

THE HELP AMERICA VOTE ACT

In response to the problems during the presidential elections of 2000, Congress passed the Help America Vote Act (“HAVA”) mandating significant changes in virtually every aspect of election administration. If HAVA is implemented properly in the 50 states, many provisions of the law hold great promise to improve the nation’s outdated voting procedures. HAVA’s new identification requirements, however, may severely threaten voters’ rights, particularly if implemented improperly. Ensuring that HAVA successfully promotes voting rights is complicated by the fact that the federal government left implementation almost entirely in the hands of the states. States have great latitude in how they meet HAVA’s minimum requirements, and they have the authority to institute idiosyncratic requirements that pose new barriers to voting. Advocates, concerned citizens, policy makers and election officials should maximize the opportunity offered by HAVA to improve the electoral process, while vigorously safeguarding voting rights.

HAVA’s Key Provisions

Voting Machines and Systems¹

- HAVA authorizes federal funding for states to upgrade voting machines. States that accept this funding must eliminate and replace all punch card and lever voting machines, unless the machines can be adapted to meet heightened standards to ensure reliability, improved access for voters with disabilities and limited English proficiency, and other new federal requirements.²
- Voting machines must provide voters with an opportunity to privately and independently verify, change or correct the ballot before it is cast and counted.
- States must ensure that at least one voting machine at every polling place meets enhanced requirements for accessibility for voters with disabilities.
- Voting systems must produce a permanent paper record for purposes of manual recounts and audits.
- States must provide ballots in multiple languages and jurisdictions covered by Section 203 of the Voting Rights Act.

¹ Pub. Law 107-252 § 301; 42 U.S.C. § 15481.

² States must replace lever and punch card machines by January 1, 2004 unless the state receives a waiver until January 1, 2006. Pub. Law 107-252 § 102(a); 42 U.S.C. § 15302(a). States must meet heightened standards for all voting systems by January 1, 2006. Pub. Law 107-252 § 301(d); 42 U.S.C. § 15481(d).

Statewide Computerized Voter Registration List³

- By January 1, 2004, or January 6, 2004 if the State receives a waiver, states must establish a computerized, statewide voter registration list to allow faster, more reliable, and centralized registration of voters.
- The computerized, statewide voter registration list must be coordinated with other agency records in the State for purposes of verifying the accuracy of information provided on voter registration applications.
- HAVA provides minimum standards to ensure that voter registration records are accurate and updated regularly.

Voter Registration and Identification Requirements⁴

- All new registrants must provide their driver's license number or the last four digits of their social security number with their registration application in order to be registered. If the applicant has not been issued one of these numbers, the State must assign a unique identification number for voter registration purposes.
- States must obtain identification from first-time voters who register by mail after January 1, 2003, unless these voters can be matched with an existing state record. Voters who have registered to vote *by mail* after January 1, 2003, who have not voted previously in a federal election in the state, *and* who do not fall within certain exceptions will be permitted to vote on a machine only after presenting one of the following items to election officials: current and valid photo identification, utility bill, bank statement, government check, pay check, or government document that shows the voter's name and address. Copies of the required identification may be provided in advance of Election Day.

Provisional Ballots⁵

- In federal elections held after January 1, 2004, states must provide "provisional" ballots at every polling place for voters who do not appear in the official registration lists, whose eligibility to vote is challenged or who are unable to provide the identification required under HAVA. These ballots must be counted according to state law rules.
- States must establish a toll-free number or website where voters who cast a provisional ballot can determine if their vote was counted and, if not, the reason that their vote was not counted.

³ Pub. Law 107-252 § 303(a); 42 U.S.C. § 14853(a).

⁴ Pub. Law 107-252 § 303; 42 U.S.C. § 14853.

⁵ Pub. Law 107-252 § 302; 42 U.S.C. § 15482.

Voter Education and Poll Worker Training⁶

- As of January 1, 2004, voting information must be posted at every polling place on Election Day, including: (a) a sample ballot; (b) instructions on how to vote, including how to cast a vote and a provisional ballot; (c) instructions about the identification requirement for first-time voters who register by mail; and (d) general information about voting rights under applicable federal and state law.
- While HAVA does not mandate requirements for poll worker training, states are required to specify in their implementation plans how the state will provide for election official education and training, and poll worker training.

Administrative Complaint Procedure⁷

- States that receive funding under HAVA must establish procedures for administrative review and alternative dispute resolution to address complaints of violations of HAVA.

