

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 06-CV-0263
	:	(GLS)
NEW YORK STATE BOARD OF ELECTIONS;	:	
PETER KOSINSKI and STANLEY L. ZALEN,	:	<b>DECLARATION OF</b>
Co-Executive Directors of the New York State Board	:	<b>RICHARD D. DADEY, JR.</b>
of Elections, in their official capacities; and STATE	:	
OF NEW YORK,	:	
	:	
Defendants.	:	

Pursuant to 28 U.S.C. § 1746, Richard D. Dadey, Jr. declares as follows:

1. Since January 2004, I have been the Executive Director of both Citizens Union of the City of New York (“CU”) and Citizens Union Foundation of the City of New York (“CUF”). I respectfully submit this declaration in support of CU and CUF’s motion for leave to appear as *amici curiae* in this proceeding.
2. CUF is a nonprofit research, education, and advocacy organization affiliated with CU, which has been involved in political reform for over 100 years. Working together, both organizations have been at the forefront of promoting and ensuring the effective practice of local democracy. CU and CUF inform and engage the citizens of New York to ensure local and state governments value their citizens, address critical issues, and operate in a fair, open, and fiscally sound manner.<sup>1</sup>
3. Historically, both organizations have been instrumental in achieving significant election reforms in New York, with CU’s efforts dating back to the late nineteenth century.

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<sup>1</sup> Believing an informed citizenry is the cornerstone of good government, CUF publishes GothamGazette.com, a daily news website covering the policies and issues facing New York. GothamGazette.com includes a permanent section devoted to voting issues and voting rights.

4. As Executive Director of CUF and CU, I have overseen their efforts to improve voting standards in New York and specifically to help New York State comply with the Help America to Vote Act (“HAVA”). These efforts have included CUF testifying, by invitation, at several public hearings in New York City on draft regulations governing the procedures and guidelines that the New York State and the New York City Boards of Elections would have to follow to test, select, and purchase the voting machine systems HAVA requires:
- On September 23, 2005, CUF testified before the City Council of the City of New York regarding the Citywide 2005 primary election and the City’s steps to comply with HAVA and to improve poll worker recruiting and training. CUF testified that the City must select a voting machine system that is easy to operate, secure, and accessible to all voters; that poll workers and interpreters (mandated under the Voting Rights Act) need to be well informed, sufficiently trained in the operation of the new machines, and able to assist voters; that sufficient funding and resources must be provided to the Board of Elections during the transition to HAVA compliance, and that there must be an extensive public education campaign to inform New Yorkers of the significant changes to the voting process brought about by HAVA.
  - On December 13, 2005, CUF testified at an Elections Budget Implementation Hearing of the New York State Assembly Standing Committee on Election Law regarding State funding for HAVA compliance, the process for counties to select new voting machine systems, and the importance of recruiting and training poll workers.
  - On December 20, 2005, CUF testified before the New York State Board of Elections on recommendations for the new voting machine system standards that will control voting machine system certification, and the importance of requiring voting machine system vendors to play a role in educating the public about the new voting machine systems.
  - On February 27, 2006, CUF testified before the City Council of the City of New York regarding HAVA compliance in New York City; replacing lever machines (under §§101-106 of HAVA); and recruiting and training poll workers. CUF highlighted that the New York City Board of Elections must recruit and train over 30,000 poll workers and educate New York City’s 4.3 million registered voters regarding the changes to the voting process that HAVA will bring.

