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Complying with the Help America Vote Act (HAVA): Variations Among the States

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The Help America Vote Act (HAVA) provided states with federal funds to upgrade their voting systems and improve election administration. To comply with the law, states had to develop implementation plans and meet established deadlines for voting safeguards (i.e., provisional voting and voter identification for first-time voters who register by mail), a statewide voter registration list, and voting system standards. Yet HAVA allowed states to implement the requirements in different ways, and they were expected to take advantage of that flexibility. As political scientist Robert Montjoy observed, HAVA's goal of providing uniform and nondiscriminatory standards for federal elections applies "within states, not across states."¹ This paper seeks to address a fundamental question: How did states with decentralized election systems adapt to a federal law that required greater state centralization and responsibility for election administration?

Our focus is on both the causes for the variations in state compliance with HAVA and the consequences of HAVA requirements for election administration, with particular emphasis on the experiences of New Jersey, New York, and Pennsylvania in implementing HAVA. We identify administrative, political, and policy-related reasons for variations in HAVA compliance in each state. We also consider the effects of HAVA on state and local government interactions, funding decisions, and policy innovation. We begin by reviewing HAVA compliance requirements, describing how states responded to those requirements, and comparing New Jersey, New York, and Pennsylvania with the national norms for compliance.

HAVA COMPLIANCE: VARIATIONS ACROSS THE STATES

HAVA is a "modified direct order" from the federal government to the state governments because it consists of a combination of incentives and requirements.² Incentive grants are provided under Title I of the act to support election administration and replace punch cards and lever machines with electronic voting machinery. HAVA also provided states with funds under Title II to meet requirements in Title III under specified deadlines:³

- January 1, 2004, for compliance by the states with provisional voting, voter identification, and voting information requirements (Section 302);
- January 1, 2004, with potential for a waiver to January 1, 2006, for compliance with computerized statewide voter registration list and voting information requirements (Section 303); and
- January 1, 2006, for compliance with voting systems requirements, including: preventing overvotes by allowing a voter to verify, correct, or change a ballot before a vote is cast; providing a permanent paper record that can be used in an audit; allowing the disabled to cast an independent and secret ballot; meeting the language minority requirements of the Voting Rights Act of 1965; ensuring that voting systems do not contain error rates that exceed Federal Election Commission standards; and establishing a uniform definition of a vote (Section 301).⁴

Although all states were required to meet the deadlines under Title III, they operated on different schedules and differed in how they spent HAVA funds and how they implemented the requirements under Title III.⁵

With respect to voting safeguards, all but five states, including New Jersey, had provisional voting in place by the January 1, 2004, deadline.⁶ New York allowed provisional voting before the 2000 presidential election and Pennsylvania adopted provisional voting legislation in 2002, prior to the passage of HAVA.⁷ Ten states, including New Jersey and New York, failed to comply with HAVA's voter identification requirement by the deadline.⁸ All states, however, met HAVA requirements for provisional voting and voter identification in time for the 2004 presidential election.

Compliance with statewide voter registration requirements under HAVA has been a greater challenge for many states. Forty-one states applied for a waiver of the January 1, 2004, deadline. By the January 1, 2006, deadline, at least 40 states had a statewide voter registration database compliant with HAVA, including Pennsylvania. Several others, including New Jersey, were nearing completion of a statewide database, while New York was far behind in complying with this requirement.⁹

Although we do not have reliable surveys on compliance with all of the voting system standards in Title III, in one of the most important areas of compliance—providing access for voters with disabilities—over one third of states had not provided at least one machine that would allow the disabled to cast an independent and secret ballot by January 1, 2006.¹⁰ Many states that accepted federal funds to replace punch cards and lever machines did not meet the deadline. New Jersey has been relatively successful by comparison to other states. New York expects new machines to be certified by 2007, though it has not yet contracted with a vendor. Pennsylvania continues to operate with a medley of optical scan, DRE, lever, and hand-counted paper ballots. We take up the issue of voting machinery in greater detail in the case studies below.

States needed to complete an implementation plan to apply for any funds under HAVA, including estimates of how HAVA funds would be spent on various aspects of election reform. These initial estimates were often adjusted after the plans were submitted; for instance, New Jersey and Pennsylvania received more

TABLE I

Allocations and Percentage of HAVA Funds by Major Category (in millions of dollars)*

Spending Category	New Jersey	New York	Pennsylvania**	National Ave.
Voting Equipment	\$48.6 (58.0%)	\$190.0 (86.0%)	\$76.1 (61.0%)	\$30.1 (57.2%)
Registration Database	\$25.0 (30.0%)	\$20.0 (9.0%)	\$13.1 (10.0%)	\$12.8 (23.3%)
Voter Education/Poll	\$4.0 (6.0%)	\$10.0 (5.0%)	\$7.2 (5.0%)	\$4.1 (9.6%)
Worker Training	\$1.0*** (1.0%)	0.0 (0.0%)	\$2 (<1.0%)	\$0.2 (4.3%)
Other****	\$6.2 (7.0%)	\$1.0 (<1.0%)	\$26.5 (21.0%)	\$0.3 (5.5%)
Total	\$88.8	\$221.0	\$123.2	\$52.7

Sources: For New Jersey, HAVA Executive Summary, April 13, 2005; for Pennsylvania, Commonwealth of Pennsylvania State Plan As Amended, September 15, 2005, p. 35; for New York, New York State Board of Elections, May 24, 2006.

* Numbers may not add to 100 percent due to rounding.

** The Pennsylvania data—breakouts and total—reflect appropriations of federal funds for 2003 and 2004, and do not include additional Title II funds estimated at about \$40 million for receipt in 2005.

*** The New Jersey HAVA State Plan allocated \$1 million for provisional voting; a figure left out of the more recent executive summary.

**** Other expenses refer to office, transportation, salaries, and voter registration.

federal funds than anticipated by their original plans. As Table I indicates, states planned to spend a majority of HAVA funds on replacing and upgrading voting equipment. All three states expected to spend near the national average percentage of funds on replacing and upgrading voting equipment.

