

WORKING PAPER

The Protracted Struggle of New Yorkers with Disabilities for Equal

Voting Rights --Joseph G. Adler (assisted by Patty Black)

Introduction

This article attempts to explain why the transition to electronic voting systems and accessible polling places has taken a decade, and describes new challenges posed by the voting ID laws. As the third most populous state, New York's more than seven thousand polling places are spread out over sixty-two counties, including the five boroughs of the largest American city. This slow pace is attributed to several factors: The decision of legislative leaders to delay implementation of the seminal Help America Vote Act (HAVA), and their refusal to deal directly with the specifics of voting accessibility. Much of the decision-making was left to state and county election commissioners who, for the most part, were disinclined to replace a time-honored system of voting. The commissioners allowed three years (2003-2005) to pass with little progress toward HAVA implementation, until finally prodded into action by federal officials from the executive and judicial branches. Then there were further delays attributable to the refusal of the state election commissioners to certify any voting systems until after the federal Elections Assistance Commission (EAC) issued its test results and guidelines. It is also posited that the state legislators and election commissioners misunderstood the needs of the disability community and discounted the ability of its leaders to work effectively with the Department of Justice toward full compliance with HAVA.

With the passage of HAVA in November 2002, it appeared likely that New Yorkers with disabilities would obtain equal voting rights within three to four years. This would mean for persons of voting age unobstructed access to all polling places and the opportunity to vote privately and independently on electronic voting systems. The total numbers of persons with disabilities in the state has been variously estimated at from 2,020,411 to

3,304,827. (AAPD voter trend information for year 2000-higher estimate and US Census Bureau, 2010 American Community Survey, lower estimate.)

The passage of HAVA was the direct result of voter discontent with the older voting systems, and the post-Election Day deadlock and confusion in Florida and Ohio. However, Congress, in formulating this seminal law, was also responding to the disability community's longstanding lobbying for a law mandating full voter participation for persons with disabilities. The federal legislators understood that state implementation of this law could require both time and money. Accordingly, Congress allotted \$3.9 billion nationally and nearly \$220 million to New York to cover transition costs. The deadline for full compliance by each state was set for January 1, 2006. The wording of HAVA in relation to voting system accessibility in federal elections is clear and specific:

Each voting system in an election for federal office shall be accessible, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters. (HAVA, p.116 stat. 1609, Sect. G)

Historical Background of Voting in New York State

It may be helpful to review the development of methods of voting in the Empire State. The secret ballot was introduced in New York in the years following the narrowly decided Presidential Election of 1884. The mechanical lever voting machine, with its privacy curtain, was first used in Lockport, New York in 1892. This new voting system afforded the voter a better opportunity to vote out of view of party officials and other voters. Privacy in voting was a cherished privilege during this heyday of urban political machines such as Tammany Hall. In addition to usually providing an accurate tally of votes, the interlocks inside the machine generally prevented over-voting. Although regarded as a safe method of voting, and arguably the best voting system prior to the debut of the electronic voting systems a century later, the mechanical lever machine was not without flaws. Bo Lipari, a software engineer and an articulate advocate of paper ballots and scanners, believes that the totals reported by lever machines were sometimes suspect:

Lever machines and their electronic descendants, paperless touch screen machines, don't allow recounts. At the end of the day, all you have is a single number for each candidate representing their vote total.

On a lever machine the number is stored on a mechanical counter; on an electronic touch-screen machine it is usually stored on a memory card, with a printout of the totals made after poll closings. When levers touch-screens fail to accurately record votes, the reported totals are suspect. The totals you have are all you will ever have, even if they appear almost certainly incorrect. On lever machines, mechanical counters would stick and fail to turn over, a problem which occurred much more than most voters realized. But when elections held on lever machines were disputed, there was nothing to count but absentee ballots. The totals reported on the lever machines counters were what they were, even when suspect. (Lipari "Pulling the lever for Paper," November 16, 2010, <http://www.bolipari.com/boblog>)

The full-faced ballot, first developed at the end of the nineteenth-century, was created more for the convenience of elected officials and party politics than for the voter. All candidates and races, party affiliations and endorsements, as well as referendums and bond issues, are squeezed onto a large, single ballot face. The ballot is often confusing for the average voter, given multiple party endorsements for candidates, the need to verify the correct lever according to column and row, and the small size of the font. Moreover, the full-faced ballot does not lend itself well to twenty-first century technology, and it presents additional barriers to people with visual and cognitive disabilities. (see forward)