5. CUF has met with the State Board of Elections, the New York City Board of Elections, the Mayor's Election Modernization Taskforce, and the Voter's Assistance Commission in the City. CUF's other election reform efforts include revising the current affidavit ballot format, preparing a report on Election Day voter registration, and attending weekly Commissioner's meetings of the New York City Board of Elections. Additionally, CUF has recruited over 5,000 nonpartisan citizens in the past few years to serve as independent Election Day workers.<sup>2</sup>
6. CU has also met with many members of the State Legislature, including Assemblyman Keith Wright (the Chair of Committee on Election Law) and members of Governor Pataki's administration. From 2003 to 2005, CU pressed for legislation that would implement the State's compliance with HAVA, resulting in the passage of several bills (A.8969/S.5877, A.6733/S.3604, A.8931/S.5822, and A.6655/S.3517) that were signed into law by Governor Pataki. As part of its effort to see this legislation enacted, CU lobbied members of the State Legislature, issued position statements on the various components of the legislation being considered, met with key legislative staff members and attended many of the conference committee meetings held between the Senate and the Assembly to resolve the differences in the legislation.
7. CUF and CU have reviewed the State Board of Election's Compliance Plan (the "Plan") submitted to the Court on April 10, 2006. Although CUF and CU have been strenuously advocating for years that New York State become HAVA compliant, because New York will be holding elections in just a few short months, CUF and CU are constrained to conclude that the Plan's partial efforts at HAVA compliance in 2006 are not only significantly flawed, but may also result in the potentially wasteful expenditure of large amounts of public funds and resources. Separately, the Plan simply fails to supply any detail surrounding the testing, selection, certification, or rollout of the crucial HAVA-compliant voting machine systems in 2007.
8. There are two parts to the Plan. The first part focuses on the deployment of "ballot marking machines" in 2006, and the second part focuses on the deployment of "new voting machine systems" in 2007. As a matter of definition, ballot marking machines are complicated computer-controlled machines that allow a disabled voter to create a marked paper ballot. Ballot marking machines do not count ballots.

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<sup>2</sup> Subsequently, CUF issued reports assessing the poll worker recruitment and training provided by the New York City Board of Elections. These reports have been instructive in providing the New York City Board with substantive analysis and suggestions to improve the current poll worker program and Election Day operations.

9. The New York City Board of Elections has prepared a “draft plan” (attached as Exhibit “A”) describing in thoughtful detail the daunting hurdles that New York City faces in rolling out — even in a very limited way — ballot marking machines in time for the looming September 12 primary elections. The views of the NYC Board of Elections are entitled to special weight because NYC is home to approximately 38% of New York State’s voters. The NYC Board of Elections concludes (Ex. A at 1) that it can only install ballot marking machines at 20-30 poll sites in time for the September elections:

With it now being little more than five months before the September 12, 2006 primary elections, it is impossible for the City Board to conduct a citywide or extensive implementation of any new voting device, including only ballot marking devices accessible to the disabled. Importantly, the City Board has determined that it can only conduct a very limited implementation of ballot-marking devices at approximately 20 to 30 poll sites this close to the 2006 elections.

The City faces unique issues that complicate the process for running elections and introducing new voting devices. These include: the very large number of candidates and races that appear on the City’s ballots; the location of the vast majority of poll sites in public facilities that may not have necessary electronic or spatial resources; the need to comply with minority language requirements; the difficulty of retraining more than 30,000 poll workers; and the need to educate more than 4.3 million registered voters on any substantial voting change. In view of these issues, the introduction in a City election of any new voting devices under an incredibly limited timetable raises an extraordinary level of concern that the City Board have total control and flexibility to run an orderly election and protect the franchise. The City Board must not be asked to undertake a plan that will result in the electoral equivalent of a “train wreck.” *Id. at 1-2.*

10. As the City Board of Elections bluntly notes, to attempt any wider deployment of ballot marking machines risks widespread voter disenfranchisement:

[A]t this very late date before the 2006 elections, the City Board can responsibly conduct only a limited implementation of accessible ballot-marking devices as

outlined in this draft plan. A more extensive deployment risks a chaotic implementation of voting devices at the poll sites and possible widespread voter disenfranchisement. *Id. at 9.*

11. Furthermore, the NYC Board of Elections concludes that even a limited rollout of ballot marking machines imposes very heavy burdens:

More significantly, even a limited implementation of these ballot-marking devices involves a number of tasks whose scope does not diminish with a decrease in the number of devices purchased. For example, regardless of the number of devices the City Board purchases and implements, it will still need to receive and test the system; integrate the new systems with the existing Board systems, provide compliance with minority language requirements; survey poll sites to determine if they are suitable for the device; develop internal procedures; develop training programs and materials; and educate the public. *Id. at 5-6.*<sup>3</sup>

12. The NYC Board of Elections has already begun testing two of the ballot marking machines that the State Board of Elections is considering. After noting that “both of these devices are relatively new on the market and have very limited track records in elections,” (*Id. at 6*), the NYC Board of Elections reports significant concerns with both ballot marking machines. For example, with respect to the “IVS” ballot marking machine, the NYC Board of Elections reported:

Nevertheless, the City Board has developed initial understandings of the functioning of the system and has significant concerns regarding its usability by members of the disabled community that have limited physical ability (there is no pneumatic interface), the quality of the audio interface over the telephone, and its suitability in the vast majority of the poll sites that are in public

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<sup>3</sup> The Plan, on page 2, provides for the certification of the ballot marking machines to happen privately — without the opportunity for public comment. This is particularly troubling to CUF and CU because we, and likely other members of the public, will wish to comment on the certification guidelines for the ballot marking machines. In addition, based on CUF and CU’s experience, the abbreviated schedule on pages 4-7 of the Plan, setting forth the timeline to prepare poll workers and the public by the September 2006 election is not practical.

facilities without telephone access, such as school gymnasiums. *Id. at 6.*

13. Moreover, the NYC Board of Elections reports that it lacks reliable data showing even where to install the ballot marking machines so as to help the maximum possible number of disabled voters:

The demographers at the City's Department of City Planning have explained, however, that this census data is not an accurate measure of disabled voters who are registered to vote and able to go to a poll site. . . . The City Board does not have any other data that indicates the number of disabled voters who may appear at a poll site. Accordingly, the City Board will use this census data as a very rough reference point to identify additional poll sites that may have a high concentration of disabled voters, but cannot rely primarily on such data. *Id. at 8.*

14. Finally, the NYC Board of Elections also raises the alarming possibility that these ballot marking machines may be used only this year:

Indeed, it is possible that any devices bought this year may be used only once because when the State Board finally provides a selection of certified HAVA-compliant voting systems, some of these systems may allow disabled voters to use the same equipment as other voters instead of separate ballot marking devices. *Id. at 2.*

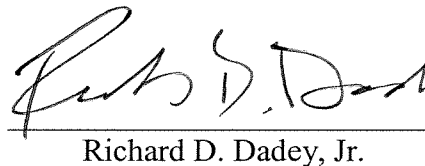
15. Indeed, there are additional reasons why the ballot marking machines may be used only this year. The NYC Board of Elections raised the specter that in 2007 the NYS Board of Elections may purchase voting machine systems incorporating ballot marking machines, rendering the ballot marking machines purchased in 2006 superfluous. In addition, the NYS Board of Elections may also purchase voting machine systems that can link with, but that do not incorporate, ballot marking functions. But not all voting machine systems can link with all ballot marking functions, and if the NYS Board of Elections ultimately decides to purchase an incompatible voting machine system, the ballot marking machines purchased this year will be useless.
16. The potential waste of public funds and resources from what the City Board of Elections has termed, "this temporary and piecemeal implementation for the 2006 elections" (*Id. at 2*) can be dramatic. The current bids submitted from ballot marking machine manufacturers range

from \$3,600 to \$5,410 per machine. For the IVS vote-by-phone system, there is a minimum of \$25,000 per county and an additional \$500 per election district. These prices do not include the cost of supporting software, supporting hardware, maintenance fees, training, and other costs of operation. Beyond this potential waste of public funds is the potential waste of public resources, described above, resulting from undertaking this temporary and piecemeal implementation. As the City Board of Elections tersely observed, it “will need to divert resources that would otherwise be focused on the full roll-out of the new system next year.” (*Id. at 2*)