Principles to Protect Voters' Rights

To ensure proper implementation of HAVA in each of the 50 states, advocates, policy makers, election officials and others must determine how best to meet HAVA's minimum requirements given the unique election system and election laws in the state. We recommend the following general principles to ensure that HAVA expands, and does not limit, access to the franchise:

Voting Machines and Systems

- *Uniform voting experience and universal accessibility.* All polling places should offer the same uniform, integrated system to all voters; this will ensure uniformity of the voting experience and the same quality of service to all voters, including non-English speaking voters and those with disabilities.
- *Open, public contract selection process for new machines.* The contracting process for new machines should be conducted openly and with an opportunity for public comment from diverse communities, including disability rights, civic and voting rights organizations within the state.
- *Secure voting systems.* States should carefully consider a range of options to test voting systems, diminish security concerns and foster public confidence in the integrity of voting systems, including soliciting state and independent experts to review the hardware, source-code and software of any system.

⁶ Pub. Law 107-252 § 302(b); 42 U.S.C. § 15482(b); Pub. Law 107-252 § 254(a)(3); 42 U.S.C. § 15404.

⁷ Pub. Law 107-252 § 402; 42 U.S.C. § 15512.

- *Full, private and independent access to voters with disabilities.* New technology allows states to inexpensively render every machine at a polling place accessible to all voters, rather than simply designating one accessible machine as mandated by HAVA. New machines must allow voters to cast their ballot privately and independently, and be able accommodate voters with a wide range of disabilities, including blind and visually impaired voters, as well as voters with impaired mobility or cognitive and developmental disabilities.

Statewide Computerized Voter Registration List

- *Broad network of databases to verify registration information.* In addition to the Department of Motor Vehicles and Social Security Administration, the statewide voter registration list should be coordinated with the databases of corrections agencies, agencies mandated to provide voter registration under the National Voter Registration Act, public assistance and disability offices, Medicaid and Medicare offices, public universities and other state agencies. Privacy concerns should be fully and carefully addressed in designing the system.
- *Clear, uniform procedures for processing voter registrations.* State election officials should develop clear procedures for accepting, verifying, updating and canceling voter registrations across the state. Among other things, these procedures should ensure that voter registration applications are not rejected for failure to provide a driver's license or social security number, and that a unique identifying number is assigned to those applicants who do not provide this information. These procedures should also define what is required to "match" information in registration applications with state records in a manner that does not result in a high rate of erroneous "non-matches."

Identification Requirements

- *Expansive, non-exclusive list of acceptable forms of identification.* States should adopt an expansive non-exclusive list of identification to serve as examples of a valid photo identification, utility bill, bank statement, government check, paycheck, or other government document. The list should include forms of identification likely to be possessed by students, disabled, low-income, and immigrant voters and communities of color.
- *Proper Definition of "By Mail."* The identification requirements only apply to first-time voters who register by mail. Accordingly, states should establish that only those voters who actually mail in registration forms shall be subject to these requirements, not voters who complete applications in person at election offices, DMV or state agencies, or voter registration drives.
- *Opportunity to submit identification in advance of Election Day.* To minimize potential confusion and disenfranchisement of voters at the polls, all boards of elections should send a letter to first-time voters who register by mail advising

them of HAVA's identification requirements, requesting that they submit a copy of the appropriate identification, and explaining that if they do not provide ID in advance of Election Day, they will be asked to do so the first time they vote.

Provisional Ballots

- *Uniform procedures for counting provisional ballots.* States must establish uniform, non-discriminatory rules to ensure that individuals who cast an affidavit ballot because their name does not appear on the registration list or does not provide identification required under HAVA are actually counted as long as the voter meets the state's voter eligibility requirements.
- *Default policy to count races at the top of the ballot.* Even if a voter casts a provisional ballot in the wrong precinct, election officials should always count any races at the top of the ballot, for which voters would be eligible to vote in their correct precinct.

Voter Education and Poll Worker Training

- *Voters' Bill of Rights.* In addition to providing the information mandated under HAVA, states should adopt and publicize a voters' bill of rights to ensure that the same voting information is provided in a clear, easy-to-understand manner at every polling place throughout the state.
- *Effective statewide poll worker training.* To ensure that voters across the state get accurate information and nondiscriminatory voting experience on Election Day, states should adopt a statewide training guide for poll workers about HAVA's new requirements, especially the new identification requirements, instructions on how to use new voting machines and the availability of provisional ballots.
- *Voter education.* Voters should also be educated about HAVA's requirements using different forms of media such as videos aired on public access television and public service announcements, the internet, newspapers, and brochures. States that implement new voting systems should also provide demonstrations throughout the state in advance of Election Day.

The Brennan Center for Justice at NYU School of Law works with other advocates, legislators and election officials in various states to draft legislation, regulations and policies, provide testimony, assist in voter education, and evaluate litigation associated with HAVA implementation. For more information, see the Center's website at brennancenter.org. For assistance or more information, please contact Jeremy Creelan or Kele Williams in the Democracy Program at (212) 998-6730.