tuesday at least forty-five days after occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation..." Because both of the local special elections at issue here were required pursuant to paragraph 4 of the subdivision, this provision applied to them. Other provisions in paragraph 6 related to vacancies occurring later in the calendar year are not applicable here.

Thus, in essence, unless the Mayor affirmatively exercises his extremely limited discretion to make a finding, the special election must be held on the first Tuesday at least forty-five days after the occurrence of the vacancy. Although the City has long been of the view that the circumscribed (and precleared) ability to shift the required election by approximately one week upon making an affirmative finding concerning voter participation is de minimis and does

not trigger any change in voting, the City agreed in 2003 to submit such shifts in the default election date for preclearance when they occur in covered counties (and the City did submit such elections in that year upon the request of the Department of Justice). My e-mail to Ms. Rivera after our discussion in 2007 included materials relating to the City's 2003 submission.

Since 2003, the Mayor has not to our knowledge made any such affirmative finding in a covered county and thus, in the absence of making such finding, has been bound by law to announce the precleared special election date set forth in the Charter when making vacancy-related proclamations in covered counties. That is what occurred in relation to the February 20, 2007 special election. The previous Council Member, Yvette D. Clarke, had resigned effective January 2, 2007, and the first Tuesday at least forty-five days later was February 20, 2007. The Mayor's proclamation to this effect was a merely a ministerial implementation of the Charter, without any voting change. My e-mail to Ms. Rivera after our discussion in 2007 included the relevant mayoral proclamation.

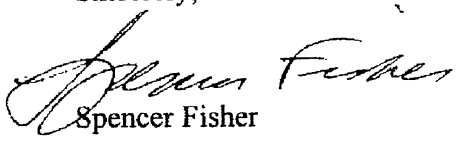
The second special election conducted in the 40th Council District in 2007, on April 24, 2007, resulted from an unusual set of events but did not trigger any discretionary decision or new voting practice on the part of the Mayor when he proclaimed the date of a second special election. Mathieu Eugene, who was determined to have won the February 20 special election, indicated by letter to the City Clerk, dated March 8, 2007, that he would not take the required oath of office as the winner of that election. This had the effect of creating a new vacancy in the office as of the date of that determination. The Mayor issued a new proclamation, in accordance with his duty under section 25(b)(6) of the Charter, setting a second special election to be held on the first Tuesday at least forty-five days after March 8, which was April 24. The Mayor did not exercise any discretionary authority in relation to the issuance of this second proclamation. Mathieu Eugene subsequently won that election. I attach a copy of the Mayor's proclamation in relation to the April 24 election (Exhibit B).

In summary, the City submits for preclearance any vacancy elections in covered counties for which the Mayor makes a discretionary determination to shift the election date that is otherwise required by the Charter based upon the Mayor's affirmative finding of the need to maximize voter participation. No such finding was made in the February 20 and April 24 special elections held in 2007, or in any special election to fill a vacancy in a City elected office that has been held since then in a covered county, and so no change affecting voting occurred in these special elections. This distinction is fully consistent with the October 11, 1988 preclearance letter for the City Council special election procedure (Exhibit C), which referred to subsequent preclearance for "any discretionary setting of the date for a special election to fill a vacancy in a city office." No such "discretionary setting of the date" took place for the two 2007 special elections held in the 40th Council District. The distinction is also consistent with public policy, in light of the delays and uncertainty for candidates and voters that the preclearance process would cause for candidates, voters and election officials during an already brief period between the vacancy and the election if preclearance were sought for even ministerial mayoral proclamations.

I hope this letter addresses any remaining concerns that you may have, and appreciate your attention to this matter. As noted above, this letter does not address the June 5, 2007 special election, which did not relate to a vacancy in a City elected position pursuant to the

Charter provisions discussed here. If further information is needed, please contact me at the Division of Legal Counsel, New York City Law Department, 100 Church Street, 6th Floor, New York, New York 10007.

Sincerely,



Spencer Fisher

Copy: Steven H. Richman, General Counsel
New York City Board of Elections

EXHIBIT A

Fisher, Spencer

From: Fisher, Spencer
Sent: Thursday, February 01, 2007 4:28 PM
To: 'yvette.rivera@usdoj.gov'
Subject: Materials we discussed

Attachments: Scan001.PDF

Scan001.PDF

Hi Yvette, I am attaching the following for your information: (1) the Charter section that applies to the City Council special elections. The proclamation was issued pursuant to subdivision b, paragraphs 1 and 6, which were precleared in 1988; (2) a preclearance submission from 2003 for a special election in which the Mayor did exercise his authority to move the date in order to facilitate voter participation; (3) the two proclamations issued by the Mayor for the current special election; (4) the two proclamations associated with the 2003 submission. You will note that the 2003 proclamations refer to facilitating voter participation because the Mayor affirmatively moved the date of the election, in contrast to the ministerial proclamations issued this year. As we discussed, even the Mayor's authority to move the date is quite circumscribed, but in 2003 we agreed to make a submission in that circumstance in order to eliminate any possibility of disagreement when the date is actually moved.

As we also discussed, I will assume that the special elections can proceed as scheduled under the precleared Charter provisions unless we hear otherwise from you.

I look forward to meeting you on February 13, and thanks very much for your time on the phone.

Spencer

Spencer Fisher
Senior Counsel
Division of Legal Counsel
New York City Law Department
100 Church Street, 6th Floor
New York, New York 10007
(212) 788-1083
FAX 212-571-4600

§ 25. **Election; term; vacancies.** a. The council members shall be elected at the general election in the year nineteen hundred seventy-seven and every fourth year thereafter and the term of office of each council member shall commence on the first day of January after the elections and shall continue for four years thereafter; provided, however, that the council member elected at the general election in the year two thousand and one and at the general election in every twentieth year thereafter shall serve for a term of two years commencing on the first day of January after such election; and provided further that an additional election of Council Members shall be held at the general election in the year two thousand three and at the general election every twentieth year thereafter and that the members elected at each such additional election shall serve for a term of two years beginning on the first day of January after such election.

Notwithstanding any other provision of this charter or other law, a full term of two years, as established by this subsection, shall not constitute a full term under section 1138 of this charter, except that two consecutive full terms of two years shall constitute one full term under section 1138. A member of the council who resigns or is removed from office prior to the completion of a full term shall be deemed to have held that office for a full term for purposes of section 1138 of the charter.

b. Any vacancy which may occur among the council members shall be filled by popular election in the following manner.

1. Within three days of the occurrence of a vacancy in the council, the mayor shall proclaim the date for the election or elections required by this subdivision, provide notice of such proclamation to the city clerk and the board of elections and publish notice thereof in the City Record. After the proclamation of the date for an election to be held pursuant to paragraphs four or five of this subdivision, the city clerk shall publish notice thereof not less than twice in each week preceding the date of such election in newspapers distributed within the city, and the board of elections shall mail notice of such election to all registered voters within the district in which the election is to be held.

