



**Statement of the
Western New York Coalition for Progress
to the Erie County Legislature
on the Implementation of the
Help America Vote Act
in Erie County**

February 22, 2006

**Western New York
Coalition For Progress**

www.wnyprogress.org

Introduction

The Western New York Coalition For Progress (“Coalition”) is a nonpartisan organization of individuals dedicated to making western New York and America a better place to live, work and raise a family. We are bound together by a common commitment to progressive values and we aspire to ensure our national and local policies reflect these values.

The Coalition works to find progressive and pragmatic solutions to significant problems and develop policy proposals that foster a government that is "of the people, by the people, and for the people." It is made up of individuals from across the political spectrum, Democrats, Independents and Republicans, who believe in progressive ideals and believe that only by working together will we make WNY and America a better place and one that promotes our ideals.

We aim to rebuild our community and promote fiscal discipline, shared prosperity, and investments in people by our government, while always ensuring that the issues and values that matter to us most are not destroyed.

The Coalition works to examine issues and effectuate progressive change through the examination of topics and presentation of reports and panel discussions by various working groups. One such working group is the “Election Reform Working Group.” The members of that group work to ensure that all persons are given the opportunity to vote, and that all votes are counted. Some of this group’s members are professionals with experience in the field of election law, others served as election inspectors in Florida and Ohio during the 2004 election, and all bring their expertise to the group.

For the past year the Coalition’s Election Reform Working Group has been reviewing issues related to the passage of laws and regulations relating to, and the machines to be used as a result of, the implementation of the Help America Vote Act in New York. Details of the group’s research and notices to the public can be found at the Coalition’s website at http://www.wnyprogress.org/Election_Reform.html.

Background on the Help America Vote Act

The following is not intended to be a comprehensive examination of the provisions of the Help America Vote Act (“HAVA”),¹ nor how it is being implemented in New York, but instead a brief overview of the subject. HAVA was passed by Congress, and signed into law by the president on October 29, 2002, in response to the voting controversy that ensued during the 2000 presidential election.² As stated by the United States Department of Justice’s Civil Rights Division’s Voting Section Home Page,³ the goal of HAVA was:

To improve the administration of elections in the United States, primarily through three means:

- (1) creating a new federal agency to serve as a clearinghouse for election administration information;

- (2) providing funds to states to improve election administration and replace outdated voting systems; and
- (3) creating minimum standards for states to follow in several key areas of election administration.

To effectuate the first stated goal, the federal government created the United States Election Assistance Commission (“EAC”) - an independent bipartisan agency charged with adopting voluntary voting system guidelines and disbursing payments to the states to replace aging and/or poor voting systems.⁴

It is the second and third stated goals of HAVA recited above that have caused the most consternation on the states. Specifically, HAVA requires that by the first election for federal office following January 1, 2006, all states that utilize either punch card voting systems or older lever machine systems replace those systems with new approved systems. HAVA also mandates that the states:

- (1) Create a statewide database of registered voters; and
- (2) Meet certain federal minimum guidelines in regards to the:
 - (a) storage of voting machines,
 - (b) casting of provisional ballots,
 - (c) providing disabled persons with an accessible means of casting a vote, and
 - (d) ensuring the certainty of votes.

New York’s legislature in 2005 enacted legislation to address these issues, but which in reality passed final decision making power on the implementation of most HAVA issues in New York, including determining the type of voting machines to be used, to the New York State Board of Elections (“NYS BOE”). It was also decided at that time that no statewide voting system would be employed, and that each individual county board of elections could choose the type of system to be used in its county from a list of approved systems prepared by the NYS BOE.⁵

As a result, since October 2005 the NYS BOE has been:

- (1) Preparing for the creation of a centralized database of all registered voters;
- (2) Finalizing regulations related to the methods of casting provisional votes and providing accessibility to disabled voters; and
- (3) Setting standards for all voting systems to be used in New York.

Unfortunately, it appears New York is either the last state, or one of the last states in the nation to enact these rules and regulations, especially in regards to setting the standards for voting systems. As of the date of this report and statement, the NYS BOE has still not finalized its regulations detailing the technical requirements for the type of new voting machines to be employed in the state.⁶ As a result the United States Department of Justice has threatened to sue

New York for failing to implement HAVA in the proper timeline.⁷ It is expected that final regulations will be passed by March 1, 2006, and an approved list of machines to be developed thereafter.

As stated, in addition to the type of voting systems to be used, HAVA requires that states have certain minimum protections in place to safeguard elections. To address these requirements New York's legislature passed the "Election Consolidation and Improvement Act of 2005" (the "ECIA").⁸

The ECIA requires that all county boards of elections assume the ownership, care, custody and control of all voting machines used.⁹ Unlike in the past when cities and towns stored the machines, and paid for the costs associated with storage, counties are now charged with the storage, care and upkeep of voting machines. The ECIA also requires each county legislature to set the standard fee paid to election inspectors for their services, a fee that was previously set by municipalities, and that the counties shall pay for the election inspectors' services, a fee that was previously paid for by the municipalities.¹⁰

While the ECIA provides that a county may charge-back municipalities some of the above-stated costs, assuming they were previously a municipal responsibility,¹¹ it is highly likely based on past practice that such costs would not be recovered by the county until after the year they were spent. Thus, counties will undoubtedly be faced with many new expenses from enforcing HAVA's and the ECIA's requirements in New York, and even those costs that will eventually be repaid will not be received for some time.