17. Additionally, because the ballots created on the ballot marking machines have a distinctive ballot “face” and distinctive machine markings, election officials will know exactly how a portion of the disabled community voted. This will effectively deny these voters their right to a private vote.
18. The Plan also fails to supply any detail surrounding the testing, selection, certification, or rollout of the crucial HAVA-compliant voting machine systems in 2007. Indeed, as the Plan reports, the NYS Board of Elections has not even completed the first step in the process, which consists of adopting the necessary amendments to its rules and regulations on voting system standards. Significantly, all the Plan says is that “it is anticipated” that the NYS Board of Elections will consider relevant amendments at its next meeting. In my opinion, a “plan” like this one, which does nothing more than recite that voting systems standards regulations must be adopted, after which there will be certification testing (according to a test plan not yet developed), after which there will be a final certification, after which contracts will be awarded, after which there will be acceptance testing (according to plans and procedures not yet developed) — is not an effective plan for HAVA compliance.
19. Given all the defects and uncertainties in the State’s Plan, it is my opinion that postponing HAVA compliance until it can be achieved in a carefully considered and thoughtfully implemented manner, with much greater likelihood of success, is the best course to follow.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 27, 2006

  
Richard D. Dadey, Jr.

**EXHIBIT A**



Exhibit "A"

**New York City Board Of Elections**  
**Draft Plan**

**For The Limited Implementation of Ballot Marking Devices for the 2006 Elections**

The following is a discussion of the Board of Elections in the City of New York's ("City Board") draft plan for the limited implementation of ballot marking devices that are accessible to the disabled for the 2006 elections. This information is an appendix to the City Board's responses to the "County HAVA Compliance Questionnaire Primary And General Elections 2006" sent to the City Board by the State Board of Elections ("State Board") and the Office of the Attorney General on March 27, 2006. The information contained herein represents the preliminary objectives of the City Board and may be subject to amendment as the planning process proceeds.

**I. Summary**

The City Board is committed to the complete implementation of HAVA, particularly its provisions concerning the replacement of the City's lever voting machines with a modern and fully accessible voting system. We fully support the purpose of HAVA to protect against the repeat of the electoral disaster that occurred in Florida in 2000 and to provide a better, more inclusive voting experience. The City Board, as well as Mayor Michael R. Bloomberg, has long advocated for the necessary State legislation and regulatory actions by the State Board, such as the certification of new voting systems, that will allow the City Board to implement HAVA and purchase new systems.

The City Board has been conducting extensive preparations for the implementation of new voting systems, but has consistently explained that it will take many months to undertake and roll-out such a significant project properly in the City. We have therefore emphasized that a list of State-certified voting systems and the completion of the State procurement process must occur far before an election in order to have the hardware and software delivered in time to complete all of the extensive preparations discussed below. In addition, we have been cognizant of the growing concerns the public has with new voting technology, and have therefore sought to conduct a credible and orderly introduction of new voting systems. In order to ensure that the voting public continues to have confidence in the electoral process as we fully implement HAVA in 2007, the limited implementation for 2006 must be conducted in a controlled, responsible manner.

With it now being little more than five months before the September 12, 2006 primary elections, it is impossible for the City Board to conduct a citywide or extensive implementation of any new voting device, including only ballot marking devices accessible to the disabled. Importantly, the City Board has determined that it can only conduct a very limited implementation of ballot-marking devices at approximately 20 to 30 poll sites this close to the 2006 elections.

The City faces unique issues that complicate the process for running elections and introducing new voting devices. These include: the very large number of candidates and races

that appear on the City's ballots; the location of the vast majority of poll sites in public facilities that may not have necessary electronic or spatial resources; the need to comply with minority language requirements; the difficulty of retraining more than 30,000 poll workers; and the need to educate more than 4.3 million registered voters on any substantial voting change. In view of these issues, the introduction in a City election of any new voting devices under an incredibly limited timetable raises an extraordinary level of concern that the City Board have total control and flexibility to run an orderly election and protect the franchise. The City Board must not be asked to undertake a plan that will result in the electoral equivalent of a "train wreck."