2. If a vacancy occurs during the first three years of a four-year term or the first year of a two-year term, a general election to fill the vacancy for the remainder of the unexpired term shall be held in the year in which the vacancy occurs, unless the vacancy occurs after the last day on which an occurring vacancy may be filled at the general election in that same year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law. If such a vacancy occurs in any year after such

last day, it shall be filled for the remainder of the unexpired term at the general election in the following year provided, however, that no general election to fill a vacancy shall be held in the last year of the term, except as provided in paragraph nine of this subdivision. Party nominations of candidates for a general election to fill a vacancy for the remainder of the unexpired term shall be made at a primary election, except as provided in paragraph five of this subdivision.

3. If a special or general election to fill the vacancy on an interim basis has not been previously held pursuant to paragraphs four, six, seven and eight of this subdivision, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office immediately upon qualification and shall serve until the term expires. If a special or general election to fill the vacancy on an interim basis has been previously held, the person elected to fill the vacancy for the remainder of the unexpired term at a general election shall take office on January first of the year following such general election and shall serve until the term expires.

4. If a vacancy occurs during the first three years of a four-year term or in the first year of a two-year term and on or before the last day in the third year of such a four-year term or the first year of such a two-year term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, a special or general election to fill the vacancy on an interim basis shall be held, unless the vacancy occurs less than ninety days before the next primary election at which party nominations for a general election to fill the vacancy may be made and on or before the last day on which an occurring vacancy may be filled for the remainder of the unexpired term at the general election in the same year in which the vacancy occurs with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law.

5. If a vacancy occurs after the last day in the third year of a four-year term or the first year of a two-year term on which an occurring vacancy may be filled for the remainder of the unexpired term at a general election in each year with party nominations of candidates for such election being made at a primary election, as provided in section 6-116 of the election law, but not less than ninety days before the date of the primary election in the fourth year of such a four-year term or the second year of such a two-year term, a special or general election to fill such vacancy for the remainder of the unexpired term shall be held.

6. Elections held pursuant to paragraph four or five of this subdivision shall be scheduled in the following manner: A special election to fill the vacancy shall be held on the first Tuesday at least forty-five days after the occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation; except that

(a) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is less than ninety days before a regularly scheduled general election or between a primary and a general election, the vacancy

shall be filled at such general election;

(b) if the vacancy occurs before September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after a regularly scheduled general election, the vacancy shall be filled at such general election; and

(c) if the vacancy occurs on or after September twentieth in any year and the first Tuesday at least forty-five days after the occurrence of the vacancy is after, but less than thirty days after, a regularly scheduled general election, the vacancy shall be filled at a special election to be held on the first Tuesday in December in such year.

7. All nominations for elections to fill vacancies held pursuant to paragraphs four and five of this subdivision shall be by independent nominating petition. A signature on an independent nominating petition made earlier than the date of the proclamation required by paragraph one of this subdivision shall not be counted.

8. A person elected to fill a vacancy in the council at an election held pursuant to paragraph four of this subdivision shall take office immediately upon qualification and serve until December thirty-first of the year in which the vacancy is filled for the remainder of the unexpired term pursuant to paragraph two of this subdivision. A person elected to fill a vacancy in the council at an election held pursuant to paragraph five of this subdivision shall take office immediately upon qualification and serve until the term expires.

9. If a vacancy occurs less than ninety days before the date of the primary election in the last year of the term, the person elected at the general election in such year for the next succeeding term shall take office immediately upon qualification and fill the vacancy for the remainder of the unexpired term.

HISTORICAL NOTE

Amended by L. L. 1945, No. 32.
Amended by L. L. 1953, No. 63.
Amended by L. 1962, ch. 998, § 3.
Amended by L. L. 1969, No. 82.
Amended at General Election, November 4, 1975.
Amended by L. L. 1977, No. 102.
Amended by L. 1978, ch. 763.
Amended at General Election, November 8, 1988.
Renumbered at General Election, November 7, 1989 (formerly § 24).
Subd. a, subd. b pars. 2, 4, 5 amended at General Election, November 7, 1989.
Subd. a amended L.L. 27/2002 § 2, eff. Sept. 25, 2002. [See Note]

NOTE

Provisions of L.L. 27/2002:

Section 1. **Purpose and Intent.** This legislation addresses the qualifications for the office of Council Member imposed by Chapter 50 of the Charter in relation to the application of the two-year terms of Council Members established by Chapter 2 of the Charter. It does not change any term of office. Nor does it change those disqualification provisions of Chapter 50 of the Charter prohibiting any elected City official from serving more than two consecutive four-year terms. This legislation

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

JEFFREY D. FRIEDLANDER
First Assistant Corporation Counsel

Phone: (212) 788-0700
Fax: (212) 227-5641
jfriedla@law.nyc.gov

March 20, 2003

Joseph D. Rich, Esq.
Chief, Voting Section
Civil Rights Division
Room 7254-NWB
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Submission under section 5 of the Voting Rights Act

Re: Proclamations of Special Elections

EXPEDITED PROCESSING REQUESTED

Dear Mr. Rich:

On behalf of the City of New York, I make this submission under section 5 of the Voting Rights Act for preclearance of the date for two special elections on February 25, 2003. Establishment of such date has neither the purpose nor the effect of denying or abridging minority voting rights. In addition, the City reserves the right to take the position that no submission for preclearance is required for the establishment of such dates because the implementation of the closely limited provisions of the Charter concerning dates for special elections does not constitute a new "standard, practice or procedure with respect to voting."

Section 25(b) of the New York City Charter (annexed to this submission) sets forth the procedures for filling vacancies that may occur among the Council members.[1] These

[1] A recent amendment by local law to subdivision a of section 25, not reflected in the attached copy of section 25, concerned the definition of a full term for purposes of the term limits

Continued...

procedures were precleared in 1988. In general, the subdivision provides, where practicable, for a special election to fill the vacancy on an interim basis, about 45 days after the vacancy, with nominations by independent nominating petitions rather than by party. Subsequently, except in the case of certain vacancies late in the term, the vacancy is filled for the remainder of the term through the regular party primary and general election process. Paragraph 1 of the subdivision requires the Mayor to proclaim the date for an election required by the subdivision within three days of an occurrence of a vacancy. Paragraph 6 of the subdivision provides that, where a special election is to be held pursuant to paragraph 4 or 5, it is to be held "on the first Tuesday at least forty-five days after occurrence of the vacancy, provided that the mayor, in the proclamation required by paragraph one of this subdivision, may schedule such election for another day no more than ten days after such Tuesday and not less than forty days after such proclamation if the mayor determines that such rescheduling is necessary to facilitate maximum voter participation..." Certain provisions in paragraph 6 related to vacancies occurring later in the calendar year are not applicable in this case.

Two Council members, Martin J. Golden of the 43rd Council District and Ruben Diaz, Sr. of the 18th Council District, both resigned from the City Council, effective January 1, 2003. Pursuant to Charter section 25(b)(1), the Mayor issued proclamations, dated January 2, 2003 (annexed to this submission), establishing the date of a special election. Pursuant to the authority vested in the Mayor by section 25(b)(6), and in order to facilitate maximum voter participation, the Mayor proclaimed that the special election was to be held in both affected districts on Tuesday, February 25, 2003, rather than on Tuesday, February 18, 2003, the date that would have applied had the Mayor issued the proclamation without exercising such authority.

