

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars. The top bar is slightly wider than the bottom bar.

NEW YORK
CITY BAR

Media Advisory
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STATEMENT BY THE NEW YORK CITY BAR ASSOCIATION

In Response To

**U.S. Justice Department Law Suit Against the State of New York
For Failing to Meet Federal Deadlines to Update State Voting System**

*A Joint Statement of the Special Committee on Election Law, Committee on Civil Rights, and the
Committee on Legal Issues Affecting People with Disabilities of the New York City Bar.*

On March 1, 2006 the United States Department of Justice filed suit against the State of New York for its failure to comply with sections 301 and 303(a) of the Help America Vote Act (HAVA) 42 USC §15301 et seq. HAVA sets standards for the states for the conduct of elections for Federal office. New York is specifically charged with failure to meet HAVA's requirements regarding the creation of a computerized statewide voter registration list (42 USC §15483) and the development of, and implementation of, voting systems standards, including standards for accessibility for voters with disabilities (42 USC §15481(a)(3)). Compliance with the first of these Federal mandates was required by January 1, 2006; the second by such time as would allow new voting systems in New York polling sites by September 12, 2006.

Although New York is not the only state to fail to meet the statutory deadline, the Department of Justice maintains that it has made the least progress and it is the first and thus far only state to be sued for noncompliance. New York's conduct is legally indefensible. Indeed, although it had been aware of HAVA's statutory deadlines since its adoption in 2002, the State Legislature did not enact legislation permitting the State Board of Elections to develop the implementation process until Summer 2005.

Despite the technical merit of its lawsuit, DOJ is at risk of losing sight of the important principles advanced by HAVA, especially in its demand that the Court order New York to comply by an absurdly short deadline. The Legislature finally has taken the necessary action and the State Board of Elections is in the midst of developing the standards and procedures needed to implement HAVA effectively. Concededly, compliance cannot be complete by the 2006

elections, but Federal insistence on more being accomplished than is reasonable or possible would be a Pyrrhic victory.

HAVA requires the replacement of New York's obsolete mechanical lever voting machines with new and in some cases untested technology. There remain substantial unresolved concerns regarding both the functionality and security of these technologies. Hasty action conceived and implemented in the adversarial context of litigation will not resolve those concerns. On an interim basis, however, procedures can be put in place for this year's election that will allow New York voters with disabilities for the first time to participate fully and on the same basis as other citizens in the communal act of voting at the polls on Election Day. This major objective of HAVA can be realized without prematurely committing New York to an inadequately vetted voting system.

Specific Concerns

We have specific concerns about the systems under consideration by the State Board of Elections for interim implementation in 2006 as the "accessible" option for voters with disabilities at polling places. We urge that any interim system not create impediments to voters with particular disabilities, preserve the anonymity of voters, and that any votes cast on such system be treated equally with all other votes.

The creation of a statewide voter registration database also should not be rushed. The State Board of Elections needs to be given the time to fully implement the safeguards found in New York's HAVA legislation. This includes important standards regarding matching names on different databases to identify when a voter is to be added or removed. The goal is to create and maintain a list, which is accurate but also ensures that no eligible voter is disenfranchised.

Finally, DOJ's recent public pronouncement that New York should forfeit some or all of the Federal funds it has and otherwise will receive to implement HAVA is particularly misguided. The citizens of this state, including voters with disabilities, should not be penalized for the inaction of their political leaders. Depriving New York of the funds to implement HAVA properly would be as irresponsible as requiring it to implement the statute precipitously.

We urge the State of New York and the Justice Department to resolve this lawsuit in a way that provides a statewide registration list that avoids fraud but preserves the right of all eligible voters to vote, allows for adequate public input, preserves the federal money provided for HAVA implementation, and ensures access to the voting systems by all voters, including those with disabilities, so that the important goals of HAVA are achieved.

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