As part of its own planning and in response to requests from State officials, the City Board is conducting detailed internal reviews of its capacity to conduct a limited introduction of ballot-marking devices at between 20 to 30 poll sites. These devices result in the production of a marked paper ballot that must be canvassed in a manner not yet determined. These devices will be targeted at poll sites (1) that are either in or near senior centers, hospitals, homes for the blind, or similar facilities; or (2) that U.S. Census data indicates may serve a high percentage of disabled voters. The City Board will also continue to improve the voting experience of disabled voters to ensure that all voters in the City have the opportunity to exercise their franchise despite difficulties with independently using the current lever voting machines.

The City Board views this draft plan as an opportunity to pilot ballot marking devices that are accessible to the disabled. However, this is only a limited and temporary solution for the replacement of the City's lever machines and the full implementation of a new HAVA-compliant voting system -- a project the City Board has long called for but has not been able to carry out because no voting system has yet been State-certified. Indeed, it is possible that any devices bought this year may be used only once because when the State Board finally provides a selection of certified HAVA-compliant voting systems, some of these systems may allow disabled voters to use the same equipment as other voters instead of separate ballot marking devices.

This draft plan, therefore, is only a temporary plan for the 2006 elections. The City Board has been in the process of developing a comprehensive voting machine implementation plan for well over a year, but has not been able to carry its plans out because the State legislature delayed passing HAVA legislation and the State Board has not certified HAVA-compliant voting systems. As part of its full implementation planning, the City Board has created several working groups to examine and prepare for the numerous tasks involved in replacing lever machines and introducing a new system in the City. In order to address the requirements of this temporary and piecemeal implementation for the 2006 elections, the City Board will need to divert resources that would otherwise be focused on the full roll-out of the new system next year.

Furthermore, even before the City Board has the ability to begin implementation of any new devices, there are a number of actions that must first occur at the State level. Although the City Board has commenced preliminary reviews of the two types of devices<sup>1</sup> it understands will

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<sup>1</sup> The term "device" will be broadly used throughout this document to refer to each ballot marking device at a poll site at which the system would operate, even though the ballot marking systems differ substantially in the type of equipment needed at the poll site and the number and type of central computer equipment.

likely be available for the 2006 elections – the ES&S Automark ballot-marking device and the IVS Vote-by-Phone system – it does not yet have any indication of when such devices could be delivered, what technical and training support the manufacturers will be able to offer, nor detailed information on the programming and other requirements of the voting systems. These are, of course, critical elements in developing an implementation plan, and the fact that such answers are not available this close to the election further raises the City Board's concerns about its ability to conduct an orderly introduction of new voting systems.

Such information will not even be available until the State Board authorizes for use these ballot-marking devices and completes the State contracts through which the City Board will eventually purchase the devices. Moreover, should the State Board make available additional devices for purchase, the City Board will wish to investigate these devices as well, to determine whether they are suitable. Accordingly, most of the critical tasks the City Board will need to undertake to introduce new devices properly at the polls (as discussed below) will not fully commence until some unspecified time even closer to the election.

## **II. The Factors Limiting The City's Introduction Of New Voting Devices In Little More Than Five Months**

### **A. Introduction**

For New York City, the introduction of any new voting system, even if only a ballot marking device for voters with disabilities, is an incredibly complicated project. As of November 1, 2005, there were 4,383,276 registered voters in the City, constituting approximately thirty-eight percent (38%) of the voters in the State. In the November 2005 election, the City Board utilized 7,347 lever voting machines at approximately 6,111 election districts located at 1,391 poll sites. These poll sites were manned by more than 30,000 poll workers. In the 2005 primary election, 721 candidates appeared on the ballot in 163 contests citywide. The City Board serves a diverse voting population and administers elections consistent with the minority language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a

It must be emphasized that ballot-marking devices involve complex computer systems and are not merely printers. We understand that five proposals to supply devices and services have been received by the New York State Office of General Services to possibly be used in 2006. We are not yet aware of the full content of these proposals nor whether they provide sufficient information, but we have had the opportunity to review two of the devices we understand may be available for use by the 2006 elections: the ES&S Automark and the IVS Vote-by-Phone system.

