

Helping New York Vote: Recommendations to Improve Voting Accessibility in November

Introduction

On Primary Day, September 12, 2006, 580 of the hundreds of thousands of New York City voters who cast their ballots that day voted using a new voting system designed to be accessible to all voters, including those with disabilities.¹ The new voting machines were part of New York City's plan to partially comply with the provisions of the federal Help America Vote Act (HAVA) of 2002, which seeks to ensure that each eligible person has a full and unfettered right to vote in privacy and with independence, and that each legally cast vote is counted.² With the machines available in only one poll site per borough, however, and no provision for transportation to the sites, serious questions have arisen about how accessible the new voting system truly is for all New Yorkers – particularly persons with disabilities.

To find out, and to respond to concerns that were voiced by the City Council³ as well as disability advocacy and good government organizations,⁴ the Council's Policy and Investigations Division surveyed voters at the New York City Board of Election's borough offices – where fully accessible voting systems were available – during poll hours (6am-9pm) on the September 12, 2006 Primary Day to gain an understanding of how effectively New York City's partial HAVA implementation provided access to voting New Yorkers, especially those with disabilities.

As this report demonstrates, the survey results indicate that immediate actions need to be taken by the New York City Board of Elections (City BOE) and the Metropolitan Transportation Authority (MTA) to make the general election on November 7th, 2006 truly accessible to every New York City voter. It is the City Council's hope that the straightforward recommendations outlined below are fully implemented over the next six weeks to ensure that the upcoming general election is fair and inclusive.

¹ Sewell Chan, "Voting Devices For Disabled Draw Praise From All Sides," *New York Times*, September 14, 2006.

² 42 U.S.C. S. 15301 *et seq.*

³ See, e.g., Res. No. 228-A, New York City Council, August 16, 2006.

⁴ See, e.g., "Voters and Disability, Civic and Civil Rights Groups Challenge State's Vote Plan in Court" (news release), American Council of the Blind of New York, Asian American Legal Defense and Education Fund, Catskill Center for Independence, Chinatown Voter Education Alliance, Young Korean American Service and Education Center, National Voting Rights Institute, New York Lawyers for the Public Interest, New York Public Interest Research Group and New York State Independent Living Council, May 18, 2006.

Background

The federal Help America Vote Act (HAVA),⁵ passed in 2002, derived from an amalgam of two parallel developments:⁶ the troubling voting irregularities in Florida during the 2000 presidential election; and the more than three-decade-old stream of federal legislation designed at least in part to increase full and meaningful access to the federal ballot for all eligible voters, including persons with disabilities and elderly persons.⁷ By improving the administration of elections, updating antiquated voting systems, and implementing a voting system that is completely accessible to all voters, including person with disabilities, HAVA sought to ensure that each eligible person would have a full and unfettered right to vote in privacy and with independence, and that each legally cast vote would be counted.⁸

HAVA required states to have compliant voting systems by November 2004.⁹ When the State BOE – which had received a waiver from the DOJ extending its deadline to January 2006 – failed to propose a plan by this deadline for New York to be fully compliant by September 2006, the DOJ sued in March 2006.¹⁰ Acknowledging that New York State could not, by that point, come into full compliance with HAVA in time for the 2006 elections, the State BOE entered into a court-ordered consent agreement with the DOJ in June 2006.¹¹ This remedial order allowed the State to delay the implementation of full HAVA compliance for one year, but required it to achieve partial HAVA compliance in time for the 2006 election cycle.¹²

Acting under State-issued directives to comply with the order in time for the September 12, 2006 primary, the New York City Board of Elections (City BOE) had to vet vendors, purchase equipment and train staff to use an accessible voting system that could process votes in English, Spanish, Korean and two Chinese dialects – and to get the word out to voters about the availability and details of this new voting system – in just a several-week time span.

The City BOE selected the Avante VOTE-TRAKKER™ Ballot Marking Device (BMD) as its accessible voting system. BMDs do not actually count votes, but enable voters – including those with a range of disabilities – to “mark” their ballot on a computer screen. The machine then prints out a marked ballot, which the voter reviews to verify his or her vote.¹³ After voter

⁵ 42 U.S.C. S. 15301 *et seq.*

⁶ See “Voting with Disabilities in the 21st Century: Bringing Outreach and Education to Court-Ordered HAVA Implementation” (briefing paper), Committee on Governmental Operations jointly with Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse and Disability Services, New York City Council, June 26, 2006 [hereinafter New York City Council briefing paper]; See also Christina J. Weis, “Why the Help America Vote Act Fails to Help Disabled Americans Vote,” 8 N.Y.U. J. Legis & Pub. Pol’y 421 (2004-2005).