Expedited consideration of this submission is requested to minimize any uncertainty concerning the filling of the affected vacancies. If further information is needed to review this submission, please contact Spencer Fisher, Division of Legal Counsel, 212-788-1083, New York City Law Department, 100 Church Street, 6th Floor, New York, New York 10007.

Sincerely,

JEFFREY D. FRIEDLANDER

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restrictions of the Charter. This amendment, which was precleared by letter dated March 3, 2003, is not relevant to the present submission.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PROCLAMATION OF ELECTION

As a result of the resignation of Yvette D. Clarke from the City Council, effective January 2, 2007, a vacancy has been created in the seat she has held as a Council Member for the fortieth Council district. Accordingly, pursuant to the authority vested in me by Sections 25(b)(1) and 25(b)(6) of the New York City Charter, I hereby proclaim that a special election shall be held in the fortieth Council district on February 20, 2007 to elect an interim Council Member to serve until December 31, 2007. Pursuant to Section 25(b)(7) of the Charter, nomination of candidates in this election shall be by independent nominating petition. Subsequent to such election, pursuant to Section 25(b)(2) of the Charter, the seat for such district shall be filled for the remainder of Ms. Clarke's unexpired term by the person duly elected at the general election to be held in November 2007.

DATED: January 3, 2007

Michael R. Bloomberg
Mayor

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PROCLAMATION OF ELECTION

As a result of the resignation of Andrew J. Lanza from the City Council, effective January 1, 2007, a vacancy has been created in the seat he has held as a Council Member for the fifty-first Council district. Accordingly, pursuant to the authority vested in me by Sections 25(b)(1) and 25(b)(6) of the New York City Charter, I hereby proclaim that a special election shall be held in the fifty-first Council district on February 20, 2007 to elect an interim Council Member to serve until December 31, 2007. Pursuant to Section 25(b)(7) of the Charter, nomination of candidates in this election shall be by independent nominating petition. Subsequent to such election, pursuant to Section 25(b)(2) of the Charter, the seat for such district shall be filled for the remainder of Mr. Lanza's unexpired term by the person duly elected at the general election to be held in November 2007.

DATED: January 3, 2007

Michael R. Bloomberg
Mayor

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PROCLAMATION OF ELECTION

As a result of the resignation of Martin J. Golden from the City Council, effective January 1, 2003, a vacancy has been created in the seat he has held as Council Member for the forty-third council district. Accordingly, pursuant to the authority vested in me by Section 25(b)(1) and 25(b)(6) of the New York City Charter, and in order to facilitate maximum voter participation, I hereby proclaim that a special election shall be held in the forty-third council district on February 25, 2003 to elect a council member to serve until December 31, 2003. Pursuant to Section 25(b)(7) of the Charter, nomination of candidates in this election shall be by independent nominating petition.

DATED: January 2, 2003

Michael R. Bloomberg
Mayor

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PROCLAMATION OF ELECTION

As a result of the resignation of Ruben Diaz, Sr. from the City Council, effective January 1, 2003, a vacancy has been created in the seat he has held as Council Member for the eighteenth council district. Accordingly, pursuant to the authority vested in me by Section 25(b)(1) and 25(b)(6) of the New York City Charter, and in order to facilitate maximum voter participation, I hereby proclaim that a special election shall be held in the eighteenth council district on February 25, 2003 to elect a council member to serve until December 31, 2003. Pursuant to Section 25(b)(7) of the Charter, nomination of candidates in this election shall be by independent nominating petition.

DATED: January 2, 2003

Michael R. Bloomberg
Mayor

EXHIBIT B

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

PROCLAMATION OF ELECTION

As a result of the determination by the New York City Board of Elections on March 8, 2007 that Mathieu Eugene was the winner of the special election, held on February 20, 2007, to elect an interim Council Member for the fortieth Council District, and the letter to the City Clerk, dated March 8, 2007, by Mathieu Eugene stating that he will not take the oath of office to act as such Council Member, a vacancy has been created in the position of Council Member for the fortieth Council district. Accordingly, pursuant to the authority vested in me by Sections 25(b)(1) and 25(b)(6) of the New York City Charter, I hereby proclaim that a special election shall be held in the fortieth Council district on April 24, 2007 to elect an interim Council Member to serve until December 31, 2007. Pursuant to Section 25(b)(7) of the Charter, nomination of candidates in this election shall be by independent nominating petition. Subsequent to such election, pursuant to Section 25(b)(2) of the Charter, the seat for such district shall be filled for the remainder of the unexpired term by the person duly elected at the general election to be held in November 2007.

DATED: March 9, 2007

Michael R. Bloomberg
Mayor

EXHIBIT C

By Hand

U.S. Department of Justice

Civil Rights Division

OCT 18 1988

WBR:MAP:DOW:dvb:gvw
DJ 166-012-3
W5019-5020
W8531-8536

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

October 11, 1988

Eric Lane, Esq.
Executive Director/Counsel
New York City Charter Revision
Commission
11 Park Place
New York, New York 10007

Dear Mr. Lane:

This refers to the procedures for conducting the November 8, 1988, special election; and the proposed charter amendments which would establish procedures for the administration of a campaign finance reform system, a voter education program (including the publication of a voters' guide), a voter assistance program to facilitate voter registration and voting, and procedures for filling vacancies in the offices of city council president, borough president, comptroller, and vacancies on the city council for the City of New York in Bronx, Kings, and New York Counties, New York, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on August 12, 1988.

We understand that the change in the procedures for filling a vacancy in the office of city council president is dependent on a change being enacted in state law. Accordingly, the Attorney General will make no determination on this matter now. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.22(a) and 51.35). When such legislation is adopted, you should notify us of its passage so that we may proceed to review this charter amendment. Refer to File No. W8531 in any response to this matter so that your correspondence will be channeled properly.

The Attorney General does not interpose any objections to the other specified changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See also 28 C.F.R. 51.41.

In addition, certain provisions of the charter amendments are viewed as enabling legislation. Therefore, those changes affecting voting which are implemented as a result of the enabling provisions will be subject to the preclearance provisions of Section 5. Such changes include: rules and regulations adopted concerning the campaign finance reform system, the voters' guide, and voter assistance plans, and any discretionary setting of the date for a special election to fill a vacancy in a city office. See 28 C.F.R. 51.15.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

By:

Gerald W. Jones
Chief, Voting Section

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
FAX (212) 487–5349
www.vote.nyc.ny.us

March 30, 2009

Mr. Matthew Nelson
Senior Vice President of Sales
Election Systems and Software
11208 John Galt Boulevard
Omaha, NE 68137

Dear Mr. Nelson:

On behalf of the Commissioners of Elections in the City of New York, I am contacting you to communicate their interest in reviewing a "best and final" offer for new voting systems before they make a selection.