The Automark has various interfaces, including a visual screen, an audio feature, and a pneumatic device (for those with limited physical abilities), to allow a voter to cast his or her vote that is then printed on a ballot by the device. The ballots are collected and later canvassed. Each Automark must be programmed to handle all of the ballots for the election districts served at the poll site at which the device is placed.

The IVS Vote-by-Phone system involves setting up telephones at a poll site and having a voter call-in to a central location and cast his or her vote through an audio interface over the telephone. A fax machine may also be set up to receive and print a copy of the ballot that the voter had recorded over the phone. The IVS system requires the establishment of a central data center to house the computers that run the telephone interface and the printers that print the marked ballots and "reads" the ballot back to the voter over the phone or sends a fax copy for verification. These ballots must then be canvassed. The computers at the central data center would need to be programmed to handle all of the ballots for the election districts at the poll sites that will be equipped with a telephone.

## **B. General Implementation Issues**

In order to conduct an implementation of any ballot marking device, the City Board would need to do, among other things, the following:<sup>2</sup>

- Select a system or systems to be used in 2006 for the limited implementation;
- Execute the necessary procurement documents;
- Conduct preliminary analysis after receiving at least one voting system, including the ballot marking devices, its supporting software, and any other required components;
- Test each aspect of the voting system separately;
- Develop a software interface to extract the ballot and other related data from the City Board's central computer systems and import it into the new voting system;
- Test this integrated voting system;
- Receive the complete shipment of the voting system, and conduct acceptance testing of each ballot marking device and the attendant computer systems to ensure that each component functions correctly;
- Configure each ballot marking device with the ballot data for every election district at the poll site the device serves (each New York City poll sites typically hosts several election districts);
- Find available storage space for the devices and attendant computer systems. The City Board currently operates five voting machine facilities that are fully occupied and likely do not have suitable environmental conditions for electronic ballot-marking devices or computer systems. Although the City

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<sup>2</sup> As noted above, this process can only begin after the State Board authorizes HAVA-compliant devices, the State procurement procedures allow for the purchase from the manufacturer, and the manufacturer has sufficient stock to deliver.

Board has determined that it will eventually need swing space for the delivery of new voting systems, such space has not yet been identified;

- Develop staff procedures for the setup, testing, deployment, operation, take down, and storage of the ballot marking devices;
- Build protocols for the configuration and use of the devices to ensure full security of the vote;
- Determine the shipping and trucking needs of the ballot marking devices to ensure they safely arrive at the voting machine facilities and the poll sites;
- Develop a back-up plan in case of failure of the devices or their computer systems;
- Develop policies and procedures for production and translations for the audio interface;
- Program the audio interface of each device, including making a recording of the names of every candidate;
- Develop policies and procedures for ensuring that the devices comply with the minority language assistance requirements of Section 203 of the Voting Rights Act;
- Survey every poll site and ensure that each may be configured to accommodate the electrical, spatial, and/or telephonic necessities of the devices;
- Develop procedures to determine how to organize the poll site;
- Retrain poll workers and designate specially-trained poll workers to manage the devices;
- Design the procedures for canvass of the ballots produced by the ballot marking devices;
- Modify the procedures for coordinating the reporting of unofficial results with the Police Department, and closing the poll sites; and
- Conduct a public education campaign on the availability of the new devices and how they will be integrated into the voting experience at some poll sites.

More significantly, even a limited implementation of these ballot-marking devices involves a number of tasks whose scope does not diminish with a decrease in the number of devices purchased. For example, regardless of the number of devices the City Board purchases and implements, it will still need to receive and test the system; integrate the new systems with

the existing Board systems, provide compliance with minority language requirements; survey poll sites to determine if they are suitable for the device; develop internal procedures; develop training programs and materials; and educate the public.