COMPARING NEW JERSEY, NEW YORK, AND PENNSYLVANIA

New Jersey, New York, and Pennsylvania have strikingly similar political and institutional characteristics. All three neighboring states have predominantly individualistic political cultures,¹¹ politically competitive electoral systems, professional state legislatures, and governors with strong institutional powers.¹² All three states score high on the dimensions of state aid to

local government and direct state spending.¹³ They also had similar election systems prior to the passage of HAVA. All three states had decentralized systems of elections, wherein the states provided no funds to localities for election costs, no training of election officials, and the localities purchased their own voting equipment, albeit with the approval of the state.¹⁴ None of the three states required any form of voter identification prior to HAVA.¹⁵ They differed, however, on other aspects. For instance, although at least some voters in all three states voted on lever machines prior to HAVA, New York led the way with lever machines in use statewide. New Jersey had largely moved to direct-recording electronic systems (DRE), and Pennsylvania voters cast ballots on a wide range of systems. New York

and New Jersey had some form of provisional balloting, though only New York's policy was standard across the state. New Jersey and Pennsylvania had compilation registration databases that gave localities authority to make changes to voter rolls, whereas New York had no such database. Given the similarities and a few differences in election systems among the three states, we consider how each responded to HAVA's requirements and incentives.

PENNSYLVANIA AND HAVA: MOSTLY ON SCHEDULE

Pennsylvania is distinctive from New Jersey and New York for its accelerated timing of election reform and for its timely compliance with HAVA mandates. In the aftermath of the 2000 election, Republican Governor Tom Ridge established a Voting Mobilization Task Force via Executive Order, and the General Assembly created a Joint Select Committee to Examine Election Laws. Then, the Pennsylvania legislature (General Assembly) passed legislation to create a statewide voter registration database (Act 3 of 2002), provisional voting, and identification requirements (Act 2002-150) in advance of HAVA.¹⁶

These election reforms enacted by the legislature were "incremental," hastened by "fears of a 'Florida' election and the emerging realization of the weak capacity of existing election law" but limited by partisan divisions over reforms, such as voter identification, that could advantage or disadvantage Republicans or Democrats.¹⁷ The voter identification issue resurfaced again in 2006, when the Republican-controlled General Assembly adopted legislation requiring all voters to present identi-

fication at the polls—not just first-time voters as stipulated in HAVA. Democrat Governor Edward Rendell vetoed the bill, contending that it would place an onerous burden on urban voters.

Following enactment of HAVA, two implementation boards authorized in the 2002 Pennsylvania legislation were appointed—the Voting Standards Development Board and State Plan Advisory Board. Pennsylvania's HAVA Implementation Plan was adopted in 2003, with amendments filed with the Election Assistance Commission in 2004 and 2005. Pennsylvania complied with the HAVA January 1, 2004, deadline regarding provisional voting and voting information. The state requested and received waivers to January 1, 2006, of the January 1, 2004, deadlines for replacement of lever machines and punch card systems, and establishment of the statewide voter registration database. As of January 1, 2006, Pennsylvania had met the statewide database and voting systems mandates of the act. Nonetheless, Pennsylvania experienced complications in bringing the statewide database system on-line, timely selection and delivery of replacement voting machines, and voter identification requirements at the polling place.

SURE

Pennsylvania's Statewide Uniform Registry of Electors (SURE) was a long-sought response to discontent at both county and state levels for many years before HAVA.¹⁸ Prior to the adoption of SURE, each of the state's 67 counties "administered its own voter registration records, and county officials had no means

to crosscheck these records with the records of other counties.”¹⁹ SURE is the clearest evidence of greater centralization of election administration in Pennsylvania. Established in law in January 2002, nine months before HAVA, and developed by Accenture, SURE was fully operational by the January 1, 2006, deadline. The process, however, of developing and implementing this centralized voter registration database was not entirely smooth.

Initial reactions to SURE varied according to whether counties had “Chevrolet” or “Cadillac” voting systems.²⁰ Smaller and rural counties—with Chevrolets—were “grateful for a better voter registration system.”²¹ “We all used to do our own thing,” the director of elections of Wayne County observed, “Now we feel more comfortable that other counties are doing as we are.”²² Larger counties, notably, Allegheny, Philadelphia, and Montgomery—with Cadillacs—had systems in place that were more sophisticated than SURE. Philadelphia, for example, with an electronic registration system which incorporated images of completed voter registration forms (with signatures) for its nearly one million voters, resisted linkage with SURE which did not include such images.²³

The technical challenges of creating a statewide electronic voter database were not trivial. As Philadelphia officials anticipated, SURE was not initially capable of efficiently handling the electronic transfer of about one million registrations from Philadelphia without slowing down the entire state system. An unrealistically fast development timeframe of one and one-half years, under a 2002 state

contract with Accenture during the administration of Governor Ridge, contributed greatly to start-up problems. An external, independent review initiated by Governor Rendell, Ridge’s successor, led to a three-year renegotiated contract with Accenture and a “PA SURE-Go Forward Strategy” in 2005. There are still technical challenges, local and state officials agree, but the level of intergovernmental cooperation in problem-solving has improved. Philadelphia, finally overcoming “kicking and screaming about abandoning its old system,” was the last county to join the SURE system in 2005.²⁴

Under SURE, the role of the Pennsylvania Department of State has been enlarged, although the role of the counties remains substantial. The department now has responsibility for maintaining the database and for coordinating registration records with the departments of transportation and health. Counties continue to play key roles in the administration of elections, by registering new voters, using state-designed forms, maintaining local voter registration records, and retaining authority for modification of local records. Also they maintain the ability to print poll books—a function they consider crucial for the smooth running of elections.

VOTING SYSTEMS

HAVA’s voting systems requirements also increased the role of state government, but maintained county discretion in the selection of voting systems.²⁵ In the November 2000 election, three types of voting methods were used in the state’s 67 counties, with lever

machines accounting for 65 percent, electronic voting systems, 34 percent, and paper ballots, less than 1 percent. HAVA mandates affected all 67 counties in the state, not only those who had to replace their lever machines, but also those with electronic systems (DREs, optical scans, and electronic punch cards) to ensure that they were accessible to individuals with disabilities.

The state government assumed authority under HAVA to certify compliant voting systems. It did not challenge the local option of counties to replace or upgrade their voting systems. Rather, the Department of State “encouraged” them, using reimbursement incentives to “procure a single HAVA compliant precinct count electronic voting system that can be used by all voters, including persons with disabilities, that provides full compliance with the voting system requirements of Federal and State laws.”²⁶

Pennsylvania permits, but does not require, a voter verifiable paper audit trail (VVPAT). The State Plan recognizes the points of difference between proponents and of opponents of VVPAT. Local elections officials interviewed for this chapter did not express a preference for VVPAT; rather, they expressed concerns about invasion of secrecy if a voter number were matched with the voter’s choices.