Federal Legislation Prior To HAVA

Advocates of electronic voting pointed to a series of federal laws enacted between 1965 and 2002, which laid the legal groundwork for the later replacement of the lever machines. The Voting Rights Act of 1965 restored the franchise to persons of color in eleven states who had been disfranchised since the Reconstruction period by literary tests and poll taxes. The passage of this act marked a personal triumph for President Lyndon B Johnson. The President understood that the restoration of the franchise would be decisive for black Americans because it would get them the power "to do the rest themselves." (www.justice.gov/crt/about/vot/intro/php) After overcoming the unrelenting opposition of his fellow Southerners in Congress to passage of the bill, Johnson directed the Civil Rights Division of the Justice Department to vigorously enforce the new law. The strong enforcement of the Voting Act of 1965 re-affirmed the right of all Americans to exercise this most basic of democratic rights and highlighted the determination of federal officials to eliminate any remaining barriers to universal suffrage. (www.justice.gov/crt/about/vot/intro/php)

While a discussion of the impact of the civil rights movement upon the disability rights movement is beyond the scope of this article, it is recognized that that disability stakeholders incorporated the strategy of militant non-violent protest and utilized many of its tactics, including sit-ins, the occupation of buildings and strategic marches.

The disability community was further encouraged by the enactment of two other pieces of legislation in the period 1968-1973. The Federal Architectural Barrier Act (ABA) of 1968 required that all buildings designed, built, altered or leased with federal funds be accessible. These guidelines were later to serve as the basis for standards for design, construction and alteration of polling places. In 1973, Congress passed the comprehensive Rehabilitation Act of 1973. This law and its subsequent amendments reshaped the legal status and future prospects of the disability community. For the first time in federal law, disability was described as “a natural part of the human experience” in no way diminishing the right of individuals to live independently, enjoy self-determination, make choices, contribute to American society, and be integrated into all areas of life. Voting was singled out as one of the areas in which persons with disabilities consistently encounter various forms of discrimination.

<http://www2.ed.gov/print/policy/speced/reg/narrative.html>

In 1984 Congress addressed the polling place access issue by facilitating voting for many people with disabilities. The Voting Accessibility for the Elderly and Handicapped Act (VAEHA) directed that all polling places in the country be accessible for federal elections. While not requiring access for state or local elections, this law mandated that states offer registration and voting aids for the disabled and the elderly, including telecommunication devices for the deaf and hearing impaired. VAEHA also stated explicitly that when no accessible location is available for use as a polling place, an alternative means of casting a ballot must be provided.

Voting registration was facilitated by the enactment of the National Voter Registration Act of 1993, popularly known as the Motor Voter Act. State governments were to process voting registration applications at motor vehicle and social service offices. This act, which enjoyed broad public support, represented an effort by the Clinton Administration to increase participation in the electoral process among voters in the lower economic brackets.

Early Efforts by Disability Stakeholders

The willingness of Congress to insist upon special equipment and physical arrangements for specific disability groups encouraged stakeholders in New York State to advocate for the extension of these rights in state and local elections. By the early 1990s, a more conservative political climate in the State also began to impact upon legislation. George Pataki, a Republican, stymied the bid of the liberal Democratic Governor, Mario Cuomo, for a fourth term in 1994. Although not well known statewide, Pataki was propelled into prominence by Republican Senator Alphonse D'Amato. This turn from political liberalism has been attributed in part to voters' loss of faith in Cuomo. It also reflected economic and demographic changes which were most pronounced in New York City. Although the City's population increased by only 250,000 in the period 1950-1999, an influx of immigrants from Mexico, the West Indies and Asia changed the economic and social character of the metropolis. Hispanics displaced Italians as the second largest ethnic group. These newcomers had grown up in cultures with diverse political systems. While new Americans from Asian countries such as Taiwan and South Korea achieved rapid economic mobility, their social integration often lagged far behind. (Klein, History of New York, 723-728). In neighborhoods with high concentrations of Mandarin or Korean speakers, ballots in these languages were provided for the first time. For these new voters, voting procedures in general and the full-faced ballot in particular were also confusing. Clearly, future reforms of voting laws would need to take into account the views of these new Americans. In addition, a common interest in further voting reform between disability stakeholders and the new immigrant groups had developed.