⁷ *Ibid.*; See also Voting Rights Act of 1965 (which includes a provision allowing blind voters to bring someone into voting booth to help); the Rehabilitation Act of 1973; the Voting Accessibility for the Elderly and Handicapped Act of 1984; the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (and its predecessor legislation); the Americans With Disabilities Act of 1990; and the National Voter Registration Act of 1993 (the “Motor Voter” law).

⁸ 42 U.S.C. S. 15301 *et seq.*

⁹ *Ibid.*

¹⁰ *United States of America v. New York State Board of Elections et al*, No. 06-CV-0263 (GLS), USDC, NDNY. [hereinafter referred to as the DOJ/State BOE case]

¹¹ *Ibid.*

¹² *Ibid.*

¹³ James Madore, “Helping the Disabled Voter,” *New York Newsday*, September 8, 2006.

verification, the ballot is sealed and dropped into a box. BOE staff must begin hand-counting the ballots within eight days of a primary election and ten days of a general election.¹⁴ As the State, based on the remedial consent order, required each county to install HAVA voting systems in only one poll site,¹⁵ the City BOE designated its borough offices as each county's accessible poll site, which the agency termed "super poll sites." To inform the public about the BMDs and accessible poll sites prior to Primary Day, the City BOE conducted one public demonstration of the BMDs in each borough in late August, and sent a mailing to all registered voters shortly before Primary Day informing them about the super poll sites, at a reported cost of \$1.2 million.¹⁶

Because the court denied motions from advocates for the disabled and for good government who attempted to intervene in the litigation,¹⁷ they did not play a role in the agreement the State BOE and the DOJ reached. Many of these advocates have found the City's plans for partial HAVA compliance – particularly the designation of a single HAVA poll site per borough – inadequate.¹⁸

New York City's plan, initially proposed by the City BOE but ultimately approved by the State BOE, the DOJ and the federal court, did not include any transportation plan to help transport disabled voters to and from the borough sites.¹⁹ This potentially made it harder for numerous persons with disabilities to use the accessible poll sites. For example, a northern Manhattan disabled resident who relies on public buses could be required to make as many as two bus transfers to get from his or her home to the one Manhattan super poll site, located in lower Manhattan.

Based on these and other concerns, the City Council took various steps to monitor and oversee the City BOE's activities, as well as to inform New Yorkers about the option to use the accessible voting systems. On June 26, 2006, the Council's Committee on Governmental Operations and the Committee on Mental Health, Mental Retardation, Alcoholism, Drug Abuse, and Disability Services jointly conducted an oversight hearing on "Voting with Disabilities in the 21st Century: Bringing Outreach and Education to Court-Ordered HAVA Implementation."²⁰ The City Council also unanimously passed Resolution 228A, expressing its concerns about the apparently lack of transparency, accountability and public input in the processes by which the City BOE was implementing HAVA's provisions. Prior to the Primary Elections, the Council also publicized information about HAVA and the accessible poll site locations on its website.²¹

¹⁴ See New York State Election Law §9-209.

¹⁵ DOJ/State BOE case (see n10).

¹⁶ Frank Lombardi, "Ballots Go High-Tech: Disabled Voters Get First Crack at Electronic Gizmos," *New York Daily News*, August 29, 2006.

¹⁷ *Ibid.*

¹⁸ See "Voters and Disability, Civic and Civil Rights Groups Challenge State's Vote Plan in Court" (news release), American Council of the Blind of New York *et al.*, May 18, 2006 (see n4).

¹⁹ DOJ/state BOE case (see n10).

²⁰ Council Hearing (see n6).

²¹ "Voting Options for 2006, including accessible machines for Persons with Disabilities," New York City Council, http://www.nycouncil.info/tempissues/voting_home.cfm (last accessed Sept. 15, 2006).

As part of the Council's continued oversight of New York City's compliance with HAVA, the Council's Policy and Investigation Division sought to evaluate the voting experience for those who voted at accessible poll sites on Primary Day.

Methodology

During poll hours (6am to 9pm) on Primary Day (September 12, 2006), ten staff members of the City Council observed and administered surveys to voters who cast votes using the BMDs at each of the five super poll sites. The surveys asked 21 questions to ascertain such matters as the means of transportation used to travel to the poll sites, how the voters became aware of the new voting machines, and the BMDs' ease of use.

Investigators surveyed 160 voters, approximately 28% of all voters who used the BMDs.²² An analysis of the survey results, and recommendations for improving the implementation of the court's remedial order for the November 7th election follow.