MAY 2006 PRIMARY ELECTIONS

The May 16, 2006, primary elections were the first statewide test of compliance with HAVA’s voting systems requirements. The process of replacing outmoded machines in time for the

primary in Pennsylvania’s 67 counties could be characterized as “zig-zag.”²⁷ The entire process was initially held up because of late formation at the federal level of the Election Assistance Commission and delays in certifying voting systems by the federal independent testing authority, and, as a consequence, by the states. Two other factors also contributed to delays—a legal challenge and the inability of a vendor to commit to delivering machines in time for the May primary elections. Plaintiffs in Westmoreland County argued in February 2006 in a Commonwealth (trial level) Court that the state constitution required voter approval before purchase of new machines; a position upheld by the judge. The ruling was overturned on March 3, 2006, by the Pennsylvania Supreme Court, the state’s highest, which agreed with the position of the Department of State, namely, that federal law preempts state law.²⁸

The May primary date created another obstacle for timely acquisition of replacement machines. Advanced Voting Systems (AVS) was not certified by the Pennsylvania Department of State until mid-February 2006. Ten counties with AVS contracts for delivery of machines within 90 days were informed on March 13, 2006, that the vendor “was doubtful of its ability to deliver the machines in time for the county to train poll workers and familiarize voters for the primary.”²⁹ While seven of the 10 counties switched to other systems guaranteed for timely delivery, three small rural counties—Northampton, Lackawanna, and Wayne—remained with AVS. Although AVS subsequently delivered the machines two weeks before the primary and conducted

three-day training sessions for poll workers, the truncated time frame was difficult for local officials. "I'm at the point where I'll just be glad when this election is over. Everything has fallen in our laps. All the stress ... all the responsibility."³⁰ Bucks was the lone Pennsylvania county that failed to switch from lever to HAVA-compliant machines. After the vendor with which it contracted for delivery of 700 electronic voting machines, Electec Inc., a subsidiary of Danaher Corporation, indicated it could not deliver the machines, Bucks County commissioners "hastily crafted a plan to use only paper ballots." That plan was ruled unlikely to be HAVA-compliant by the state elections commissioner. In the end, Bucks County officials decided to risk the loss of \$950,000 in HAVA funds by using lever machines.³¹

On the whole, the May primary with new HAVA-compliant voting systems went relatively smoothly in most Pennsylvania's counties. The director of elections of rural Wayne County noted the advantage of testing the new machines in a primary election. "Of all elections," she observed, "it was best to have a primary [with the new machines] because of fewer candidates and voters."³² Officials in urban Allegheny County, which overlies Pittsburgh, concurred. Despite "glitches, particularly with getting the new electronic voting machines started" and longer time to count votes than in the past, they and their counterparts in other western Pennsylvania counties were relatively pleased with the adaptation of voters to the new systems.³³

VOTER EDUCATION AND ELECTION WORKER TRAINING

While education of voters and training of election-day workers are county responsibilities, the role of the state government has been enlarged. Respectful of the statutory authority of the counties for these matters, yet anticipating potential confusion from the use of new voting technology, the Department of State developed an extensive voter education and outreach program and training sessions for elections officials. The Pennsylvania Plan stipulates a wide variety of educational activities, developed in consultation and with the support of county boards of elections that were mounted across the state beginning in 2004. Both state and local officials made clear that the purpose of all of these activities was for understanding the new voting systems and ensuring accessibility to them, not in generally extending the franchise.

REINFORCING CENTRALIZATION

The major effect of HAVA in Pennsylvania has been to reinforce a trend toward greater centralization in election administration. While the prerogatives of the counties in election administration remain strong, they have been diminished and those of the state government, strengthened. The trend toward centralization of elections was in place prior to HAVA. In part, it was attributable to the National Voter Registration Act (NVRA) of 1993, which increased the role of the state Motor Vehicles Department (DMV) in voter registration. The other centralizing influence was SURE, Pennsylvania's own initiative to address the problem of duplication of records under NVRA, which

involved central electronic processing of registration forms by the DMV, then transmittal by paper to the counties. Until the NVRA and SURE, the "Department's role was largely ministerial, and it had little authority—except through policy direction and assistance—over the county boards of elections and registration commissions."³⁴

HAVA reinforced the centralization trend by making states accountable for compliance. While Pennsylvania respected the constitutional authority of counties to select state-certified voting machines, at the same time, it required them to share accountability. All 67 counties were required to submit written county plans prior to disbursement of HAVA funds by the Department of State; the plans detailed intended uses of HAVA funds and how the county would maintain current levels of local funding for election administration. These contractual relationships, new in the history of elections administration in Pennsylvania, were explicitly intended "as a means to determine a county's compliance with HAVA."³⁵

HAVA's effects have not been uniform across Pennsylvania's counties. The state's influence has been greatest on smaller, rural counties regarding selection of replacement voting machinery and accession to the SURE system. Counties like Philadelphia, the state's largest, with its own pre-HAVA sophisticated electronic voter registration database and electronic voting machines (acquired in 2002 with its own funds, pursuant to a 1999 city ballot initiative), did not welcome an enlarged state government role. Nonetheless, HAVA,

under the direction of the state government, trumped all of these local variations.

NEW JERSEY AND HAVA: DELAYED COMPLIANCE AND POLICY INNOVATION

Four general observations emerge from New Jersey's efforts to implement HAVA. First, New Jersey represents a case of delayed compliance with HAVA requirements, and the reasons for delay are different for each of the three main areas of reform: voter safeguards, statewide registration database, and voting system standards. Second, HAVA provided a stimulus for policy innovation, and those innovations mainly have been directed toward expanding voter access and participation. Third, the degree of partisanship in election policy varies by issue, and partisan differences are greatest on issues dealing with voter access and identification. Finally, HAVA and subsequent policy innovations that stem from HAVA have forced state level policymakers and local election officials to negotiate a tenuous balance between state responsibility and local control over elections. Officials in the attorney general's office and legislators have learned to value the experience and expertise local election officials bring to the policy process, and they have solicited their input,³⁶ but the lines of authority in the attorney general's office and its articulation of election administration policies are not entirely clear to local officials.³⁷

DELAYED COMPLIANCE

Compared with most states, the New Jersey legislature acted swiftly in response to HAVA, passing bipartisan bills (A3151 and S2348) in

June 2003 with compliance provisions for provisional balloting and voter identification.³⁸ The legislation was enacted even before completion of the final report in August 2003 of the HAVA state planning commission. But the bill contained a controversial item; it required all voters who registered after January 1, 2003, and had not presented personal identification (not just those who registered by mail for the first time as required by HAVA) to provide proof of identification at the polls. Though this provision extended HAVA's voter identification requirement, legislators believed that it created a more uniform approach to voters who had registered for the first time. But, at the urging of unions and other advocacy groups who opposed a voter identification provision, Democratic Governor James McGreevey vetoed the bill. After stripping the bill of its voter identification language, the Democrat Assembly majority approved the bill, but the Senate, equally divided between Democrats and Republicans, defeated the measure along party lines.

