

**DRAFT PLAN FOR COMPLIANCE with
the HELP AMERICA VOTE ACT and
the LAWS OF NEW YORK STATE**

1 Given the delays in establishing standards and testing and certifying new voting systems,
2 New York State has continued to use a voting system that has been working for a long time.
3 Recognizing these delays, in July 2007 the New York State Legislature approved, and on August
4 6, 2007, the Governor signed into law, Chapter 506 of the Laws of 2007, which removed a
5 deadline to replace lever voting systems in September 2007 and now requiring counties to
6 provide at least one ballot marking device in each county until there is a replacement system that
7 is certified by the New York State Board of Elections (State Board). Members of the New York
8 Congressional delegation have also supported the State's need to provide access to voting for the
9 voters who are disabled and to move deliberately in replacing lever voting machines.¹

10 A. Ballot Marking Device:

11 With regard to the June 2, 2006 Order of the Court, the following ballot marking device
12 benchmarks have been achieved:

- 13 • One or more accessible ballot marking devices were deployed in each county for
14 the Fall 2006 elections, and that same program will be in place for the 2007 Fall
15 elections and the February 5, 2008 Presidential Primary election.
- 16 • Outreach efforts to inform the public of the implementation of accessible ballot
17 marking devices were initiated in 2006.²

¹ See September 25, 2007 Letter to Acting Attorney General Paul Clement attached as Ex A.

²A link to the education and outreach information can be found at XXX

- 1 • In 2006, the State Board developed procedures for implementing the accessible
2 ballot marking devices, to ensure the casting and counting of ballots from voters
3 using these devices. For use in 2007, the State Board adopted similar procedures.

4 3

5 Moving forward, the State Board respectfully advises the Court that at the August 16,
6 2007 meeting of the Commissioners of the State Board, counsel was advised to inform the
7 Department of Justice that the State Board has agreed that it will put together “a revised HAVA
8 implementation plan and as part of that we will be scheduling a meeting with the county board of
9 elections (sic) within the next two weeks to help formulate that plan to include accessibility at
10 every polling site in 2008”.⁴ That meeting took place August 28, 2007. At that meeting the
11 county commissioners expressed deep reservations about a plan to place a ballot marking device
12 in every polling place along with their existing voting systems. A second meeting with selected
13 representative counties (New York City, Oswego and Monroe Counties) and disability advocacy
14 groups was held on September 11, 2007. Again, at that meeting the counties described the issues
15 they have with operating dual voting systems at all polling places. As a follow up to those
16 meetings, on September 20, 2007 the Election Commissioners Association filed with the State
17 Board a letter explaining their needs in deploying a new voting system, attached hereto as
18 Exhibit B. The County Boards of Election (County Board) have stated an interest to work with
19 the State Board and the Department to determine the appropriate number of devices. In fact a
20 disability group has put forth a plan to expand the current number of devices that the counties

³ A link to “Procedures - Plan B Voting Devices” is found at the State Board’s website: www.elections.state.ny.us

⁴ See, Minutes of August 16, 2007 meeting available at the State Board’s website:
http://www.elections.state.ny.us/portal/page?_pageid=35,1,35_8534:35_62319&_dad=portal&_schema=PORTAL.

1 have expressed interest in. Attached as Exhibit C. In order to have that dialogue, we request that
2 prior to the Department's response to this Plan, that they meet with county election officials to
3 discuss their issues.

4 As the Department of Justice is aware, the County Boards have an integral role in the
5 implementation of the Statewide Voting System Purchase and Replacement Project. After the
6 State Board tests and certifies voting systems to the federal standards and the additional New
7 York State statutory and regulatory standards, the County Boards select a voting system from the
8 list certified by the State Board. Those systems are purchased by the counties utilizing a
9 statewide contract. Ultimately, the systems are delivered to the counties. The voting systems
10 must be tested when the county accepts delivery to make sure that they function properly upon
11 delivery. Counties must integrate the new voting system into the counties election management
12 system to place candidates on the ballot and to record and organize results at the end of the
13 election. The counties must hire and train the election workers to operate the equipment. The
14 counties educate the voting public on the use of the machines.