Finding #1: Low Turn-out at HAVA Poll Sites, Particularly Among Voters with Disabilities

- **Only five percent of respondents said they voted at a HAVA poll site because they were disabled or needed to use an accessible machine.**²³ Some disabled voters are able to use the voting machines available at their neighborhood poll sites, and many ordinarily vote using an affidavit (paper) ballot or an absentee ballot. Even allowing for the fact that some voters with disabilities would continue to use these other options, the number of people with disabilities who voted at the HAVA poll sites was very low, given that these sites were uniquely designed to allow individuals to vote on election day, in privacy and with independence, in a way they have historically been excluded from doing.
- **Survey respondents' single most common response to why they were voting at the HAVA poll site – aside from working for the City BOE that day (27%)²⁴ – was convenience (26%).** The survey found many respondents voting at the new sites not because of accessibility issues, but because the sites were close to their home or work locations.
- **Eighteen percent of respondents indicated that they chose to vote at the HAVA poll sites because they understood the BOE's mailing to mean they had to vote there.**²⁵

²² Approximately 580 people voted at the five accessible poll sites (Chan, Sewell, "Voting Devices For Disabled Draw Praise From All Sides," *New York Times*, September 14, 2006). Survey findings are significant at a 95% confidence level with a margin of sampling error of 6.6%.

²³ The survey question was: "Why did you come to this location to vote today?" Any response that indicated that the voter needed to use an accessible voting machine was coded under this heading and included in this figure.

²⁴ The survey question was: "Why did you come to this location to vote today?" Any response that indicated that the voter was working at the Board of Elections office, as a standby poll-worker, or at a poll site was coded under this heading and included in this figure.

²⁵ The survey question was: "Why did you come to this location to vote today?" Any responses that indicated the voter misunderstood BOE literature would have been coded under this heading and are included in this figure.

Prior to Primary Day, the City BOE sent out a mailing to all registered voters to inform them about the BMDs at the HAVA poll sites as an additional option for Primary Day voting. Because this mailing was sent out after the City BOE's customary mailing to notify voters of the locations of their neighborhood poll sites, some voters evidently misunderstood this as a change of their designated poll sites.

- The remainder of respondents said they voted at the HAVA poll sites for some other reason, including curiosity about the new machines or confusion as to the location of their regular poll sites.

Recommendation #1: Improved, Targeted Outreach

Given the low turn-out at these poll sites, particularly among people with disabilities for whom the poll sites are uniquely designed to be accessible, a more targeted outreach strategy is necessary to ensure that disabled voters are aware of the accessible voting machines weeks – not days – before Election Day.

- **The BOE should spread the word about the HAVA poll sites using mail, print, radio and TV.** Because this is a new option for all voters, increased outreach is especially important. The City BOE should send out new literature more than once, beginning in early October. This will allow all voters additional time to learn about the HAVA poll sites and arrange for transportation, childcare, and time off work, if necessary. In addition to mailings, the City BOE should conduct cost-effective outreach through a public service announcement (PSA) campaign incorporating advertisements in print, on radio and even television. Finally, the City BOE should partner with organizations that advocate for and provide services to people with disabilities to spread the word about these sites.
- **BOE literature should be revised for clarity of content and visual accessibility.** The City BOE should produce new literature that provides only what information voters need to know about this accessible alternative to their neighborhood poll site – such as how, when, and why to vote using the new machines at the HAVA poll site. In addition, the City BOE should follow guidelines for accessible design in its literature, as promulgated by nationally recognized organizations for people with low vision, such as Lighthouse International.²⁶ For example, the City BOE's mailing about the HAVA poll sites had small black text on a light blue background. The City BOE should instead use the highest possible contrast, larger text and ensure ample space between lines and letters.
- **The BOE should conduct more public demonstrations of the BMDs, particularly at locations that people with disabilities know to be accessible.** Prior to the Primary Elections, the City BOE provided only one public demonstration of the BMDs in each borough. More demonstrations should be conducted to ensure that members of the

²⁶ See, for example, Aries Arditi, "Making Text Legible: Designing for People with Partial Sight," Lighthouse International, http://www.lighthouse.org/print_leg.htm (last accessed Sept. 18, 2006).

public, particularly people with disabilities, are given the opportunity to familiarize themselves with the BMDs before November's election.

- **The BOE should provide directions to HAVA poll sites in its literature, to its staff and to 311.** New literature should include all major public transportation options to the HAVA sites, as well as specific cross-streets. In addition, 311 operators and members of City BOE staff who answer questions from the public should receive this information to be able to provide directions to voters in advance of Election Day. If a HAVA poll site has more than one entrance, these directions should indicate which of these entrances are accessible.

Finding #2: Few Voters Traveled Far to Use the HAVA Poll Sites

- **Eighty-six percent of those surveyed said they traveled for less than thirty minutes to get to the HAVA poll sites.**²⁷ Convenience, as previously noted, was a common reason for why respondents were voting at the HAVA poll sites. Voters were either unwilling or unable to travel significant distances in order to vote at HAVA poll sites.
- **In fact, 37% of respondents said it took them ten minutes or less to get there.**
- **Walking was the most common means by which respondents traveled to the poll site (29%).**²⁸ Only two respondents, for example, reported using Access-a-Ride.