This delay caused New Jersey to be one of just 10 states to miss HAVA's deadline of January 1, 2004, for provisional voting and voter identification.³⁹ After the 2003 elections, in which Democrats gained a majority in the Senate, both chambers passed in July 2004, and the governor signed into law S701, a bill that complied with HAVA voter identification and provisional voting guidelines. The vote on S701 reflected partisan divisions over voter identification. In the Assembly, all Democrats voted for the bill, while only two Republicans voted in favor and 29 voted against; in the

Senate all Democrats voted in favor, while only seven Republicans voted in favor and 10 voted against.⁴⁰

In 2005, the New Jersey legislature enacted two additional pieces of legislation related to HAVA compliance standards, both with bipartisan support. A bill to improve poll place accessibility for the disabled (A3392/S1387), with input from Director of Elections Ramon de la Cruz and local election officials, met and exceeded the requirements of HAVA and passed both chambers unanimously.⁴¹ A statewide registration database bill (A45/S28), with input from the attorney general's office and local government officials, also passed with overwhelming support by the legislature with one just one dissenting vote in the Assembly.

The development and implementation of the statewide voter registration database (SVRS) proved to be more difficult, revealing the challenges of introducing a centralized system in a state where local governments have traditionally run elections. The attorney general was slow to act on what turned out to be an enormous challenge: to coordinate the input and efforts of local governing boards, election officials, and various state agencies that would eventually share data on a single system comprised of voter lists that had been developed and maintained by the various 21 counties across the state. When the attorney general proposed a top-down centralized voter registration database, the New Jersey Association of State Election Officials threatened to file a lawsuit.⁴²

Eventually, the attorney general appointed Michael Gallagher, formerly director of administration with the Motor Vehicle Commission, to direct the SVRS project. Local officials demonstrated to Gallagher and other staff in the attorney general's office that vendors proposing to build the SVRS did not have a back-up system and could not guarantee that information would be secure if the system failed.⁴³ Gallagher's solution was to allow local governments to keep their servers and maintain their voter lists. He also developed a communication plan consisting of system protocols, newsletters, weekly updates, and special bulletins.⁴⁴ Coordination among the various stakeholders also improved as a result of Joint Application Development (JAD) sessions, where the attorney general's staff, local election officials, and representatives of various state agencies involved in the project exchanged information and ideas and worked out compromises.⁴⁵ Gallagher maintains that the state could not have developed a system without input from local election officials.⁴⁶

In spite of these improvements in the process, SVRS was not completed by the January 2006 deadline. The delay was partially a consequence of the scale of the project, which Gallagher describes as a "comprehensive electoral management system," with "real time architecture," that allows voter registration information entered by local officials to be checked instantaneously by records from various state agencies.⁴⁷ Progress also slipped as a result of programming problems. The SVRS was fully deployed in all 21 counties by May 15, 2006. Yet the counties brought on line last could not use the system during the June primaries, and

some individuals worry that it will take months to troubleshoot the complicated system. If the system succeeds, despite its delayed implementation, New Jersey officials contend it will be one of the most advanced voter registration databases in the nation.

VOTING SYSTEMS

New Jersey also lags behind many states in terms of making its voting systems HAVA compliant, and at least some of the problems stem from a lack of administrative support for voting machine certification. An inventory report of the attorney general in 2004 showed that virtually all of New Jersey's 21 counties needed to be either replaced or upgraded.⁴⁸ Under the HAVA plan, the state reimburses local governments for 75 percent of their costs of replacing voting machines. The plan also noted that the attorney general would need to "promulgate rules and regulations that comport with the latest technology of voting machines," and redefine the voting machine committee that examines machines for certification and charge the committee with addressing security issues and problems associated with access for disabled voters.⁴⁹ Several observers have noted that these steps have not been taken, creating delay in ordering voting machines.⁵⁰ Even counties with machines in place anticipate training and operational problems with the audio kits and software designed for disabled access machines.

Meanwhile, certification has been further complicated by a bill (A33) passed by the state legislature in 2005 requiring all machines to produce a voter-verified paper trail (VVAPT)

of votes. Though the technology had not yet been fully developed when the bill passed, the state's estimated cost of implementing the new requirement was between \$26.4 and \$39 million, and the local cost was "unknown."⁵¹ In addition to costs, issues about storing, operating, and maintaining the machines had not been resolved when the bill was signed into law.⁵²

ELECTION EDUCATION AND VOTER OUTREACH

New Jersey contracted with the Center for Government Services at Rutgers University to develop a first-of-its-kind training course on election administration for election officials.⁵³ Professor Earnest Reock of the Center for Government Services involved experienced election experts in the development and instruction of a "Basic County Elections Administration."⁵⁴ Hundreds of election officials took the four-day course, which was offered in several locations throughout the state. Several counties have also involved students at local high schools to work at election-day polls.⁵⁵ These efforts are generally viewed positively by policymakers and administrators.

The most striking and controversial aspect of New Jersey's voter education program has been an extensive voter outreach program designed to increase voter registration and turnout. Attorney General Peter Harvey broadly interpreted the voter education provisions of HAVA, stating that one of HAVA's goals was to increase voter participation and turnout.⁵⁶ The point is stated in the HAVA state plan: "The fundamental goal of any electoral process, at any level of government, is

to have the largest number of qualified voters turnout to vote This is clearly one of the goals of HAVA, to engage as many qualified voters in exercising the franchise."⁵⁷ Actually, though HAVA does not preclude states from spending funds on voter outreach, it does not recommend that states use federal funds to promote participation. HAVA's voter education provisions are intended to support state efforts to provide voters with information about how to register and vote, and to ensure that every vote is counted. HAVA generally sought to strike a balance between access and ballot security often described as "making it easier to vote, but harder to cheat."⁵⁸ Harvey's voter outreach program was clearly focused on the first part of this statement.

