



Testimony of
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of the
New York Public Interest Research Group, (NYPIRG)
before the
Committees on Governmental Operations & Mental Health, Mental
Retardation, Alcoholism, Drug Abuse, and Disability Services
regarding
Oversight of the Board of Elections Plan for Limited Implementation of the
Help America Vote Act
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Good afternoon. My name is Neal Rosenstein, Government Reform Coordinator for NYPIRG, the New York Public Interest Research Group, (NYPIRG). I appreciate the opportunity to testify here today regarding the disappointing plans put forward by the city Board of Elections to comply with disability access provisions of the Help America Vote Act (HAVA.)

Background. HAVA was initially passed in acknowledgement of the problems and failures of the election systems across the United States, most notably, the meltdown of the 2000 Presidential Election. Unfortunately, here in New York, HAVA has failed to live up to its promise because of failures at all levels and branches of Government. The Federal Executive, Legislative and Judicial systems have failed the voters of New York and the Country, a failure only compounded by similar shortcomings at the State and Local levels.

So far, HAVA implementation in New York is a sad story. It is our hope that the positive aspects of this legislation will not continue to be unfulfilled and that pressure on the city Board of Elections by the Council and others will lead to improvements for all voters both this year and in 2007.

HAVA Implementation: What Went Wrong. HAVA is a complex rewriting of significant portions of our nation's laws regarding elections. It contained positive and negative provisions that ultimately resulted in opposition from NYPIRG and many other civic organizations in the city, along with "No" votes from both our United States Senators. HAVA did however codify basic rights for voters with disabilities into federal law. A series of delays at all levels of government has now undercut these new rights, at a minimum for this year's elections. The failures include:

A failure of the Congress and President for passing inadequate Legislation, failing to establish and fund the Election Assistance Commission that is responsible for oversight of HAVA and the issuance of national voting system standards;

Failure of the Governor for politicizing implementation of HAVA in New York State from the start, with the biased and partisan appointment of first State HAVA Task Force and the creation of a flawed, incomplete and prejudiced implementation plan;

Failure of the State Legislature to legislate and provide guidance on the complex issues involving HAVA for three years after its passage in Washington, only to throw important decisions to the county level, such as selection of voting systems and registration of voters;

Failure of the State Board of Elections for failing to do any meaningful preparation for HAVA while the Legislature dithered and for going forward with a sham task force in developing NY's initial HAVA implementation plan. More recently, their failure to follow the law in promulgating voting system standards by violating the State Administrative Procedures Act's provisions for allowing public comment on significantly revised regulations;

Failure of the Department of Justice to adequately protect and advocate for the rights of voters with disabilities and all the voters of NYS by proceeding with a lawsuit that seemed more interested in making a point than about approving a voting system plan for this year that wasn't pointless. A failure now tentatively approved by a federal court system seemingly more interested in having the issue go away than in making HAVA work well; and

Failure of Mayor of City of New York, for not using the powers of his office to force a more open and public process for selecting voting system and for failing to recreate the non-patronage based Elections Project to do it's own evaluation of voting systems. And looking towards next year, for the failure to address looming problems like poll worker shortages and deficiencies by enabling city workers to be poll workers on both Primary and General Election day.

Now we get to New York City Board of Elections. The Board has made strides over the last decade at professionalizing their operations. As noted, in regards to HAVA, they've had to labor under the constraints and failed implementation efforts of all of the above levels and branches of government. Are we sympathetic? Up to a point. The city BOE is clearly laboring to comply with mandates and timelines that they have little control over and has put a tremendous amount of thought into implementation. But, the city BOE is now where the action is...that's where implementation will come from. That means it's appropriate to critique their efforts.

Problems with the New York City Board of Elections Implementation Plan. Simply put, the City Board of Elections plan to install ballot markers only at their five borough offices is inexcusable. They have appeared to decide that they wish to do the least amount possible for the fewest voters that they can get away with. One can't help wonder if they secretly wish for limited exposure to ballot marker technology in the hope that a more favored system such as computerized Direct Recording Electronic devices can be introduced for all voters next year.

While the Board expresses a desire to have these new voting systems centralized so senior staff can supervise their rushed introductions, it seems that that spending the least money and limiting voter exposure to it are their priorities. We have faith that the board could put a ballot marker and trained staff at the State Office Building in Harlem, or at one of the facilities for paraplegics on Roosevelt Island, or at the Staten Island Ferry Terminal or major transit hub in each of the five boroughs. While there's no legal barriers to increasing the locations of their machines, it appears that since they're not being forced to, they're not. That's inexcusable.

The board has also failed in its plans to protect the privacy and independence of the voters using ballot markers. A genuine possibility exists that only a very small number of voters will figure out where the ballot markers are and be able to transport themselves to the Board's borough offices. As a result, the anonymity of the small number of ballots marked by those machines will be compromised. The board has failed to take measures such as requiring the poll workers of staff at their borough offices to also use the ballot markers to increase the overall pool of ballots and therefore help preserve the general public's ballots generated by the machines. That's inexcusable.

Looking forward to the replacement of the entire lever voting machine fleet, we also understand that the city Board of Elections has been advocating for maintaining the 800 voters to one voting system ratio we currently have under state law. That flies in the face of the objective fact that the new voting systems and provisions for Voter Verified Audit Trails mean that voters will need more time in the booths. We don't want four-hour lines at the polls on Election Day, what we need are shorter lines than we have now in heavy turnout years. If the Board continues this advocacy, that's inexcusable.

Some questions for the City Board of Elections. The NYC Board of Elections and counties across the state have been dealt a rotten hand, but that doesn't mean they should fold. In poker, you're allowed to trade in cards, to try and improve your hand, that's what the Board of Election needs to be doing. Here are some of the important questions that still need to be answered:

Why don't you expand your sites with accessible ballot markers for 2006? Why not develop an objective set of criteria, such as providing any facility with 100+ residents with disabilities such a system, or providing at least two additional accessible sites per borough within 500' of each of that boroughs major transit hubs?

Will the Board work with literacy and graphics experts to design the mailing to city residents about new voting systems this year and next? Will the Board request funds from the city to make the mailing graphically more pleasing than current legal notices from the Board? Will the Board notify voters where the poll sites with ballot markers will be located on the mailing?

Will the Board offer to send out supplemental educational mailings to lists provided by disability and civic organizations?

Will the Board mandate all employees at borough offices mark their ballots using these systems to help preserve the anonymity of the ballots cast using the markers? Will Executive Director

John Ravitz and his central staff set an example by using the system (at least on Primary Day when turnout is light?)

One of the biggest hurdles faced by BOE will be the training of poll workers across city to use new voting systems. Will the Board or it's Executive Director publicly call for the city to provide comp time to city workers for Primary Day (they already get General Election day off) to improve and supplement the existing pool? If not, those poll worker problems we'll be having next year will be Board of Election's fault and no one else's.

Will the Board stop advocating for preserving the voting system to voter ratio of 800 to 1 that will guarantee longer lines at the polls for heavy turnout elections?

We believe that significant improvements can be made to the Board's implementation plan for 2006. We thank the Council for this hearing and hope they can add their voice to making sure that the Board does more than token implementation this year.