Recommendation #2: Increased Coordination between the City BOE and Metropolitan Transportation Authority (MTA) for Election Day

In order for HAVA poll sites to be truly accessible to each borough's voters, the City BOE must work in partnership with the MTA in order to effectively coordinate transportation and outreach for people with disabilities. While the court order only recommends, rather than requires, that transportation be provided, the City BOE did reportedly notify the MTA about the "potential" need for an increase in Access-a-Ride service, but indicated it would not be providing any "transportation to or reserved parking at these poll sites."²⁹ It is unclear what, if any, change in services that communication produced.

- **The City BOE and MTA should coordinate to conduct outreach to people with disabilities.** The City BOE should provide the MTA with materials the MTA can distribute to every Access-a-Ride passenger between now and Election Day. Additionally, the City BOE should work with the MTA to launch an outreach campaign

²⁷ The survey question was: "Approximately how long did it take for you to get here today?"

²⁸ The survey question was: "How did you get here today?" Any responses that indicated walking was the means by which the respondent arrived at the poll site would have been coded under this heading and are included in this figure.

²⁹ Board of Elections in the City of New York, "Ballot Marking Devices (BMDs) Frequently Asked Questions," Board of Elections in the City of New York, <http://vote.nyc.ny.us/pdf/documents/boe/bmdenglish.pdf> (last accessed September 18, 2006).

about the accessible poll sites at least four weeks prior to Election Day in subway stations, on trains, buses, bus stops, and other public transportation venues, especially those most frequently used by people with disabilities. The BOE should also work with disabled service providers and advocates to distribute information about the accessible poll sites to voters prior to Election Day.

- **The MTA should increase Access-a-Ride service on Election Day.** Currently, a passenger must reserve a spot on Access-a-Ride either one or two days prior to the desired date of travel. At minimum, the MTA should allow Access-a-Ride passengers to reserve their ride to the polls at least two weeks prior to Election Day, so that the agency is able to assess and accommodate the demand on November 7, without impacting normal Access-a-Ride service.

Additional Findings and Recommendations

- **Most voters surveyed found BMDs easy to use.** Given a scale of one to five (with one being most difficult and five being the easiest), 69% of respondents rated their experience using the machine a “five.”
- **Each borough’s City BOE office should provide at least two stations for check-in.** Even though the HAVA poll sites each had multiple voting machines (between three and five per borough), each site had only one sign-in station. During Primary Day, with its low turnout, this did not pose a problem. Given, however, that general elections tend to have a higher voter turnout than primary elections, this set-up could create a bottleneck that leads to large crowds and long waits for voters in November.
- **HAVA poll sites were well-staffed, and staff appeared to be knowledgeable and helpful.** City Council observers noted several poll workers were assigned to each BMD, and poll workers assisted voters using the new machines through every step of the process.

Conclusions

The City BOE had some major challenges to overcome in order to become partially HAVA-compliant in a short period of time. The time, resources and attention the agency devoted to implementing the new voting system and training staff for Primary Day is evident. On these tasks, the BOE deserves to be congratulated for a job well done.

However, the low voter turnout at these HAVA poll sites was a disappointment. The particularly dismal turnout among people with disabilities, for whom the BMDs were designed to be accessible, is cause for serious concern. Outreach by the BOE was insufficient at best, and a much greater effort should be exerted in the upcoming weeks leading to Election Day.

In addition, the lack of coordination between the City BOE and MTA to provide transportation for such an important day is troubling. A plan must be implemented to meet accessible transportation needs on Election Day if the City is to see a meaningful change in participation among voters with disabilities, despite the omission of transportation accommodations from the court order to which the City and State are bound.

In addition, more scrutiny should be given to this plan's potentially disparate impact on minorities who, based on their location, are even less willing or able to travel to the one accessible poll site in each borough. For example, the HAVA poll site in lower Manhattan was arguably least accessible to voters who live in the northern part of the borough, where many racial and ethnic minorities are concentrated. Ideally, if sufficient funding were available, the City BOE could set up two or three accessible poll sites per borough for the General Election at places easily accessible to most, if not all, residents. However, the City Council recognizes the funding limitations facing the City BOE, and therefore encourages the agency to think creatively about reaching out to residents for whom the accessible poll sites are not conveniently located.

In order to see democracy at its best, full and complete cooperation among all agencies involved must be achieved. The next several weeks present a unique opportunity to address these concerns and provide *all* voters a viable option for Election Day voting – an historic first for New York City.