15 The State Board is committed to working with the counties and disability advocacy
16 groups to have voting devices for the September 2008 primary elections that meet the
17 accessibility requirements under HAVA for accessible features and interfaces to voters with
18 disabilities . The State Board will work with the County Boards, advocates for the disabled and
19 associated groups and agencies to expand voter information outreach efforts. Attached as Exhibit
20 D, is a task list which identifies the tasks required to deploy and implement accessible ballot
21 marking devices in New York in 2008.

22 The State Board has started initial tasks related to the re-bidding of contracts for
23 accessible ballot marking devices. This will allow the State to have in place by the first calendar

1 quarter of 2008, a mechanism for increasing the number of such devices from which county
2 boards may make their selections. The principle to expand the number of options that county
3 boards may consider is being pursued to enable these interim devices to become part of each
4 county's permanent solution. The notice to bid appeared in the New York State Contract
5 Reporter on September 4, 2007. State Board staff has drafted ballot marking device
6 requirements⁵, and is drafting, in conjunction with the Office of General Services, the contract
7 requirements, which will be sent to the Department once they are publicly available.

8 **B. Voting Systems:**

9 Moving forward, the State Board respectfully advises the Court that the State Board is
10 working on the tasks related to re-bidding to secure the services of an Independent Testing
11 Authority (ITA), for the purposes of conducting certification testing for all voting systems being
12 proposed for sale in New York.⁶ Proposals are due on October 9, 2007. Any necessary site visits
13 are to be done between October 23 and 30, 2007. The estimated vendor selection is November 7,
14 2007. A complete contract award is estimated for December 7, 2007.

15 To complete lever machine replacement, The State Board has started initial tasks related
16 to the re-bidding of contracts for complete voting systems, including the publication of a notice
17 to bid (appearing in the New York State Contract Reporter on September 4, 2007), the drafting,

⁵ A link to these "Draft Ballot Marking Device Requirements" is available at the State Board's website:
XXX

⁶ A link to the ITA procurement, "RFP Bid Number 1396" is available at the OGS website:
<http://www.ogs.state.ny.us/purchase/Bidcalendarlv.asp>

1 adoption and distribution of voting system requirements identified as 9 NYCRR Part 6209⁷, and
2 is drafting, in conjunction with the Office of General Services, the contract requirements, which
3 will be sent to the Department once they are publicly available..

4 The State Board will proceed with voting system certification testing forthwith, upon
5 completion of a contract award to the successful ITA, and currently anticipates the start of
6 testing in January of 2008.

7 The time required to complete testing to New York's requirements which include New
8 York Election Law Section 7-202, 9 NYCRR Part 6209, and the 2005 Voluntary Voting System
9 Guidelines adopted by the US Election Assistance Commission, is dependent upon each
10 submitted system's readiness to comply with same. The State Board estimates the time required
11 to test to the standards identified herein is approximately nine (9) months. Attached as Exhibit E,
12 is a task list which identifies the tasks required to certify and deploy voting systems.⁸ It is
13 anticipated that these voting systems will be ready for implementation statewide in time for the
14 Fall 2009 elections.

15 Voting system certification includes testing, an independent review of the testing, the
16 creation and review of corresponding reports, review of the voting devices by the Citizens
17 Election Modernization Advisory Committee, and final consideration by the State Board
18 Commissioners.

19 Immediately following voting system certification, the County Board selection processes

⁷ A link to these regulations is available at the State Board's website:
http://www.elections.state.ny.us/portal/page?_pageid=35,1,35_8424:35_8445&_dad=portal&_schema=PORTAL

⁸ The ITA will review this task list and will add and/or delete tasks and provide corresponding estimated task completion dates within 15 days of their start date.

1 may commence, which may differ from county to county. Counties have indicated that some, all
2 or a combination of the following, will be required, prior to the selection of a new voting system:
3 public hearings; hands-on voter demonstrations, ad hoc committee reviews. The ultimate
4 selection of a replacement voting system rests with the commissioners in each County Board.
5 The State Board is committed to allowing a 30 day period after the State Board notice of
6 certification within which County Boards complete their selection/purchase process.