In 2004, the attorney general's office launched its "BE POWERFUL, BE HEARD" voter education campaign, which was explicitly designed to encourage young people to vote.⁵⁹ Harvey contended: "We have to advertise voting and other civic responsibility the same way we advertise leisure activities and the same way we advertise beer. We need to get people excited about voting and explain to people why their vote matters."⁶⁰ The advertising campaign features celebrities in the entertainment and sports industries. The attorney general held a "Hip Hop" Summit, recruited the New York Giants, and devoted the Division of Elections home page to streaming videos from famous musicians, actors, and athletes.⁶¹ According to one source, Harvey spent \$2.7 million of the \$3 million in HAVA funds planned for voter education on the advertising campaign.⁶² The voter outreach campaign was the third-largest expense of the

\$28.4 million New Jersey had spent up until 2006; \$15 million was spent for new voting machines and the \$9 million for the statewide voter registration system.

The attorney general's office attributes increases in voter registration and voter turnout data, particularly among 18–24 year olds, in the 2004 election to the voter outreach campaign.⁶³ But the program clearly pushed the intention of HAVA's voter education provision toward the advocacy end of the spectrum and drew criticism from some observers of HAVA who believed the funds could have been used more constructively to educate young people about the election process.⁶⁴

HAVA AND BEYOND: POLICY INNOVATION IN NEW JERSEY

New Jersey's voter outreach campaign, the statewide voter registration database (SVRS), legislation to improve disabled access to voting, and the voter verified paper audit trail (VVPAT), exemplify the innovative spirit of the state's efforts to exceed HAVA requirements. In 2005, the New Jersey legislature passed a bill (A35/S1133) to allow no-excuse absentee voting, yet another example of New Jersey's efforts to make it easier for people to vote. Consistent with previous roll calls dealing with voter access, the bill reflected partisan divisions.⁶⁵ Thus HAVA has been a stimulus for election law reform, and with the Democrats in charge, those reforms have clearly emphasized easing voting restrictions and encouraging voter access to the system.

NEW YORK AND HAVA: EVENTUAL REFORM

New York was the last state to bring its laws into compliance with HAVA. Governor Pataki's signature on July 12, 2005, of the Election Reform and Modernization Act, adopted unanimously by the state legislature on June 23, 2005, marked the end of a long and divisive political process. After failing to meet HAVA deadlines, on March 1, 2006, the United States Department of Justice filed suit against the New York State Board of Elections, alleging violations of the Help America Vote Act.

New York's troubles in complying with HAVA reflect what scholars refer to as "strategic delay," a delay that may result from needs for greater clarity about policy implications, lack of support from key stakeholders, or concerns about how federal programs affect local preferences.⁶⁶ The strategic delay in New York was facilitated by advocates who sought partisan advantage, made claims about home rule, or insisted on framing the issue of election administration in terms of civil rights.⁶⁷ As a result of compromises that ended the strategic delay—those already reached and those expected as a result of the federal court order—the administration of elections will be considerably centralized. Local boards of elections will continue to play consequential roles in the elections process. So, too, will the advocates for change in New York's system, whose voices throughout the implementation process were forceful and effective. Ultimately, however, HAVA's combination of mandates and funding incentives changed the agenda for election reform in New York.

ELECTION REFORM: THE PROCESS

For two years after the 2000 election, election reform in New York was mired in gridlock, a consequence of partisan divisions, a strong tradition of home rule, an entrenched decentralized election system, and fierce advocacy groups. In 2002, HAVA—with its prospect of more than \$235.6 million to replace New York's lever machines, educate voters, train election-day workers, and establish a statewide registration database—changed the terms and the pace of election reform. Though the state legislature missed the HAVA's deadline of January 1, 2004, for voter identification, Assembly Democrats and Senate Republicans reconciled their differences in time for the September 2004 primary elections.⁶⁸ It was a compromise between the Assembly Democratic majority's expansion of HAVA language to include 22 forms of acceptable voter identification (in light of its traditional base of poor, urban, minority voters, many of whom do not have a driver's license), and the Republican Senate majority's much less inclusive list responsive to its largely suburban base. The compromise included the HAVA language and allowed discretion for local elections boards to verify identification.

New York sought and received a waiver to January 1, 2006, for compliance with computerized statewide voter registration list and voting information requirements, and was faced with the same deadline for compliance with voting systems requirements. Partisanship and access advocacy were entangled in New York's responses to those HAVA mandates. Governor Pataki's designation of Peter Kosinski, Republican deputy executive

of the state Board of Elections, as chief state elections official—bypassing Thomas Wilkey, the Democratic executive director of the state board—generated charges of partisanship.⁶⁹ Kosinski was criticized for "failing to represent adequately the diverse citizens of New York State, especially . . . racial, ethnic and language minority communities" in the 19-person Task Force he appointed, and for "preventing [the Task Force] from playing any significant role in the process of preparing the State Plan."⁷⁰ The plan filed in August 2003 with the Election Assistance Commission was intended by the State Board as a framework for "an ongoing process" within which to discuss and resolve specific issues; it was characterized by its detractors as full of good intentions, but failing to "articulate a true plan of action."⁷¹

Over the next two years, the Assembly Democratic majority and Senate Republican majority passed one-house bills, but failed to reconcile differences. Finally, with the January 1, 2006, HAVA deadline looming, the legislature unanimously passed major reforms in New York's election system in April, May, and June 2005. The Election Reform and Modernization Act, passed at the end of the 2005 session on June 25, contained the two most dramatic reforms—development, maintenance, and administration of a new statewide registration database by the state Board of Elections and replacement of lever machines with state-certified DRE or optical scan machines, each with a paper record of votes cast. Although the statewide database and new voting systems were nearly foregone conclusions by both houses of the legislature by the time of adoption, the final bill

reflected compromises that respected partisan positions, sensitivities of county boards, and concerns of watchdog groups and disability rights organizations.⁷²

New York's lateness in adopting laws compliant with HAVA mandates bore out the prediction that failure of the State Plan in 2003 to resolve contentious issues "would push New York to the limit in 2006."⁷³

VOTING SYSTEMS

The truncated timetable for replacing New York's lever machines in time for the September 2006 primary elections was unrealistic. "We think it's a massive project that requires time and care to get done and we would feel very anxious to have to run a couple of elections in a row with workers not familiar enough with these machines to carry it off without disenfranchising some people," a state board spokesman commented.⁷⁴

The Election Reform and Modernization Act of 2005 stipulates that state-certified DRE or optical scan machines, with a paper record of votes cast, are to replace the lever machines. One voting machine or system at each polling place is to accommodate voters with disabilities or to permit alternative language accessibility. The state board published draft voting machine regulations on November 30, 2005, and held four public hearings in regions around the state in December and January. Civic groups, including the New York State Public Interest Research Group, Common Cause, and the League of Women Voters, reacted negatively to the draft regulations. Their comments included concerns about

lost votes and failure to assure full access to voters with disabilities and to protect language minorities.⁷⁵ "Voting Systems Standards," final regulations revised in response to those comments, were not issued by the state board until May 2006.