On March 16, 2009, Sequoia Voting Systems sent a letter to the Commissioners of Elections expressing an interest in presenting a "best and final" offer for its new voting system. The Commissioners of Elections recently voted to entertain such an offer and directed me to reach out to both vendors. As you know, the Commissioners will not select a new voting system until the State Board of Elections has completed the certification process. As such, the selection will in all likelihood not be made for several months. Accordingly, we will notify you of the deadline for submission of the "best and final" offer. The offer should be addressed to the President and Secretary of the Board.

Thank you again for continuing to work with the Board during its evaluation efforts as it prepares to implement a new voting system on behalf of the voters of the City of New York. Please do not hesitate to contact me if you ever have any questions or if I can be of any assistance.

With best wishes.

Sincerely,

Marcus Cederqvist
Executive Director

cc: Commissioners of Elections
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Lucille Grimaldi, Manager, Electronic Voting Systems

BOARD OF ELECTIONS
IN
THE CITY OF NEW YORK
EXECUTIVE OFFICE, 32 BROADWAY
NEW YORK, NY 10004–1609
(212) 487–5300
FAX (212) 487–5349
www.vote.nyc.ny.us

March 30, 2009

Mr. Peter McManemy
Vice President and Chief Financial Officer
Sequoia Voting Systems
717 17th Street, Suite 310
Denver, CO 80202

Dear Mr. McManemy:

On behalf of the Commissioners of Elections in the City of New York, thank you for your letter dated March 16, 2009 concerning Sequoia Voting Systems' interest in presenting a "best and final" offer for its new voting system.

The Commissioners of Elections have directed me to respond to your letter and express their interest in reviewing such an offer. As you note in your letter, the Commissioners will not select a new voting system until the State Board of Elections has completed the certification process. As such, the selection will in all likelihood not be made for several months. Of course, consideration of such a "best and final" offer would have to be extended to both vendors. Accordingly, we will notify you of the deadline for submission of the "best and final" offer. The offer should be addressed to the President and Secretary of the Board.

Thank you again for your letter and for continuing to work with the Board during its evaluation efforts as it prepares to implement a new voting system on behalf of the voters of the City of New York. Please do not hesitate to contact me if you ever have any questions or if I can be of any assistance.

With best wishes.

Sincerely,

Marcus Cederqvist
Executive Director

cc: Commissioners of Elections
George González, Deputy Executive Director
Pamela Perkins, Administrative Manager
Steven H. Richman, General Counsel
Lucille Grimaldi, Manager, Electronic Voting Systems

Comm #5
F41

Steven H. Richman

From: Cathleen Rogers [cathyrogers41@gmail.com]
Sent: Tuesday, March 24, 2009 11:41 AM
To: Steven H. Richman; Sean Hennessey; William Scriber; Ruth Same; Tom Ferrarese
Subject: Fwd: Fw: Seeking Hamilton County Leadership and Support for Fiscal Responsibility: Save our Lever Voting System

---------- Forwarded message ----------
From: **Cathleen Rogers** <cathyrogers41@gmail.com>
Date: Tue, Mar 24, 2009 at 11:31 AM
Subject: Fwd: Fw: Seeking Hamilton County Leadership and Support for Fiscal Responsibility: Save our Lever Voting System
To: Stanley Zalen <szalen@elections.state.ny.us>, Doug Kellner <dkellner@elections.state.ny.us>, Todd Valentine <TVALENTINE@elections.state.ny.us>, Kim Galvin <KGALVIN@elections.state.ny.us>, ANNA SVIZZERO <ASVIZZERO@elections.state.ny.us>, emcdonough@rensco.com, kmih@co.ulster.ny.us, lbugbee@rensco.com, mnabozny@govt.co.columbia.ny.us, tburke@discovergreene.com, ttur@co.ulster.ny.us, Arthur Brassard <arthur.brassard@schenectadycounty.com>, Bill Fruci <wfruci@saratogacountyny.gov>, Brian Quail <brian.quail@schenectadycounty.com>, Carol Engelmann <cengelmann@discovergreene.com>, Carol Turney <sarboede@govt.co.saratoga.ny.us>, Cathleen Rogers <cathyrogers41@gmail.com>, Diane Wade <dwade@saratogacountyny.gov>, Donna English <DEnglish@co.washington.ny.us>, Hilary Hillman <hhillman@govt.co.columbia.ny.us>, Jeff Curtis <JCurtis@co.washington.ny.us>, "Joan M. Grainer" <jgrainer@co.montgomery.ny.us>, John Graziano <jgraziano@albanycounty.com>, Kathleen Anderson <sarboere@govt.co.saratoga.ny.us>, Lew Sanders <lsander3@nycap.rr.com>, Lewis Sanders <lew@sandersrealestateoffice.com>, Linda Coons <lcoons@co.fulton.ny.us>, Linda Madison <lmadison@co.fulton.ny.us>, Lyn May <lmay@co.montgomery.ny.us>, Marie Metzler <mmetzler@discovergreene.com>, Matthew Clyne <Matthew.Clyne@albanycounty.com>

The following letter was addressed to the Hamilton County Board of Supervisors. In keeping with the Federal Mandates/law can the SBOE help the county boards in responding to this letter if or when our Board of Supervisors approaches us on this?
Cathleen Rogers
Hamilton County

---------- Forwarded message ----------
From: **Cathleen Rogers** <CathleenRogers@frontiernet.net>
Date: Tue, Mar 24, 2009 at 11:21 AM
Subject: Fw: Seeking Hamilton County Leadership and Support for Fiscal Responsibility: Save our Lever Voting System
To: cathyrogers41@gmail.com

----- Original Message -----
From: Andi Novick
To: hamcosup@frontiernet.net ; frank.mezzano@gmail.com ; bobnlin@frontiernet.net ; inletsupervisor@eagle-

wireless.com ; ilsuper@hotmail.com ; epincombe@frontiernet.net ; wesayso@full-moon.com ; llsuper@telenet.net ; rick@townofarietta.com ; elections@hamiltoncountyny.gov
Sent: Tuesday, March 17, 2009 10:28 AM
Subject: Seeking Hamilton County Leadership and Support for Fiscal Responsibility: Save our Lever Voting System

Attached please find a letter documenting relevant information regarding the unaffordable and skyrocketing costs to our counties if the State replaces its lever voting system with an optical scanner system. These costs will **not be** covered by the HAVA funds. I am respectfully urging that you consider joining other counties in passing resolutions to retain our affordable and secure lever voting system and join in litigation which will permit us to do so. Having augmented our lever voting system with accessible ballot marking devices, we have satisfied the requirements of HAVA. At this time of ballooning deficits and the prospect of cuts in essential services, it is irresponsible for the State to burden counties with extraordinary costs, that will increase annually, for a new voting system that is unnecessary and undesirable.

Thank you for your attention. Please call with any questions or to discuss further.