The earliest organized voting rights efforts by disability advocates were directed toward the removal of architectural barriers. Several of the earliest lawsuits were filed in New York City. Patrick Figueroa, who also founded the Center for the Independence of the Disabled in New York (CIDNY) in 1978, played a leadership role in these efforts. Upstate activity was coordinated by Frank Pennisi of the Southern Tier Independence Center (STIC) in Binghamton. Pennisi questioned the accuracy of a report issued in the mid-1980s which claimed that about ninety per cent of all polling places in New York State were accessible to people with disabilities. While no statistics were available, Pennisi had good reason to conclude that this figure was greatly inflated. A follow-up study in Broome County conducted with Pennisi's assistance confirmed that only a third of the polling sites in the County were fully accessible. Many lacked proper signage and/or had

architectural barriers, such as doors too narrow to accommodate wheelchairs unsafe ramps or no ramps. (Author's phone interview with Pennisi, 1/22/2009.) Pennisi resolved to intensify his efforts to remedy the situation by working closely with County officials. His efforts were successful beyond his expectations; by 1990, nearly all the polling sites in Broome County were fully accessible. In retrospect, Pennisi (who is currently Program Services Coordinator at STIC) believes that his prior development of a cordial working relationship with the election commissioners and other county officials, and his regular follow-up contacts prior to each primary and election, were the keys to his success.

1990 was a momentous year for all Americans with disabilities due to the enactment of the Americans With Disabilities Act (ADA) with its promise of "equal opportunity, non-discrimination and a level playing field" for all persons with disabilities. Many stakeholders, such as the group in Rochester which later founded the Center for Disability Rights, advocated for passage of this legislation. At the signing ceremony in Washington, President George H.W. Bush spoke eloquently about the significance of the ADA:

This act is powerful in its simplicity. It will ensure that people with disabilities are given the basic guarantees for which they have worked so long and hard; independence, freedom of choice, control of their lives, and the opportunity to blend fully and equally into the rich mosaic of the American mainstream.
(G.V.Bush, Remarks at Signing of ADA, 11/23/2002)

The ADA prohibited private and public employers, employment agencies and labor unions from discriminating against qualified individuals with disabilities in employment settings. In 1991, a companion law, the Civil Rights Act of 1991, specified penalties for intentional discrimination or harassment in employment settings.

In 1992, Richard Zachmeyer, executive director of the Catskill Center for Independence (CCFI), challenged a similar claim by Governor Mario Cuomo about the prevalence of accessible polling places statewide that Pennisi had refuted earlier. The assertion by the Governor flew in the face of contrary anecdotal information for the three counties served by CCFI. In order to obtain more reliable information, Richard and his wife Christine decided to visit each of the more than 150 polling sites in Otsego, Delaware and Schoharie counties. Their findings, which were

subsequently described in a report, revealed that that fewer than ten per cent (10%) of the polling sites were fully accessible. Many sites had physical barriers, such as narrow doorways and unsafe ramps. In addition, a large number lacked designated “handicapped parking spaces and proper signage. Together these obstacles, in the Zachmeyers’ view, explained why many voters in the three counties either voted by absentee ballot or did not vote at all. (Summary Report of Richard Zachmeyer, 1999 (exact date unknown). As Christine Zachmeyer later explained, by being unable to vote in person, many voters were also unable to participate in the social aspect of voting:

Voting is more than just casting a ballot. Part of participation in community life is going to the polls, casting your ballot, and stopping to chat with family members and neighbor. Though we didn’t have any formal complaints, certainly the folks that we talked to would have preferred to have been able to vote independently at their own polling places (Usiak’s interview with C. Zachmeyer, August 25, 2006.)