Implementation then shifted to a second state agency, the Office of General Services (OGS), charged with negotiating with and awarding contracts to vendors of HAVA-compliant machines. OGS issued requests for bids on June 1, 2006. After the award of contracts for a term of five years, the process will revert to the state Board of Elections for certification of the voting systems. At the same time, each county and New York City will begin its own machine selection and vendor-negotiation processes. Finally, each local elections board will submit a plan to the state board detailing its preferred machine and how it will meet voter education, election worker training, and accessibility for persons with disabilities mandates in HAVA and New York State law. By mid-June 2006, some movement had occurred with regard to New York's voting systems. However, the basic charge of the U.S. Department of Justice against New York of failure to meet voting systems standards of HAVA still pertained. (See below for discussion of the lawsuit filed on March 1, 2006.)

THE STATEWIDE VOTER REGISTRATION DATABASE

The challenges of developing a statewide voter registration database were recognized from the outset at both state and local levels. They, too, were exacerbated by late adoption of state legislation to bring New York into

compliance with HAVA. "Building a statewide database was supposed to be simpler than replacing our lever machines," one local elections commissioner observed. "It turned out to be more complicated."⁷⁶ "We knew we were going to be late," a state elections board official acknowledged, but also asserted, "We were not going to rush."⁷⁷

After months of consultation by the state Board of Elections with elections experts around the country, OGS issued on May 22, 2006, a request for proposals (RFP) to build "NYSVoter," a statewide voter registration system. The broad parameters for a "bottoms-up" statewide database were specified in the 2005 New York Election Reform and Modernization Act: a system "whereby each of the 62 counties maintains its own local registration and election management system and feeds voter registration data to a statewide registration database." The state Board of Elections responded by adopting the "bottoms-up," two-phase process of the State of Washington.⁷⁸ As described in the 2003 Washington State Plan, the first phase was to "implement a single interactive state-wide voter registration database (VRDB) designed to interact with [existing] county election management systems and to interact in some fashion with commercial election management systems (EMS) operating at the county level."⁷⁹ The second phase, in cooperation with county officials, involved tight integration of VRDB and EMS, "allowing the state to provide greatly enhanced voter information services to the counties. This phase include[d] building an EMS in-house to replace county EMS systems, or building additional tools and linkage mechanisms."⁸⁰

The Washington State voter registration database was attractive to New York for several reasons. First, by obviating the need to "custom-build" or purchase a "commercial-off-the-shelf" solution, it could expedite the procurement and implementation processes. Second, it was cost-effective since Washington State both offered to transfer its database architecture and connectivity features and Microsoft, its software platform, without cost to New York. Proposals to OGS on the bid date of June 28, 2006, for systems integration implementation assistance for NYSVoter allowed bidders to "implement and modify the Washington transfer solution using... existing or... alternative technologies."⁸⁰

VOTER EDUCATION AND ELECTION WORKER TRAINING

Local boards of election are responsible for poll worker training and education of voters. The entire chain of steps for local installation of new voting machines was held up by late enactment of HAVA-compliant state laws. Without vendor contracts and certified voting systems, training of local elections officials, from commissioners to technicians to election inspectors, and outreach efforts to educate voters on new voting systems, could not be initiated. In brief, the ripple effects of the state legislature's lateness in bringing New York into compliance with HAVA came home to roost.

THE U.S. JUSTICE DEPARTMENT LAWSUIT AGAINST NEW YORK

Although the state Board of Elections moved immediately to translate the Election Reform and Modernization Act into reality, it could not

move quickly enough to meet the HAVA compliance deadline of January 1, 2006. For two months after the deadline passed, the state board negotiated with the U.S. Department of Justice to develop a consent agreement on an implementation timetable.⁸¹ "We thought we had an agreement; it was 99 percent worked out," stated Lee Daghlian.⁸² The Department of Justice determined otherwise.

New York was the first state to be sued by the federal government for non-compliance with HAVA. Legal action was initiated on March 1, 2006, with the filing of a suit in U.S. District Court for the Northern District of New York (Albany) against the New York State Board of Elections, the co-executive directors of the board, and the State of New York. Two causes of action were specified in the lawsuit—the state's failure to implement a statewide voter registration database and to meet voting systems standards of HAVA (Sections 303 and 301, respectively). "Unless and until ordered to do so by the court," the Department of Justice stated in its petition to the court, "New York would not take timely action to ensure compliance" with these mandates of the Help America Vote Act.⁸³

Shortly after the lawsuit was filed, a coalition of New York voters and civic groups, including New Yorkers for Verified Voting and the New York State League of Women Voters, filed a motion to intervene. The coalition was critical of the state for "having failed to comply with HAVA, when proper implementation could have led to proper elections" in 2006. However, the coalition contended that forcing New

York to overhaul its voting systems before the September 26 primary would "throw elections into complete chaos" for voters and election-day workers using untested voting systems acquired in haste.⁸⁴

Three weeks later, on March 23, 2006, U.S. District Court Judge Gary L. Sharpe ordered New York to submit by April 10, 2006, "a comprehensive plan for compliance with Sections 301 and 303(a) of HAVA," and the Department of Justice to respond to the state's proposed compliance plan 10 days later. At the same time, Judge Sharpe denied the coalition's motion to intervene.

THE NEW YORK PLAN FOR COMPLIANCE WITH HAVA

The New York Board of Elections responded to the court order with a proposed remedial plan in two-phases: interim compliance in 2006 and full compliance in 2007. Both phases concern HAVA's voting systems and statewide voter registration database mandates.⁸⁵

- The Interim Voting Systems Plan focuses on steps to make voting devices accessible to persons with disabilities for the 16 September 2006 primary elections. Locations of such ballot-marking devices are to be determined on a jurisdiction-by-jurisdiction basis; most of the county boards of elections proposed to locate one machine at one central place (typically its central office) for all its disabled residents. Interim compliance with HAVA statewide voter registration requirements takes the form of initial steps to fully implement the Washington State "bottoms-up" model described above. The Interim Plan includes milestone tasks with target start and completion dates for voting systems and NYS Voter, the statewide database.

- The plan for full compliance in 2007 stipulates a chain of actions necessary to replace New York's 20,000 lever machines—from promulgation of regulations, certification of machines, contracts with vendors, to acceptance testing of voting equipment prior to use in an election—and to locate at least one HAVA-compliant voting system for individuals with disabilities in each polling place. The target for full compliance is the fall 2007 elections. Complete development and implementation of NYSVoter, is intended to be achieved by spring 2007. The Full Compliance Plan does not specify milestone tasks and target dates.