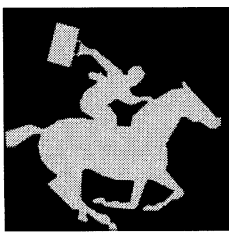
Andrea T. Novick, Esq.
Finder Novick Kerrigan LLP
Rhinebeck office
349 Ackert Hook Rd.
Rhinebeck, New York 12572
(telephone fax) 845 876 2359

Andi Novick, Esq.
Founder and Legal Counsel

Joanne Lukacher
Executive Director

Susan Greenhalgh
Communications Director

Howard Stanislevic
Director of Voter Education



Re-Media

Election Transparency Coalition

P.O. Box 113, Staatsburg, NY 12580
Phone: (845) 876-2359 (845) 337-4855
Email: Joanne@re-mediaetc.org
http://re-mediaetc.blogspot.com

March 17, 2009

Re: Seeking County Leadership and Support for Fiscal Responsibility: Save our Lever Voting System

Dear Messrs Farber, Mezzano and the Board of Supervisors,

I am writing to urge you to consider joining the growing movement of counties who recognize transitioning to a budget-breaking computerized electoral system at this time of economic crisis is not in the best interests of the public. The counties of Dutchess, Ulster, Columbia, Schuyler as well as the Association of Towns have all passed resolutions in support of staying on our lever voting machines.[1] Now that we have ballot marking devices (BMDs) in every poll site, our combined lever/BMD system is HAVA-compliant.[2] The problem is ERMA, which requires the replacement of our levers; not HAVA.

New York's counties have been left holding the bag for what is now recognized as HAVA's unfunded mandate. Across the nation, counties are finding the excessive costs associated with computerized elections unaffordable.[3] As documented in the endnotes herein, counties are at the mercy of vendors who exploit the counties' dependence, forcing them to keep up with extortionate prices.[4] These increased costs are not covered by the HAVA funds. County legislatures are 'somehow' expected to find the money, notwithstanding the deficits throughout the State and the country. No elected representative should have to choose between cutting essential services just to finance a complex and costly voting system we don't need and don't want.

Even if we weren't in this financial crisis, abandoning a functioning reliable system for substandard machines that will cause the cost of elections to skyrocket, is irresponsible. "Voting system vendors are taking billions of tax-payer dollars and, in return, giving us inaccurate, inaccessible, unauditable, unreliable voting equipment that counts our votes in secret."[5]

Please consider the evidence and these compelling reasons for staying with our now HAVA-compliant lever voting system. The excessive costs and associated headaches of conducting a full optical scan election[6] pale in comparison to the existing problems of having to prepare both the lever machines and BMDs for elections. Counties can work towards better performance of their BMDs for citizens with special needs, but the concomitant nightmares that have been the experience of the nation using software systems should be contained to the number who need the software to *create* ballots and not be compounded by actually using that software to *count* ballots. Unlike our lever machines, software-based machines are so deficient and unreliable they require a second count of ballots after the election is over.[7] That's a dual system: a machine count on election night and hand counts for weeks (months?) thereafter.

Conversion to a software-based counting system is a bottomless hole sucking up taxpayers' dollars:

a) The expense of computerized voting systems are exorbitant and will increase annually, with legislators dependant on the vendors' whims.[8] We have none of this uncertainty with our lever machines that have allowed us to control our budgets in a manageable and affordable manner.

b) Certification is a deception and is forever. The State seeks to certify these voting systems as if that will make them safe for use, but the entire scientific community agrees certified software can be undetectably hacked just as well as an uncertified system.[9] Like every good Ponzi scheme, this one requires the constant infusion of millions towards the never ending cycle of recertification every few years, all in pursuit of an unattainable illusion of a more secure system.[10]

c) Because certified software-based systems are in fact unsafe and vulnerable to undetectable exploitation, they necessitate extensive hand counting in an effort to verify the unreliable machine count. ERMA requires that the counties commence hand counting an increasingly large number of ballots after the election is over; another unquantified and ceiling-less expense for taxpayers. There is a potential for a 100% hand count in any election.[11]

The State Board of Elections (SBoE) was only supposed to approve a software-based system if it could certify it as safe. Not only has it been proven that from a security and reliability perspective this is "not possible",[12] but we also know the equipment being sold is shoddily made.[13] SBoE Commissioner Kellner has said, "[T]he voting industry sells crap. And that's the problem." [14] SBoE Commissioner Peterson has repeatedly spoken in favor of our lever machines, noting the obvious, "If you have something that works and something that doesn't work, I vote for the thing that works."[15]

And yet the State to date has ignored the evidence, proceeding down a path that will harm democracy and add to our rising deficits. Rational leadership is needed at this critical moment, which is what we are looking to our local governments to provide. If the State won't repeal ERMA, county governments, county boards of election and citizens can together commence litigation seeking to declare ERMA unconstitutional.[16] A finding of unconstitutionality on any of the myriad grounds described in the litigation synopsis referenced at endnote 16 would render the State's agreement to comply with ERMA in the Federal action null and void.[17]

Please feel free to contact me with any questions. I hope you will consider your county's passing a resolution and participating in the litigation.

Sincerely,

Andrea T. Novick, Esq.

Founder and legal counsel to The **Re-Media Election Transparency Coalition,** http://www.re-mediaetc.org/, on behalf of the more than 1,800 New Yorkers to date who have signed this petition, http://electiondefensealliance.org/save_ny_levers, and the growing coalition of organizations, who have joined with their counties and towns to save our lever voting system.

cc: Commissioner Rogers
Commissioner Peck

1.With the exception of a lone vote in Columbia, these resolutions were passed unanimously by these counties: http://sites.google.com/site/remediaetc/home/documents/DutchessLeverRes.pdf, http://sites.google.com/site/remediaetc/home/documents/ColumbiaCtyLeverResoFeb12_09.pdf, http://sites.google.com/site/remediaetc/home/documents/UlsterReso.pdf, http://sites.google.com/site/remediaetc/home/documents/AoTLeverResolution.pdf, Schulyer County's resolution was unanimously passed on March 9, 2009

2. **HAVA** Section 301(a)(1)(A) expressly **states** that so long as: "the voting system (**including any lever voting system**, optical scanning voting system, or direct recording electronic system) shall..." comply with five federal standards, the system is HAVA-compliant. (Emphasis supplied)

As SBoE Commissioner Kellner testified to the NYC Voter Assistance Commission on December 7, 2004:

"The federal Help America Vote Act. "sets minimum standards for voting machines. **Our lever machines satisfy all but one of those standards, that there be at least one machine at each poll site that is 'accessible for individuals with disabilities."**

See also, **New York's Voting System Satisfies and Surpasses HAVA,** http://sites.google.com/site/remediaetc/home/documents/EACAdvisoryShouldbeRevoked.pdf , *See also* ***Discredited federal E-voting oversight commission issued an incorrect 2005 'legal advisory' helping to keep NY on a collision course with democracy,*** http://www.bradblog.com/?p=6956,