It has often been observed that the voting privilege is “the great equalizer” in American society. Each American, regardless of economic or social position, has one vote. People with disabilities are entitled to have their votes counted in the same way as all Americans. With determination to make this ideal the real, the Zachmeyers and other CDCI staff worked diligently from 1993-1999. They sent reports of voting barriers to municipal, county and state officials. They also contacted many legislators serving the three counties to request assistance. Yet despite these extensive efforts, few changes had been made in the polling places by 1999, the year that the new Attorney General, Eliot Spitzer, assumed his office. (Interview with C. Zachmeyer, 8/25/2006)

Attorney General Eliot Spitzer

Although candidate Spitzer had described himself as a “pragmatic liberal” and “a centrist”, the Attorney General left the starting gate as a crusading liberal. He extended the reach of his office to enforcement areas such as local fraud and civil rights, which had traditionally been handled by the federal Department of Justice. As one of his biographers has noted, Spitzer envisioned his office as a “giant public relations firm”, which would hunt for evidence of injustice and then devise new ways to fight it. (Brook A. Masters, Spoiling for a Fight: The Rise of Eliot Spitzer, 2006, p. 47). Thus, when Richard Zachmeyer contacted him to request assistance with polling place accessibility, Spitzer readily agreed to look into the matter. Two young attorneys in the Civil Rights Bureau were assigned to the case. After visiting many polling sites to confirm that no serious effort toward accessibility had been made, the attorneys notified the election commissioners in the three

counties of the changes required to bring the polling sites into compliance with state disability laws. Three more months passed and few changes were made, despite the commissioners' representations of progress. At this point, a decision was made to ask the staff of NYSILC to identify disability advocates statewide who could team up with the assistant district attorneys on Election Day, 1999. Eighteen teams fanned out to collect data at the polling places within the three counties. The data collected was to be utilized to bolster the lawsuit filed by the CCFI against the election commissioners in Otsego, Delaware and Schoharie Counties. Faced with the threat of further legal action by the State Civil Rights Bureau, one county gave in. The other two capitulated only after being sued by the State. By the fall of 2002, all polling in the three counties had become accessible. With few exceptions, regular monitoring by CCFI staff has ensured continuous full access during the past decade. (Press release, Office of NYS Attorney General, Nov. 1, 1999; Fax transmissions, Zachmeyer to Asst. AG Ruti K. Bell and Asst AG Carrie H Cohen to officials in Delaware, Otsego and Schoharie Counties, Nov. 4-10, 1999; summary report, Zachmeyer, 1999.)

1999 was also notable for the far-reaching Supreme Court decision in *Olmstead vs. L.C.* in which the Court upheld the Title II integration mandate of the Rehabilitation Act of 1973, requiring that services for people with disabilities be provided in the "most integrated setting appropriate to their needs." This ruling provided the legal precedent for the related 2004 Court ruling, *Tennessee v. Lane*. In this case, the plaintiff was a voter and wheelchair user whose polling place was accessible only by a staircase. A poll worker carried the voter up the stairs. Attorneys for the plaintiff argued that this was a violation of Title II of the 1973 act, since the voter was denied the opportunity to vote in the most integrated setting.. This case made it way on appeal to the Supreme Court, which sided with the plaintiff. After this ruling, it became unlawful to request voters to either cast absentee ballots or to vote at an inaccessible or separate site. If a polling site could not be made accessible by modifications such as the addition of sturdy ramps, proper signage and special "handicapped" parking spaces, it would need to be moved to an accessible site.

The 2000 Presidential Election and Its Impact Upon Disability Voting.

New Yorkers ushered in the new millennium and presidential election year on January 1, 2000. In June, disability leader Jim Dickson of the American Association of People With Disabilities (AAPD) addressed a voting rights press conference in Albany. Dickson was in town to help pull together a statewide coalition of disability groups. He spoke to a large crowd at the Capitol and a smaller group of media representatives. Dickson's words were prophetic: "People with disabilities are the sleeping giants of American politics." (Quote supplied by Brad Williams, a participant; "Vote:2000 Campaign Announced in New York," Newsbriefs, (Summer 2000).) Significantly, Dickson's prediction predated HAVA as well as American involvement in the wars in Afghanistan and Iraq. Our participation in these wars would result in tens of thousands of American casualties, including many soldiers with physical and psychiatric disabilities. Dickson's forecast also preceded the current dialogue on the impact of the aging "baby boomer population," with its projected increase in the incidence of disability. After the media event, four hundred advocates demonstrated their clout by engaging in a protest outside the Governor's office over the Medicaid-Buy-In program. Eight individuals chained themselves to the entryway door as the rest of the group shouted their support.