The response of the Department of Justice to the New York remedial plan was reluctant approval. The interim voting systems plan was characterized as “far less than even minimum compliance since [it] deals only with compliance with Section 301's requirements of voting system accessibility for individuals with disabilities and, even then, only provides for partial—and far from full—compliance.” The department described the jurisdiction-by-jurisdiction plans as “for the most part, very poor [but] better than nothing.” With “great reluctance” and the desire to avoid “overwhelming electoral chaos” if New York were to attempt “replacement of all lever machines and achieve complete voting systems accessibility by the fall,” the department did not oppose the interim voting systems plan of the state board. Regarding the plan for full compliance in 2007, given New York's “record to date,” the department requested the court to order the state board to submit by July 15, 2006 a “detailed schedule for long-term voting systems compliance.” The department was less critical of the interim and long term plans for development and implementation

of NYSVoter, the statewide voter registration database, agreeing that, on full implementation, “New York should be in full compliance with Section 303 (a) of HAVA.” Nonetheless, it requested that the state board submit a detailed schedule by June 15, 2006, of implementation milestones to the court.⁸⁶

Judge Gary Sharpe accepted the remedial plan submitted by the state Board of Elections on June 2, 2006, viewing it as leading, “upon full implementation, to full compliance with HAVA.” “The actions that the State and local jurisdictions in New York to partially comply with HAVA for the fall 2006 elections,” he wrote, “will provide a practicable measure of compliance tempered by the need to ensure that the right of every voter to vote is not impaired and that the orderly conduct of the election process itself is not in any manner jeopardized.” At the same time, retaining the court's jurisdiction, he ordered more submissions by the state board than were requested by the Department of Justice. They were four separate filings, in June, August, and September 2006, of efforts by each county and New York City to ensure privacy of the individual vote of each voter with disabilities, a detailed schedule for replacing all lever machines, regulations for NYSVoter, and a detailed schedule to develop and implement the statewide registration list. Finally, he ordered the state Board of Elections to submit bi-weekly reports through November 7, 2006, and monthly reports thereafter of progress in implementing his Remedial Order.⁸⁷

GETTING HAVA RIGHT AND ON TIME

"New York," an elections official observed, "has been more concerned about getting HAVA right than doing it on time." Filtered through the lenses of partisanship in the legislature, demands by advocacy groups, and local claims for election control, "getting HAVA right" was inextricably linked to strategic delays in implementation. The federal court order has changed the timetable for implementation. New York must now not only "get it right," but "do it on time."

CONCLUSION

How did states with traditionally decentralized election systems respond to a law that requires greater state centralization in election administration? The short answer to this question is that they did so with difficulty and in different ways. Delays in Pennsylvania were largely a result of tensions between state and local officials, certification problems, and the magnitude of the task of replacing voting machines in 67 counties. The causes for delay in New Jersey depended on the issue. A lack of leadership at the outset of the process and functional problems later on stalled the effort to build a statewide registration database; partisan differences over voter identification prevented the state from meeting voter safeguard requirements on schedule; and unclear certification guidelines, problems with installing disabled access equipment, and apprehension over the VVPAT slowed the process of installing and upgrading voting equipment. Some observers suggest that the prevalent delays in implementing HAVA in New Jersey stem

from its institutional structure. New Jersey is the only state in which the attorney general is the chief elections official. In addition to commingling law enforcement with administrative functions, this arrangement may weaken the administrative capacity of the Division of Elections, as it competes with other priorities of the office.⁸⁸ New York suffered the longest delays in enacting enabling legislation, due to intense partisanship, local traditions, and advocacy group demands. Then, further complexity resulted from converting such legislation into new HAVA-compliant voting systems across the state and creating an operational statewide registration database in time for 2006 elections. If not for the force of a federal judge, the prospects for implementing HAVA in New York would still be dim.

A few common themes emerged with respect to the consequences of HAVA. First, though HAVA compliance required greater state responsibility over essential aspects of election administration, the federal legislation also served as a stimulus for innovation. These innovations varied across the states and they emerged in the context of HAVA requirements (such as the statewide databases, voter education, and voting system standards), and somewhat tangentially as a consequence of the increased attention to election reform. Second, compliance decisions and policy innovations were advanced through administrative, legislative, and legal channels, and in some cases through more than one of these. Those decisions required a blend of complex, technical information about tasks like programming a database or developing protocols for certification, philosophical and partisan

debates over voter identification and access, and practical issues about the interaction of voters with election officials and poll workers. Third, because of the technical and practical issues, state-level policymakers had to engage local election officials who had the experience and expertise needed to gain HAVA compliance. HAVA unquestionably required greater state responsibility in election administration, but involving local officials in both legislative and administrative decisions was essential, particularly in the development of statewide voter registration databases. Fourth, delays in meeting HAVA deadlines for voting equipment normally resulted from state and local politics, the certification process, and the availability of machines. One could argue rea-

sonably that, in specifying deadlines for HAVA compliance, Congress did not anticipate the enormous pressure the new law would put on administrators and manufacturers of voting equipment. Congress' failure to anticipate the VVPAT further complicated the situation. Finally, though partisanship does not pervade all aspects of election reform, party does matter in issues related to voter access and voter identification. Our state-by-state comparison provides evidence for the adage: "Democrats want every vote to count; Republicans want every vote to count once."⁸⁹ Let the counting resume, as election officials continue to work through the complex and challenging issues posed by the Help America Vote Act.

Notes

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2. Sarah F. Liebschutz and Daniel J. Palazzolo, "HAVA and the States," *Publius: The Journal of Federalism* 35 (Fall 2005), p. 506.

3. Federal payments for these requirements are contingent upon the state submitting an implementation plan, including a commitment to match 5 percent of the total payments.

4. For a summary of provisions for HAVA and funding implications, see Robert S. Montjoy, "HAVA and the States," *Election Reform: Politics and Policy*, eds.

Daniel J. Palazzolo and James W. Ceaser (Lanham, MD: Lexington Books, 2005), pp. 16–34.

5. For a review of HAVA compliance in all states, see Electionline.org, *Election Reform: What's Changed, What Hasn't and Why 2000–06*, (Washington D.C.: Electionline.org, 2006).

6. Electionline.org, *Election Reform 2004: What's Changed, What Hasn't and Why* (Washington D.C.: Electionline.org, 2004), p. 25.