3.***Counties Struggle on Election Costs:***
"Elections have gotten very complex and federal and state legislation . . . keeps driving the cost of elections up," Larimer County Scott Doyle said. The vast majority of those costs are paid by county taxpayers. **Given the current economic pressures, "I don't know that counties can continue to bear the weight,"** Doyle said. (emphasis supplied)
http://www.rockymountainnews.com/news/2009/jan/24/counties-struggle-on-election-costs/

State and County Elections Offices Struggle with Economic Crisis,
http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Reports/ElectionlineReports/electionlineWeekly02.19.09.pdf

Vendors are Undermining the Structure of U.S. Elections,
http://www.votersunite.org/info/ReclaimElections.pdf:

"Webster County, Iowa.
On-going fees charged by ES&S have doubled the cost of elections. In 2005, the county budgeted $49,000 for elections, but in 2007 **the cost skyrocketed** to $110,700 for only 29 precincts and 25,300 registered voters. According to County Auditor Carol Messerly **the increase was primarily because of the maintenance contracts for the new optical scanners and ballot-marking devices. At this point, the county saw no realistic alternative to paying the exorbitant costs of maintenance since they had already bought the system."**

Finding themselves at the mercy of the vendor, county election officials' expressed their **sticker shock**, referring to the cost for a one year service warranty contract:

"It just about blew our minds away," said Alice Nicolia, director of the [Fairfield] county Board of Elections.

"We just do not have the money," said Janie DePinto, elections board director. Holmes County officials, too, were in shock.

"This completely blind-sided the county," said Ray Feikert, a Holmes County commissioner in northeastern Ohio. **"It's kind of a back-door expense that no one saw coming."**

Steven Harsman, president of the Ohio Association of Election Officials and director of the Montgomery County Board of Elections, understood the difficulty of running an election on new, complicated, unfamiliar electronic equipment. He pointed out how Diebold now **had the counties over a barrel:**

"The irony is that the small counties will have a bigger need for these contracts, but they won't have the money to pay for them," Harsman said. "Elections boards are going to county commissioners, and commissioners are kicking and screaming. It's not a pretty situation at all. But when the dust settles, a high percentage of counties are going to need this, and county commissioners are going to have to find the funding."

See also the various studies below, attempting to calculate the increased expenses related to software-based elections, all of which demonstrate the extraordinary expenses of software-based electoral systems and their limited life span. **Optical scanners estimated to last 15 years (or be replaced even sooner if federal certification process renders existing machines obsolete). Contrast this to lever machines which are so well built if properly maintained they will last another century.**

In addition to the ever-increasing operating and maintenance costs as software technology's defects and weaknesses are continuously revealed, the inability of software-based technologies to accurately or securely count votes requires the additional and exorbitant administrative expense to hand count ballots just to try to determine if there was any basis for the unknowable and vulnerable software-based tallies. **Contrast this with transparent, immutable lever voting machines which can reliably demonstrate the accuracy of their count without having to undertake extensive weeks of hand counting.**

Invisible vote counting machines put our democracy at risk as well as our ability to pay the tax-guzzling costs experienced throughout the nation.

The Cost of Automating Elections, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1150267, *Onondaga Cost Report*, http://www.nyvv.org/newdoc/county/OnondagaCostRpt041907.pdf, *NYVV Cost Reports,* http://www.nyvv.org/newdoc/county/CmtsOnondagaCostRpt.pdf, *Florida Election Cost Study*, http://www.votersunite.org/info/FloridaElectionCostStudy12 01 05.pdf, *Suffolk County's Overview of Cost Factors Associated with Electronic Voting Machines*, http://www.co.suffolk.ny.us/legis/bro/Reports/2006/Voting%20Machines.pdf

4. ***What New York Election Commissioners have to look forward to if Computerized Voting Systems are Permitted to Replace our Existing Lever Voting System,*** *at*

http://sites.google.com/site/remediaetc/home/documents/Election_Problems_Counties_Across_Nationfor_ECs_NY.pdf:

- Illinois Commissioner of Elections in Cook County, citing tabulation problems by the Sequoia's optical scanners and DREs in the 2006 election said: "**The administration of this election was a train wreck**." Sequoia officials insisted however that the system "performed very well, overall."

- Texas election programmer William Singer wrote the Secretary of State's office after the 2004 vote to report that ES&S pressured officials to install unapproved software during the presidential primaries. **"What I was expected to do in order to 'pull off' an election ...was far beyond the kind of practices that I believe should be standard and accepted in the election industry."**

- California's Secretary of State's 2007 Top to Bottom Review of the voting computers in the state revealed that **Sequoia's voting system could be subverted without "leaving any evidence that the security of the system had been compromised.... Sequoia's security hardening consisted in large part of a customer relations campaign to allay fears that tampering would be a problem."**

"[A] 2007 Electoral Commission Report produced in response to the problems with the Dominion optical scanner used in Britain last year for the first time.**Dominion is new to the field, but as the report reveals, the myriad of breakdowns and computer problems experienced by election officials in Britain are not at all new**. As the annexed newspaper account describes, **the elections "ended in chaos as the electronic votes were chucked out following a catalogue or errors and the whole thing was recounted by hand, delaying results by several days."** The article went on to state that, "The list of things that went wrong is far too extensive to repeat here, but if you want an example of how not to manage an IT project, look no further than the link at the end of this story."

Thus the new computerized system planned for New York will produce unknowable results which will then be checked after election night by counting paper. New York has a lever voting system that does not rely on paper ballots to prove the accuracy of its elections and that gets the job done on election night. How can we surrender a functioning time-tested, reliable voting system to one so inferior, unreliable and far costlier?

See also Vendors are Undermining the Structure of U.S. Elections,
http://www.votersunite.org/info/ReclaimElections.pdf

5. ***Federal Vote-Counting Accuracy Mandate Is Ignored: Violations abound, but no federal action is taken*** http://www.votersunite.org/info/AccuracyIgnored.asp

6. See endnote 3

7. ERMA, EL-9-211

8. Indeed just last week New York's county election commissioners got a taste of things to come as the vendors tried to induce them with a 'pig in a poke' offer, threatening immediate increases, as if such increases aren't going to be relentless **State Board to Counties: Buy new equipment**

fast or face price increases!, Feb. 26, 2009
http://wheresthepaper.org/BuyFastOrFacePriceIncreasesFeb26_09.pdf

9. The National Institute of Standards and Technology **(NIST), the very experts who advise the Federal government** on the writing of the certification standards to which New York is trying to adhere, **have rejected the notion that certified systems could be secure**, finding that:

"[T]esting to high degrees of **security and reliability** is from a practical perspective **not possible.**"

Requiring Software Independence in VVSG 2007: STS Recommendations for the TGDC, 11/06, http://vote.nist.gov/DraftWhitePaperOnSIinVVSG2007-20061120.pdf (emphasis supplied)