Within five months of Dickson's speech, the deadlocked presidential election underscored the need for changes in the recording and counting of ballots. In New York, Attorney General Spitzer ordered a comprehensive review of the State's entire electoral process. In a wide-ranging report released in February 2001, Spitzer recommended that the legislature and the governor enact more than twenty changes. These recommendations were embodied in the Election Reform and Modernization Act (ERMA) of 2005. The new law reflected in part the viewpoint of reform-minded organizations such as The New York League of Women Voters (NYLWV), New Yorkers for Verified Voting (NYVV) and NYSILC. For example, it recommended that the lever voting machines be replaced with computerized voting systems. As noted in the Attorney General's report, the lever machines often displayed technical flaws and broke down on election days. The key finding of the Spitzer report related to disability voting was that eighty-three per cent (83%) of voters with disabilities had cast ballots in the 2000 presidential election, a figure much higher than for other voters. Another finding was that the use of punch cards for absentee ballots in four counties had compromised both the vote count and the integrity of the voting process. The Attorney General concluded his report with a request that the three state branches of government work together to reach a consensus on changes needed to provide a more efficient electoral system.

Progress Toward Polling Site Accessibility in the North Country

While the Legislative, Executive and Judicial branches were considering electoral changes at the state level, voting advocates at the county level were promoting polling place accessibility. In the North Country, the extreme northern area of the State bordering Lake Ontario, the St. Lawrence River, Vermont and the Adirondack Mountains, voting advocacy began in 2001 under the direction of Robert Poulin of the North Country Center for Independence. The county board of elections and the mayor were generally receptive to efforts by Poulin to organize polling site inspections and to upgrade accessibility at city hall. Recommendations included the replacement of one polling site and the addition of accessible parking and directional signage at city hall. The Plattsburgh Press endorsed these recommendations and ran several articles supporting full access to public facilities. (Author's interview with Poulin and unpublished report by Poulin).

Help America Vote Act

The enactment of HAVA on October 29, 2002 marked a giant step forward in the struggle for equal voting rights. Included in this comprehensive federal law was funding for the states to upgrade their election systems by the replacement of mechanical voting machines, and to create a computerized voter registration database. The legislators who drafted this law with the help of disability stakeholders understood that the successful implementation of its provisions would depend in part upon the retraining of poll workers in the several states and the education of voters over a period of several years. An Election Assistance Commission (EAC) was created as an independent agency to facilitate this process by administering HAVA related funds, by creating a national program for the testing and certification of voting systems and by serving as a national clearing house for information related to federal elections. From the outset, it was established that the EAC would create and maintain voluntary voting system guidelines rather than impose its standards upon the states. In practice, New York and many other states adhered closely to the standards established by the EAC for voting machine certification. The executive director of the EAC from 2005-2011 was Thomas R Wilkey, who had previously directed the New York State Board of Elections. The delay in fully staffing the EAC and filling the commissioner slots impacted upon New York in that it provided a rationale for delaying decisions, such as the approval of specific voting systems, until the EAC's technical consultants had vetted the machines.

Westchester County

In Westchester County, efforts toward equal voting rights had been well underway prior to the enactment of HAVA. By September 2002, the Systems Advocacy Teams of the Westchester Independent Living Center (WILC) and Westchester Disabled on the Move (WDOM) had joined with other organizations to hold a workshop on polling site accessibility and accommodations for people with disabilities. Mel Tanzman of WDOM and Lisa Tarricone of WILC led the efforts in southern and northern Westchester respectively, with strong support from WILC's executive director Joe Bravo. A training session was held for town clerks and volunteers on ADA requirements, and information was also provided on polling place access, disability etiquette and barriers to voting. One such barrier was attitudinal: More than a few voters known to the stakeholders had been discouraged by county election personnel from using the new voter technology. Voting on the new machines was sometimes characterized as more difficult and time-consuming. Joe Bravo's statement in a prominent local publication that the right of all persons to vote takes precedence over other considerations provided a necessary corrective. ("Disability Training Workshop....description," 2002; Lisa Tarricone to Linda Peterson, 9/12/2002; Bravo quoted in Journal News, 10/16 2002.)