### **C. Specific Implementation Issues Related To The To-Be-Selected Device**

In addition to these general matters, the City Board will also need to identify the specific requirements of the to-be-authorized devices and determine their suitability for the City. The City Board has commenced intensive reviews of two devices that we understand have been submitted for authorization to the State Board for use this year. Both of these devices are relatively new on the market and have very limited track records in elections. Accordingly, the City Board will have to approach an introduction of either device with special care and with no assumption that the manufacturer will understand the City's special needs or be able to fully deliver and implement its systems in an incredibly short period of time.

The City Board staff and Gartner, Inc., the Board's consultant, met with representatives from Electronic Systems & Software, the provider of the Automark, on March 15, 2006. A demonstration of the device was conducted at this meeting; and an Internet conference was held on March 30<sup>th</sup> with technical staff, but additional meetings will be necessary. Although the City Board cannot make a complete evaluation of this system at this time, it has identified a number of particular suitability concerns with the Automark, including its need for electrical power, its relative weight, its boot-up time, its configuration and integration complexity, manufacturer device production rate, and service & support capacity that will require further investigation.

Representatives from the City Board also traveled to New Hampshire on March 14, 2006 to observe the IVS Vote-by-Phone system in use during a local election. In addition, Board staff and Gartner spoke with IVS technical personnel by phone to further understand "back-end" operations and support infrastructure. On April 5, the City Board will meet with the manufacturer of the IVS system and continue its analysis of the IVS system and the services the manufacturer may be able to provide. Nevertheless, the City Board has developed initial understandings of the functioning of the system and has significant concerns regarding its usability by members of the disabled community that have limited physical ability (there is no pneumatic interface), the quality of the audio interface over the telephone, and its suitability in the vast majority of the poll sites that are in public facilities without telephone access, such as school gymnasiums.

In addition, the IVS system requires the development of a complicated central data center and the ability to handle numerous telephone calls at the same time. Most significantly, this voting system process has unique constraints. It is based on a remote, real-time, interactive process that involves multiple systems, multiple parties and therefore is, by its nature, more "brittle" than stand alone systems. In addition, it is difficult to correctly determine the capacity (*i.e.*, the number of voters it can handle simultaneously) of this system as it would be used for an unknown population size for one-time events. Finally, the design of this system is not "stand alone" and therefore has security risks to which stand alone systems are not subject.

### **III. The City Board's Draft Plan For The Limited Introduction Of Ballot Marking Devices For The 2006 Elections**

It is clear that a limited introduction of a new voting device in New York City involves substantial effort under any circumstances; the short time frame makes even a limited effort incredibly difficult. Accordingly, in determining what the City Board can practically do in time for the 2006 elections, the City Board has considered several factors:

1. The requirement of HAVA to allow disabled voters to vote on accessible voting devices;
2. The feasibility of implementing a number of devices at the poll sites within the current time frame;
3. The time required to integrate the new voting system with the City Board's existing systems;
4. The time required to configure the new voting system;
5. Uncertainties that remain out of the City Board's control, such as the timeline for State authorization of devices and the completion of the State procurement process as well as the ability of the manufacturer to timely and properly manufacture and deliver devices and provide sufficient technical support;
6. The learning curve associated with the use of a new device and the need to have each device properly configured and poll workers fully trained to ensure that votes are accurately recorded; and
7. The main purpose of HAVA, which was to prevent a repeat of an electoral disaster such as that which occurred in Florida in 2000. A rushed implementation must be circumscribed so as not to cause confusion at the poll sites and the possible widespread disenfranchisement of voters.