In addition to the NIST report, over three dozen independent computer scientist reports, http://sites.google.com/site/remediaetc/home/documents/Scientific_Studies_7_20_08.pdf, **have proven this software can be undetectably manipulated such that if the system was compromised, "The canvass procedure would not detect any anomalies, and would just produce incorrect results."** California Voting Systems Technology Assessment Advisory Board Security Analysis of the Diebold AccuBasic Interpreter, 2/06, commissioned by California's SoS, Debra Bowen:
http://ss.ca.gov/elections/voting_systems/security_analysis_of_the_diebold_accubasic_interpreter.pdf

10. Like every Ponzi scheme, this one requires the ongoing infusion of millions of dollars to maintain an illusion: in this case, that if only these machines could be "certified" -- and "re-certified" -- to the next unattainable yet inadequate set of standards, they will someday be reliable and safe enough to entrust with the counting of our votes.
See Voting machines as a Ponzi Scheme http://www.democracyfornewhampshire.com/node/view/3505

See also, Dr. Avi Rubin's Electronic Voting Security Blog, Aug. 7, 2007:

"**[Y]ou cannot certify an electronic voting machine the way you certify a lever machine.** Once the voting machine goes through a lengthy and expensive certification process, any change to the software requires that it be certified all over again. What if a vulnerability is discovered a week before an election? What about a month before the election, or a week after it passes certification? Now the point is that we absolutely expect that vulnerabilities will be discovered all the time. That would be the case even if the vendors had a clue about security." http://avi-rubin.blogspot.com/2007/08/secretary-bowens-clever-insight.html

See also, the Dan Rather Reports, http://www.hd.net/transcript.html?air_master_id=A4755:

"It all sounds familiar, too familiar. **Taxpayers being asked to throw out millions of dollars worth of voting equipment, start over again, and pick up the tab. With no guarantee the new equipment will provide a solution to the problems. Technology can often offer a solution to a complicated process, in this case, accurately recording votes. But technology poorly conceived, designed, integrated and tested is a recipe for failure. In this instance, subsidizing the same outfits that couldn't get it right the first time, giving them more chances could lead to the further waste of millions upon millions of taxpayer dollars. And just as important, the further loss of confidence in our nation's ability to use technology to provide solutions for mission-critical applications, none more important to our nation than**

accurately recording each of our votes.

11. Election Law 9-211

12. *See* endnote 9

13. *See* lists of thousands of software-based voting machines breakdowns as reported in the media at:
http://www.votersunite.org/electionproblems.asp?offset=0&sort=&selectstate=&selectvendor=&selectproblemtype

14. SBoE Commissioner and Co-chair Douglas Kellner, June 19, 2008 SBoE meeting

15. SBoE Commissioner Gregory Peterson, October 3, 2008 SBoE meeting ,
There's No Place Like Home: The State Board of Elections Struggles to do the Impossible when the Possible and Best Solution for Transparent, Safe, Reliable Elections is Right Here:
http://www.opednews.com/articles/There-s-No-Place-Like-Home-by-Rady-Ananda-081015-502.html

16. **In 2003 the Court of Appeals found the Governor had exceeded his constitutional authority in entering into an agreement authorizing casino gambling, thus resulting in the agreement's being null and void. *Saratoga v Pataki*, 100 NY2d 80. Similarly the State's agreement, entering into a timetable to implement ERMA in the Federal action commenced by the Department of Justice, would be null and void if ERMA was declared unconstitutional.**

This **litigation synopsis, prepared** by the Election Transparency Coalition, available at, http://sites.google.com/site/remediaetc/home/documents/LitigationSummaryfinal109.pdf , describes the various ways in which ERMA is unconstitutional. In particular, the Legislature exceeds its authority in precluding election commissioners, who are constitutional officers by virtue of NY Constitution, Art II, sec.8, from performing those duties integral to their office. For example, the ability to safeguard and control the conduct of elections by being able to observe and prevent error and fraud is impossible when software invisibly tabulates votes and election commissioners can no longer witness that the voting machines have been properly programmed.

17. In 2006 the Department of Justice sued New York State in order to enforce compliance with HAVA. The issue of how that compliance was best achieved was never litigated. The State had already enacted ERMA, requiring the replacement of the levers with software systems, and entered into a timetable for ERMA'a compliance, *U.S.A v New York State Board of Elections, et. al.*, Civil Action No. 06-CV-0263. The State never argued that augmenting our lever voting system with BMDs would also be HAVA-compliant since it was intent on implementing ERMA.

The State has not yet complied with its agreement to replace the levers, holding out for certification, which will *not* make the software safe to use and is *not* a requirement of HAVA. Since certification is only required by ERMA, the federal court doesn't care if the software is certified and can force the State's compliance with its agreement unless ERMA is declared unconstitutional in state court. As in *Saratoga v Pataki, supra,* where legislators and citizens successfully challenged the constitutionality of the Governor's agreement, rendering that agreement null and void, voters and their counties can prevent the State's agreement to replace the levers by having ERMA declared unconstitutional.

FOR IMMEDIATE RELEASE: March 19, 2009

SCHUMER PUSHES FOR FULL FUNDING FOR VOTING RIGHTS LEGISLATION

Schumer Asks Senate Budget Committee To Fully Fund Federal Mandates on States for Better Voter Lists, New Voting Systems and Poll Worker Training

Washington, D.C. – U.S. Senator Charles E. Schumer, Chairman of the Senate Rules Committee, has asked the Senate Budget Committee for $470 million in previously allocated funds to help states pay for the new statewide voter lists and better voting machines they are mandated to provide under the 2002 Help America Vote Act (HAVA).

"Congress has passed legislation to make elections better and fairer, and it authorized money for states to carry it out," said Schumer. "The states need help to meet the standards set up by HAVA so their local election officials can fully comply with the law."

Since passage of HAVA, the election assistance programs that support the states' efforts have been underfunded by $470 million, leaving local officials struggling to pay for the unfunded federal mandates.

"It is the responsibility of Congress to help ensure that the final results of federal elections are accurate, reliable, secure, and transparent. Problems brought about by insufficient funding of election reform initiatives may undermine public confidence in elections," Schumer wrote in his March 18th letter to the Budget Committee.

The shortfall in money for state election officials occurred in fiscal years 2005-2007, when the Republican-led Congress completely eliminated the funding. HAVA was funded at $1.5 billion annually in fiscal years 2003 and 2004, to launch the program, and again in fiscal year 2008 at $115 million and in fiscal year 2009 at $100 million to assist states with implementation.

Schumer noted that the 2008 federal elections for President and Congress were unprecedented in the number of voter registration problems that disenfranchised millions of eligible voters nationwide, and that the Rules Committee may seek funding also for future election reform legislation.

On March 11, Schumer chaired a Senate Rules Committee

hearing, "Voter Registration: Assessing the Problems." It featured groundbreaking new reports of voter registration problems that resulted in up to 7 million people not casting their ballots in the 2008 Presidential election.