On Election Day 2002, Michael Hellman and Dennis Boyd coordinated an effort by disability advocates and volunteers to survey over seventy polling places. The results revealed that the majority of the polling places remained in violation of voting access standards. In March 2004, several disability organizations filed suit against the Westchester Board of Elections alleging that several hundred sites were inaccessible. Subsequently, the scope of this legal action was broadened to include all of the six cities and nineteen towns in the County. Judge Stephen Robinson ruled in favor of the plaintiffs. The settlement agreement stipulated that staff from WILC and WDOM survey all polling places in the county in order to make access recommendations to both the County and the municipalities. Some localities settled individually with representatives of the independent living centers, and the others agreed to meet with Tarricone and Tanzman for the purpose of reviewing their recommendations. As in the case of the three smaller upstate counties discussed above, it had taken legal action to actualize change. ("WILC, WDOM et al. v. Westchester Bd. of Elections, complaint filed in US District Ct;" Journal News, 10/15/ 2002.)

New York State Board of Elections

The execution and enforcement of state election laws is entrusted to the State Board of Elections (SBOE) which oversees all laws related to elections and campaign practices. Established in 1974 as a bi-partisan agency, the Board is composed of two Republican and two Democratic commissioners selected by the party leaders and confirmed by the Governor. (Laws of NY, Section 3-2000.) Typically, the candidates selected for these part-time positions have given years of service to the party at the county or municipal level. While nominally independent, the commissioners need to be responsive to requests of both their party leaders and county election officials, while giving a hearing to watchdog organizations and special interest groups.

Following the enactment of HAVA, the SBOE allowed more than three years to pass before it made any serious effort to get the county election officials to comply with HAVA. It took a court order by Federal Judge Gary Sharpe for the commissioners even to conduct a polling place accessibility survey. To be sure, the SBOE has limited authority over the county election boards; it can cajole and coax, but not order the county commissioners to install new equipment in polling places or relocate to a more accessible site. Despite these limitations in its authority, the tone of the Board's communications is important. The state commissioners can either display a laid-back or pro-active manner. In failing to push earlier for the replacement of the lever machines, the SBOE was following the lead of the Democratic leadership in the Assembly, which had reached a decision to retain the full-faced ballot until after the Presidential Election of 2008. By retaining the lever machines, the state party leaders hoped to promote the election of one of their own, Senator Hillary Clinton, who was expected to head the Democratic ticket. Voters would have the option of voting a straight Democratic ticket by pressing a single lever. However, this "straight party" voting advantage would be neutralized with electronic voting, since candidates for each race are listed on separate screens. (Adler interview with Bo Lipari, 9/15/2009) Although no written evidence was found to substantiate this claim, it is consistent with statewide Democratic political practice. It may also help explain why Senators Schumer and Clinton were the only Senators to vote against HAVA in 2002. The two Senators were also concerned that provisions of the new law would empower New York and other states to require voters to purchase voters identification cards. Clinton and Schumer were among the first public officials to point out that this requirement could be used as a means of discouraging many working class voters and illegal immigrants from voting.

("Schumer, Clinton Call For DOJ To Grant Extension To New York For HAVA Compliance," 1/26/2006, <http://schumer.senate.gov/Schumer/pressroom/recordprint.cfm?id+259368>)

While stressing their support for a modernized voting system enabling voters to cast their ballots with confidence, Senator Schumer contended that the lawsuit would "drain the state of the necessary funds to comply with HAVA, thereby making the problem worse, not better." ("Schumer, Clinton Call For DOJ....," 1/26/2006) Most likely, all of these considerations were factored into their Senate votes.

In December 2005, Assembly Speaker Sheldon Silver and Senate Minority Leader David Paterson announced the appointment of Douglas A Kellner as the Democratic co-commissioner of the SBOE. Kellner, an attorney and expert in election law, had previously represented Manhattan on the New York State Board of Elections for twelve years. His study of alternatives to the manual lever machine persuaded him of the need for a voter verifiable audit trail to ensure the accuracy of electronic vote counts. After joining the State Board, Kellner prodded the other commissioners to be more pro-active in supporting compliance with HAVA, with the caveat that they withhold their endorsement of any new voting systems until the EAC released its own approval list. He also aligned himself with the voting experts who opposed the use of the DRE machines because it did not provide voters with a verifiable paper ballot. (Statement of Douglas A Kellner to Committee on Oversight and Government Reform, Subcommittee on Information Policy, Census and National Archives, US House, May 7, 2007.) While Commissioner Kellner's leadership skills and openness to innovation were a welcome addition to the SBOE, he underestimated the size of the disability community, whose "target population" in his view was "10,000 to 25,000 people." (Minutes, May 22, 2006, NYSBOE.)