7 In the event that a county does not make a selection in the State Board's established time
8 frame, the State Board is statutorily authorized to determine the type and number of systems to
9 be purchased and implemented in such county and shall order such voting systems for such
10 county.⁹

11 The State Board staff is crafting a program for the training of personnel on and the
12 deployment of an acceptance testing program for new voting systems and ballot marking
13 devices, as required by Election Law Section 7-206.

14 On September 20, 2007, the Commissioners of the State Board approved proposed
15 regulations related to the use of new voting systems. The proposed regulations are currently
16 being reviewed by the state agencies responsible for their publication. Upon, publication, a 45-
17 day public comment will ensue, after which the proposed regulation may be formally adopted by
18 the State Board.¹⁰

19 The State Board staff continues to draft and distribute for comment, procedures related to
20 the ownership and use of new voting systems. These initiatives are represented in the task list.

⁹ Election Law Section 7-203(3).

¹⁰ A link to the proposed "Draft Regulations (6210) - Voting Systems Maintenance and Testing" is available at the State Board's website: www.elections.state.ny.us

1 C. Poll Worker Training and Voter Education:

2 The State Board has developed a poll worker training core curriculum for election
3 inspectors and other county board employees. This core curriculum will be supplemented with
4 specific procedures for the use of any new voting systems or ballot marking devices. The core
5 curriculum was developed around specific topical modules so that changes, updates or additions
6 can be inserted into the curriculum.

7 The State Board has completed the procurement of a contractor, OES, to develop a web-
8 based poll worker and voter education training tool fully accessible to all County Boards which
9 accommodates customization by individual counties.

10 The State Board in collaboration with the Commission on Quality and Care and
11 Advocacy for Persons with Disabilities (CQCAPD), developed a Disability Etiquette Program to
12 provide instruction to poll workers to better meet the needs of voters with disabilities. A series of
13 regional “Train-the-Trainer” training sessions were conducted in 2006. The State Board
14 anticipates conducting several additional series of regional training upon certification of ballot
15 marking devices and/or new voting systems.

16 The State Board has established a grant program to provide funding to county boards to
17 increase the accessibility of all of their polling sites for voters with disabilities.

18 D. Statewide Voter Registration List (NYSVoter):

19 With regard to the June 2, 2006 Order of the Court, the following Statewide Voter
20 Registration System, known as NYSVoter, benchmarks have been achieved:

- 21 • NYSVoter system is operational.
- 22 • All voters registered in the State of New York have been incorporated into

1 NYSVoter.

- 2 • All system connectivity tasks have been accomplished.
- 3 • All County Boards have full access to NYSVoter, and can utilize the system's
- 4 features to implement all list maintenance procedures.
- 5 • The State Board developed, approved and distributed procedures for the use of
- 6 NYSVoter, identified as 9 NYCRR Part 6217.¹¹
- 7 • The NYSVoter Disaster Recovery/Business Continuity Plan has been
- 8 implemented, with the creation of a back-up site, located in Westchester County.

9 Moving forward, The State Board respectfully advises the Court that by mid-October of
10 2007, NYSVoter will be able to allow New York's voters to access their own voter registration
11 data via the Internet.

12 E. Conclusion:

13 The State Board appreciates that this proposed implementation plan is extensively
14 aggressive and that the most substantial burden falls to the County Boards. The State Board will
15 continue to work the Court and the Department of Justice as it moves forward on this project.

16 Respectfully submitted,

17 NEW YORK STATE BOARD OF ELECTIONS

¹¹ A link to these regulations is available at the State Board's website:
http://www.elections.state.ny.us/portal/page?_pageid=35,1,35_8424:35_8445&_dad=portal&_schema=PORTAL

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September ____, 2007

2 Exhibits:

3 A: Letter from NY Congressional Delegation

4 B: Letter from ECA with survey

5 C: Disability group Plan

6 D: Plan B Task list

7 E: Plan A Task list