#### **A. Limited Implementation of Ballot Marking Devices at Targeted Poll Sites**

As part of an ongoing and careful review of these factors, the City Board believes that it could feasibly introduce a ballot-marking device at between 20 and 30 poll sites. These figures are based on the City Board's assessment of the total number of devices, poll sites, and poll workers the City Board will be able to fully prepare in the very minimal time before the September 2006 primary election. As noted above, there is a substantial amount of start-up work that the City Board will need to undertake to be able to introduce even a single device at a poll site. *Each additional device significantly raises the complications and workload as it entails more devices to configure (each with all of the ballots that appear at the various election districts at the poll site); more devices to be stored and shipped to the correct poll site; more candidates' names to record for the audio component and translate into the mandatory languages; more poll sites to survey and reconfigure; and more poll workers to train*

Consistent with the purpose of HAVA to allow for disabled voters to vote on accessible voting devices, the City Board plans on targeting the poll sites at which a device will be placed based on the site's location in or near nursing homes, facilities for the blind, hospitals, or other

locations that are likely to serve a high number of disabled voters. In addition, the City Board will consider U.S. Census data that indicates the number of residents in an area served by a poll site that self-reported as (1) being blind, deaf, or having severe vision or hearing impairments; or (2) having a condition that substantially limits one or more basic physical activities.

The demographers at the City's Department of City Planning have explained, however, that this census data is not an accurate measure of disabled voters who are registered to vote and able to go to a pollsite. For example, the data includes all residents and cannot be correlated to actual registered voters. In addition, it includes responses from persons ages 16-18 as well as an uncertain number of other individuals who are not eligible to vote. Moreover, an untold number of respondents who also are registered voters may not vote at a polling place, may vote by absentee ballot (including permanent absentee balloting or absentee balloting conducted at nursing homes and other facilities as discussed below), and/or may have sufficient physical ability to use the lever voting machines. The City Board does not have any other data that indicates the number of disabled voters who may appear at a poll site. Accordingly, the City Board will use this census data as a very rough reference point to identify additional poll sites that may have a high concentration of disabled voters, but cannot rely primarily on such data.

#### **B. Ongoing Development Of The City Board's Draft 2006 Plan**

As part of this plan, the City Board is currently deploying survey teams to identify potential poll sites that fit the criteria discussed above. These teams will determine whether the site has the necessary spatial, telephonic, and electrical resources to serve the potential devices.

The City Board has not determined which device it will implement as part of this plan and cannot do so until the State Board authorizes new ballot-marking devices for use in the State. As indicated above, the City Board has already identified issues with potentially authorized devices that raise serious concerns as to their suitability and usability in New York City. The City Board is committed to implementing a limited plan for the 2006 elections, but, consistent with its legal obligations to run an orderly and accurate election, the City Board will not purchase a device that cannot meet the needs of the City voters.

Finally, it is important to note that the City Board is currently undertaking other steps to make voting easier for the disabled. For example, the City Board has instituted a poll site accessibility department to review and ensure pollsite accessibility. The City Board is also revising its training program for poll workers to emphasize guidelines for better serving disabled voters, such as ensuring that voters who require assistance using the existing voting machines are appropriately served as required by State law. Furthermore, as provided by New York State Election Law § 8-407, the City Board typically attends approximately 120 nursing homes and similar facilities to conduct in-person absentee voting prior to elections.

Moreover, the City Board sends out 22,217 absentee ballots to voters who have identified themselves as "permanently ill or disabled" and have requested that an absentee ballot be automatically sent to them for each election per Election Law § 8-400. In addition, the City Board will continue to work with the Mayor's Office For People With Disabilities, other local agencies, and local advocacy groups to improve the voting experience for the City's disabled



voters. These practices are designed to ensure that every voter is able to exercise his or her franchise.

#### **IV. Conclusion**

The City Board is committed to the full implementation of HAVA and is eager to replace its lever voting machines with a modern and fully accessible system when the State Board certifies such voting systems for use. For the foregoing reasons, however, at this very late date before the 2006 elections, the City Board can responsibly conduct only a limited implementation of accessible ballot-marking devices as outlined in this draft plan. A more extensive deployment risks a chaotic implementation of voting devices at the poll sites and possible widespread voter disenfranchisement.