Statement of the WNY Coalition for Progress on Specific Issues as they Relate to Erie County

Assuming the NYS BOE issues its approved voting system list soon, county boards of elections will then have the opportunity to choose the voting system to be employed in their respective counties. Until that list is detailed it is uncertain what system(s) will be approved for use (optical scan methods, electronic voting machines or other systems), and what the final cost will be on each county.

Therefore, as it pertains to Erie County, the WNY Coalition for Progress reserves its right to issue a more comprehensive statement in regards to the type of voting system to be used in Erie County until the NYS BOE issues its approved machine list. That being said, in general the Coalition believes that whatever system is used must include a method for a voter to verify his or her vote through a paper trail. The only way to ensure that each vote is counted, especially if a recount is needed, and to prevent the fiasco that was the 2000 presidential election in Florida from ever occurring again is by requiring all machines to have some method of allowing a voter to verify his vote on paper.

In regards to the implementation of other HAVA requirements in Erie County, the Western New York Coalition for Progress believes that all aspects of the law must be implemented as soon as possible, but in a manner that takes into account Erie County's delicate financial situation. In February of 2005, the Coalition issued a statement criticizing those in

county government for failing to prevent the county's fiscal meltdown. Moreover, we called upon Erie County's leaders to take a more proactive and disciplined role in setting Erie County's fiscal future.

It is unfortunate that the implementation of HAVA in New York coincides with Erie County's fiscal problems, but that is no reason for the county to shirk its responsibilities under federal and state law. Unfortunately, past experience gives Erie County's residents a reason to question the viability of our county's budgets and finances, but at no time should our citizens question whether our elections are not only secure, but are being held in accordance with law. As such, the WNY Coalition for Progress calls on Erie County's leadership to pay for and provide safe and secure elections, but at the same time ensure Erie County's future through sound fiscal discipline.

The Erie County Board of Elections has been charged with assuming responsibilities that once were the purview of the municipalities. This includes, but is not limited to, assuming the ownership, care, custody and control of all voting machines used in Erie County, as well as paying a fair, yet fiscally responsible, wage to election inspectors.

While we understand that new voting machines will be utilized soon, it is doubtful that these new machines will be available for use in 2006. Therefore, pursuant to the ECIA and HAVA, Erie County is required to pay for the ownership, care, custody and control of the current older lever-style voting machines until those machines can be replaced. We hope that Erie County's Board of Elections has prepared a plan for, and has accurately estimated the cost of, storing its present set of machines. If so, we believe it is incumbent upon Erie County's government to pay for those expenses, and then to seek from the municipalities as soon as possible a charge-back of some of Erie County's expenses, as is provided for in New York's Election Law.

As such, the Coalition calls on the Erie County Legislature to fully fund all costs associated with the storage and care of all current machines for the remainder of 2006. However, at the same time we call on the Erie County Board of Elections to release its plan for the proper storage of not only the new machines, whenever those become available, but for all existing machines.

Additionally, we call on the Erie County legislature to set the rate of pay for all election inspectors at a rate that takes into consideration our current fiscal situation, as well as amounts that were paid to inspectors by the municipalities in the past. It is our understanding that the Legislature has set the rate for the upcoming special election in New York's 60th Senate District at \$132.00 per inspector because it was the highest rate charged by the three (3) municipalities (Buffalo, Grand Island & Tonawanda) in that district. We believe the decision to charge that rate was a good compromise in order to ensure that inspectors were available for this special election.

However, it would be fiscally irresponsible for the legislature to set a higher, and possibly arbitrary rate of pay for the 2006 primary and general elections that would not only negatively impact Erie County's 2006 budget, but would lead to a substantial increase in what the cities, towns and villages are used to pay. It would be wiser, after a complete examination of the

amounts charged by all municipalities in 2005, to set a rate per inspector for 2006, that while lower than neighboring counties, ensures a balanced budget in 2006.

If the amount is less per inspector than what other counties charge, and the Erie County Legislature, Erie County Board of Elections and/or Department of Budget and Finance believe this amount to be insufficient, then the matter should be revisited during the proceedings establishing the 2007 budget. However, the overriding thought of those on the legislature should be in ensuring a balanced budget for 2006, and therefore we call on the legislature to set a rate of pay that does not have a negative impact on Erie County's budget for 2006.

Endnotes

¹ Public Law 107-252, October 29, 2002.

² While a full recitation of the events of the 2000 election is not necessary, the passage of HAVA is a direct result of the fiasco that was the determination of the winner of the presidential election in the State of Florida. Claims of butterfly ballots not working correctly, “hanging chads,” accusations of widespread disenfranchisement, court intervention and electoral uncertainty led an almost united Congress to pass HAVA.

³ See <http://www.usdoj.gov/crt/voting/hava/hava.html>.

⁴ Information about the EAC’s mission and statements can be viewed on its website: <http://www.eac.gov>.

⁵ New York Election Law § 7-200 (1).

⁶ The New York State Board of Election’s published its first set of draft voting machine regulations in late 2005, and on February 14, 2006 issued its second set of draft voting machine regulations. Public comment on the second set of regulations will be accepted until February 24, 2006. A copy of the draft regulations can be viewed at the Board of Elections’ website at: <http://www.elections.state.ny.us/hava/2ndDraftVotingMachineRegs.pdf>.

⁷ See Albany Times-Union, HAVA Failings Imperil State, January 12, 2006.

⁸ Laws of New York, 2005, Chapter 180, July 12, 2005.

⁹ New York Election Law § 3-226 (1).

¹⁰ New York Election Law § 3-420 (1).

¹¹ New York Election Law § 3-226 (1).