



Lever Machines and the Help America Vote Act

Recently individuals seeking to prevent New York State's move to verifiable, accessible, and auditable paper ballot based voting systems have argued that the Help America Vote Act of 2002 (HAVA) does not require replacement of mechanical lever machines. In making these arguments, they rely on several paragraphs from HAVA that are at best ambiguous about this requirement (although it must be stated that the accepted interpretation of HAVA by Federal and State Courts, the New York State Legislature, and New York's good government organizations is that these sections do indeed require replacement of lever machines).

However, there are two sections of HAVA, Title I Section 102, and Title III Section 301, that are clear and unambiguous about the requirement to replace mechanical lever machines. The text of these two sections follows, with relevant paragraphs underlined.

HAVA Title III, Section 301

Fact:

HAVA Title III, Section 301(a)(2) requires that voting systems produce a permanent auditable paper record that can be used in audits and recounts. Lever machines have no such capability.

Analysis:

Title III, Section 301 (a)(2) paragraphs (A) and (B) clearly call for voting systems to produce an auditable paper record that lever machines do not possess:

TITLE III--UNIFORM AND NONDISCRIMINATORY ELECTION TECHNOLOGY AND ADMINISTRATION REQUIREMENTS

SEC. 301. 42 USC 15481; VOTING SYSTEMS STANDARDS.

(a) Requirements.--Each voting system used in an election for Federal office shall meet the following requirements:

(2) Audit capacity.--

(A) In general.--The voting system shall produce a record with an audit capacity for such system.

(B) Manual audit capacity.--

(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.

(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.

(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.



HAVA Title I, Section 102

Fact:

HAVA Title I, Section 102 requires that states which take Federal funding to replace lever machines and punch card systems must use the funds to replace these machines. New York State has accepted and used these funds. HAVA clearly states that in this case lever machines must be replaced.

Analysis:

Title I, Section 102 (a) and (b) are clear that if funds for improving voting systems are accepted by a State, these systems must then be replaced:

TITLE I--PAYMENTS TO STATES FOR ELECTION ADMINISTRATION IMPROVEMENTS AND REPLACEMENT OF PUNCH CARD AND LEVER VOTING MACHINES

SEC. 102. 42 USC 15302; REPLACEMENT OF PUNCH CARD OR LEVER VOTING MACHINES

- (a)
- (2) Use of funds.--A State shall use the funds provided under a payment under this section (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in qualifying precincts within that State with a voting system (by purchase, lease, or such other arrangement as may be appropriate) that--
- (A) does not use punch cards or levers;
 - (B) is not inconsistent with the requirements of the laws described in section 906;
- and
- (C) meets the requirements of section 301.
- (3) Deadline.--
- (A) In general.--Except as provided in subparagraph (B), a State receiving a payment under the program under this section shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State have been replaced in time for the regularly scheduled general election for Federal office to be held in November 2004.
- (B) Waiver.--If a State certifies to the Administrator not later than January 1, 2004, that the State will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, the State shall ensure that all of the punch card voting systems or lever voting systems in the qualifying precincts within that State will be replaced in time for the first election for Federal office held after January 1, 2006.
- (b) Eligibility.--
- (1) In general.--A State is eligible to receive a payment under the program under this section if it submits to the Administrator a notice not later than the date that is 6 months after the date of the enactment of this Act (in such form as the Administrator may require) that contains--
- (A) certifications that the State will use the payment (either directly or as reimbursement, including as reimbursement for costs incurred on or after January 1, 2001, under multiyear contracts) to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the State by the deadline described in subsection (a)(3);
 - (B) certifications that the State will continue to comply with the laws described in section 906;
 - (C) certifications that the replacement voting systems will meet the requirements of section 301; and