7. For a review and analysis of election reforms in Pennsylvania, see H. W. Jerome Maddox, "Pennsylvania: New Policies, Old Politics," Daniel J. Palazzolo and James W. Ceaser, eds., *Election Reform: Politics and Policy* (Lanham, MD: Lexington Books, 2005), pp. 141–56.

8. Dan Seligson, "Ten States Still Debating Help America Vote Act Compliance Legislation," February 19, 2004, electionline.org, accessed March 9, 2006.

9. Electionline.org, *Election Reform: What's Changed, What Hasn't and Why: 2000–06*, p. 19.
10. Electionline.org, *Election Reform: What's Changed, What Hasn't and Why 2000–06*, p. 9.
11. Daniel J. Elazar, *The American Federalism: The Impact of Space, Time, and Culture on American Politics* (Boulder, CO: Westview Press, 1994), p. 241.
12. See Virginia Gray and Russell Hanson, *Politics in the American States* (Washington, D.C.: CQ Press, 2004), for ratings of competitiveness (p. 88), professionalism of legislatures (p. 158), and governor's powers (pp. 212–14).
13. Gray and Hanson, *Politics in the American States*, p. 54.
14. Electionline.org, *Working Together? State and Local Election Coordination* (Washington DC: electionline.org, September 2002).
15. For information on these three voting systems, see Electionline.org, *Election Reform: What's Changed, What Hasn't and Why 2000–06*.
16. Maddox, "Pennsylvania: New Policies, Old Politics," p. 141.
17. For elaboration of these points see Maddox, "Pennsylvania: New Policies, Old Politics."
18. Commonwealth of Pennsylvania, *State Plan as amended*, September 15, 2005, p. 22.
19. Electionline.org, *Election Reform: What's Changed, What Hasn't and Why, 2004–06*, p. 65.
20. Interview with William Boehm, Director of Policy, Bureau of Elections, Pennsylvania Department of State, March 21, 2006.
21. Interview with William Boehm.
22. Interview with Darlene Burnett, Wayne County Director of the Bureau of Elections, 16 March 2006.
23. Interview with Edgar Howard, Philadelphia Commissioner, March 21, 2006.
24. Interview with Edgar Howard.
25. Maddox, "Pennsylvania: New Policies, Old Politics," p. 147.
26. Commonwealth of Pennsylvania, *State Plan as amended*, p. 37.
27. Verbal observation by Doug Chapin, Director of Electionline.org, "Making Every Vote Count: A Colloquium on Election Reform Legislation," Princeton University, April 7, 2006.
28. Diana Reddington, "It's a go for new voting systems," *Philadelphia Inquirer*, March 3, 2006, p. B4.
29. Peter Hall, "Counties told to move on machines," *The Express-Times*, March 15, 2006. www.nj.com
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34. Commonwealth of Pennsylvania, *State Plan as amended*, p. 4.
35. Commonwealth of Pennsylvania, *State Plan as amended*, p. 30.
36. Interviews with Michael Gallagher, New Jersey HAVA administrator, March 27, 2006; Steven Finkel, Assistant Attorney General in New Jersey and Director of Legislative Affairs, March 30, 2006; Joanne Armbruster, Atlantic County Supervisor of Elections, March 17, 2005; and Ingrid Reed, Director of the Eagleton New Jersey Project, Eagleton Institute of Politics at Rutgers University, March 30, 2006.
37. Interview with Reed; Dana Convoy, Policy Advisor, New Jersey Assembly Republican Office, March 24, 2006; and anonymous local election official, March 27, 2006.
38. "The States Tackle Election Reform Summary of 2003 Legislative Action" May 11, 2004, www.ncsl.org/programs/legman/elect/taskfc/03billsum.htm, accessed March 10, 2006.

39. Dan Seligson, "Ten States Still Debating Help America Vote Act Compliance Legislation," *electionline Weekly*, February 19, 2004, www.electionline.org, accessed March 10, 2006.
40. Votes on final passage in the Assembly (June 17, 2004) and the Senate (March 22, 2004). Data provided by Dana Conrad, Policy Advisor, NJ Assembly Republican Office (March 22, 2006).
41. The bill ensured that polling places complied with the Americans with Disabilities Act and established voting accessibility advisory committees at the county level to inspect polling places for disability access. For county committees, see www.state.nj.us/lps/elections/voter_advisory_committees_doe.html.
42. Interview with Armbruster.
43. Interview with Armbruster.
44. For specific protocol, see, for example, "SVRS Decision Matrix," New Jersey Office of the Attorney General, HAVA Unit-SVRS Project Management Office, www.state.nj.us/lps/elections/svrs/resources/decision-matrix-6-15-05.pdf; for references to communications from the attorney general's office, see www.state.nj.us/lps/elections/svrs/index.html, both accessed March 20, 2006.
45. Interviews with Armbruster and Michael Gallagher, New Jersey HAVA administrator, March 27, 2006.
46. Interview with Gallagher.
47. Interview with Gallagher.
48. New Jersey Help America Vote Act (HAVA), New Jersey Office of the Attorney General. At: www.state.nj.us/lps/elections/hava-info/p8.html, accessed March 26, 2006.
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51. Legislative Fiscal Estimate, No. 33 State of New Jersey 211 Legislature, May 19, 2005, www.njleg.state.nj.us/2004/Bills/A0500/33_EI.PDF, accessed March 26, 2006.
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58. Stated in the testimony of Doug Chapin, director of electionline.org, "Testimony concerning the implementation of the federal mandates imposed by the Help America Vote Act and its impact on the administration of elections in New Jersey," February 9, 2004, www.njleg.state.nj.us/legislativepub/pubhear/afr020904.pdf, accessed March 23, 2006.
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64. Both quoted McClure, "Harvey's hip-hop voting ads a \$3M buy."
65. For the vote on final passage of A35, (June 20, 2005) all Democrats in the Assembly and only five Republicans voted for the bill; 24 Republicans voted against it. The Senate vote on final passage was less divisive: Republicans voted 10–4 in favor of the bill and all Democrats voted in favor. Data provided by Dana Conrad, Policy Advisor, NJ Assembly Republican Office (March 24, 2006).
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85. New York State Board of Elections, *Plan for Compliance with the Help America Voter Act and Chapters 24 and 181 of 2005 Laws of New York*, April 10, 2006.

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89. We are not sure where this phrase originated, but we trace it at least to Cokie Roberts, see James W. Ceaser and Andrew E. Busch, *The Perfect Tie* (Lanham, MD: Rowman and Littlefield, 2001), p. 9.