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U. S. ELECTION ASSISTANCE COMMISSION
VOTING SYSTEM TESTING AND CERTIFICATION PROGRAM
1225 New York Avenue, NW, Suite 1100
Washington, DC. 20005

March 5, 2009

Mr. Mark Phillips
Vice President of Compliance Services
SysTest Labs, Incorporated
216 16th Street, Suite 700
Denver, CO 80202-5115

RE: Accreditation Renewal

In consideration of the recent NVLAP reinstatement of SysTest Labs, Incorporated's (SysTest) accreditation (attached) and the U.S. Election Assistance Commission's (EAC) acceptance and verification of SysTest's certification of Remediation Plan Completion (attached) in accordance with Section 5.5.2.4 of the *Laboratory Accreditation Program Manual*, the EAC hereby lifts the suspension of SysTest's Voting System Test Laboratory accreditation under the conditions noted below.

- SysTest provide the EAC with monthly updates on the status of ongoing documentation updates related to laboratory SOPs and Test Methods. This update should be sent to the attention of the undersigned no later than the 28th day of each month via email or any other format agreed to by SysTest and the EAC until further notice.

- For the first test engagement entered into by SysTest after the date of this letter, provide the EAC with detailed timeline for all testing to be conducted. Testing during this first engagement will be observed by representatives of the EAC pursuant to Section 4.7 of the *Manual*.

The EAC congratulates SysTest on the great strides you have taken over the past four months to develop documents, procedures and training programs to enable your lab to most efficiently and effectively serve your customers and ultimately, the voters of the United States.

Sincerely,

Brian J. Hancock, Director
Testing and Certification Program

Attachment: 02/26/09 NVLAP Correspondence, SysTest correspondence of 12/16/08 and 03/04/09

UNITED STATES DEPARTMENT OF COMMERCE
National Institute of Standards and Technology
Gaithersburg, Maryland 20899

February 26, 2009

Mark Phillips
Vice President of Compliance Services
SysTest Labs, Incorporated
216 16th Street, Suite 700
Denver, CO 80202-5115

NVLAP Lab Code 200733-0

Dear Mr. Phillips,

On behalf of the National Voluntary Laboratory Accreditation Program (NVLAP), I write to notify you of NVLAP's decision to reinstate SysTest Labs Incorporated's accreditation in the NVLAP electronic voting systems testing program. The reinstatement is effective on the date of this letter.

In a letter to you dated October 28, 2008, NVLAP suspended the accreditation of SysTest Labs for voting systems testing. This suspension was made pursuant to NIST Handbook 150, *NVLAP Procedures and General Requirements*, 2006 Edition, section 3.10. The suspension was based on nonconformities that had been sited from the last NVLAP on-site assessment visit in March 2008, findings from the Election Assistance Commission (EAC), and observations made during an October 2008 monitoring visit. These issues and findings were documented in the October 28th letter (enclosed).

After receiving the suspension letter, SysTest provided materials to NVLAP which focused on procedures and documentation in response to:

1) SysTest's lack of properly documented and validated test methods.

2) Testing being conducted by unqualified or untrained personnel.

3) Improper assurances made to manufacturers regarding testing outcomes.

SysTest Labs received a second monitoring visit by NVLAP on February 18th, 19th, and 20th, 2009, to assess the results of changes implemented and documented since the suspension letter. The visiting team consisted of two members of NVLAP and three from the EAC. The team interviewed SysTest employees involved in voting systems testing, assessed new and existing documentation, and witnessed testing.

As a result of this visit NVLAP found the following, which are numbered in relation to the above issues:

1) SysTest was able to show documented test methods and validations that comply with the voting standards. Specifically, SysTest was able to show the documentation of test modules that are used together to comprise a testing campaign and a process for validating said modules. The assessment team witnessed the performance of testing, recording of results, and reviewed the process flow and documentation.

2) SysTest has made changes in its personnel that have resulted in a more competent testing team and was able to show evidence of new training and its effectiveness. Training courses and quizzes have been developed to document the competency of those involved in testing.

3) SysTest was able to show that personnel had undergone training on professional ethics and signed a document attesting to the fact that they were aware of the factors involved in ethical behavior and the consequences that could ensue if a breach of ethics occurred. Although no direct breach of ethics had been alleged, NVLAP had been concerned about the appearance of unethical communications with lab customers.

SysTest was able to demonstrate through documentation and observations that they have corrected the nonconformities that lead to their suspension. NVLAP understands that SysTest has undergone some major changes in documentation and personnel and feels that the current team has done a great deal of work to reinvent some of the processes involved in the NVLAP accredited testing. SysTest has been successful in demonstrating their competency and NVLAP believes that the current technical and management team has ownership in the new processes and will work with NVLAP to ensure continued compliance.

Sincerely,

Jon Crickenberger

Jon Crickenberger
NIST/NVLAP Program Manager

Enclosure

Cc: Brian Hancock, Election Assistance Commission

SysTest

labs®

December 16, 2008

Brian Hancock
Director of Voting System Testing and Certification
U.S. Election Assistance Commission
1225 New York Avenue, NW, Ste. 1100
Washington, DC 20005

cc: Jon M. Crickenberger
NIST/NVLAP Program Manager
National Institute of Standards and Technology
100 Bureau Drive, Stop 2140
Gaithersburg, MD 20899

Re: Certification of Remediation Plan Completion

Dear Mr. Hancock,

In accordance with section 5.5.2.1.5 of the VSTL Program Manual, SysTest Labs certifies our timely completion of the plan to remediate non-conformance items approved by your office on November 19, 2008. SysTest has provided NVLAP the following items in accordance with the schedule as originally stipulated in our approved plan: a complete set of revised procedures for test method development and validation, revised documentation control procedures, complete and fully developed test methods mapped to federal voting standards, curricula for training of staff in these methods and documentation that specifically addresses the control of statements to clients regarding testing outcomes. We have provided weekly updates regarding our progress, sample documentation as it became available and have conducted review calls to update EAC and NVLAP regarding progress during this period.

According to NVLAP's decision, an on-site visit must be conducted to finalize the review of the documentation that has been provided and to witness testing and interview personnel. We hereby request that EAC and NVLAP timely notify SysTest Labs when this monitoring visit will be conducted so that identified non-conformance correction can be verified.

Yours Sincerely,

Mark Phillips
Vice President, Compliance Services

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www.systest.com

SysTest

labs®

March 4, 2009

Brian Hancock
Director of Voting System Testing and Certification
U.S. Election Assistance Commission
1225 New York Avenue, NW, Ste. 1100
Washington, DC 20005

cc: Jon M. Crickenberger
NIST/NVLAP Program Manager
National Institute of Standards and Technology
100 Bureau Drive, Stop 2140
Gaithersburg, MD 20899

Re: EAC Notice of Compliance to SysTest

Dear Mr. Hancock,

In accordance with section 5.5.2.1.5 of the VSTL Program Manual, SysTest Labs certifies that our remediation of non-conformance items is complete. Also, please note that on February 26, 2009 the National Voluntary Laboratory Accreditation Program (NVLAP) notifed SysTest Labs of their decision to reinstate our accreditation in the NVLAP electronic voting systems testing program.

Yours Sincerely,

Traci Mapps
VSTL, Director of Operations

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