The Commission on the Quality of Control and Advocacy for Persons with Disabilities (CQCAPD)

The creation of this state commission in New York State was a response to public concern over the quality of care offered for people with physical, mental or sensory disabilities, especially in the developmental centers, and the desire to strengthen advocacy efforts. Its work has been pivotal in monitoring the compliance of state agencies with federal and state disability legislation, and investigating consumer complaints. The Commission also offers legal services and provides

information. Created as an independent agency in 1978, the CQC was combined with the state Office of the Advocate for People with Disabilities in 1998. Senior CQCAPD attorney Greg Jones, who specializes in disability law, is often consulted by the SBOE and other state agencies. Jones has also served as an ex-officio member of NYSILC and worked at times in tandem with NYSILC on various projects.

The CQCAPD also funds the downstate and upstate Protection and Advocacy for Voter Access (PAVA) project, an outgrowth of HAVA, which coordinates a wide range of activities related to disability voting, including voter education, technical assistance to the independent living centers, presentations to municipal boards, and inspections and upgrading of polling sites. The Center for the Independence of the Disabled (CIDNY) in Manhattan, which is currently directed by Susan Dooha, J.D., hosts the Upstate PAVA project, which has been coordinated in recent years by Rima McCoy and Monica Bartley respectively. CIDNY has been active in a wide range of voting rights activities since its inception in 1978. Some of its more recent activities are a train-the-trainer program for polling place supervisors and workers, the coordination of focus groups to enable voters with sensory, neurological and other limitations to try out the new voting machines and provide feedback to the machine vendors, the inspection of polling sites, and testimony before the New York City Election Board. The upstate PAVA coordinator, Helen Benlisa, is at the Catskill Center for Independence in Oneonta, where she edits a lively newsletter dedicated to disability voting, coordinates conferences and webinars for stakeholders, and monitors polling site compliance in three states. Together, the upstate and downstate coordinators have spearheaded efforts statewide to register more voters and mentor instruction in electronic voting.

Veteran disability advocate Susan Cohen, owner and director of Voting Access Solutions, has developed curriculum materials combining a civics unit on the importance of voting with hands-on instruction in filling out voter registration forms and voting on the two electronic systems certified in New York State. Cohen hopes to offer this instruction at independent living centers statewide.

New York State Independent Living Council

The New York State Independent Living Council (NYSILC) is an independent not-for-profit, federally-mandated state council with the primary responsibility of jointly developing, monitoring and evaluating the three-year Statewide Plan for Independent Living (SPIL). Since its creation in 1997, NYSILC has also closely observed the SBOE's compliance with disability legislation pertaining to voting. One technique for doing this is by analyzing voter complaints. In 2004 NYSILC received a total of ninety-two written complaints on Primary Day and Election Day, which were then grouped into four categories: polling site access, voting machine access, ballot access and other. After studying these complaints, Christine Zachmeyer, co-chair of NYSILC's election reform subcommittee, recommended that they be addressed via "clear legislative mandate, proper enforcement, and adequate poll worker training." ("Report Detailing Barriers and Discrimination....", News Briefs (Spring 2005).) NYSILC also sent registered letters to the SBOE expressing concerns about its lack of responsiveness to voter complaints but received no response.

The Help America Vote Task Force (HAVTF) briefly provided a point of contact between NYSILC and the SBOE. The purpose of this group, as per HAVA, was to ensure that the interests of all disability stakeholders were considered during the implementation process. The group met four times in March-April 2003 and was chaired by Peter Kosinski, Deputy Executive Director of the SBOE. The disability community was represented by Cliff Perez, Brad Williams and Greg Jones. Discussion topics included the creation of a statewide voter registration database, the distribution and monitoring of Congressional funds for HAVA implementation, and the selection and purchase of the new voting systems. The disability representatives favored a slower and more open meeting process, including a thorough consideration of upcoming public hearings on HAVA implementation. Kosinski, however, prevailed in his view that HAVTF should conclude its work as rapidly as possible. In sum, little was accomplished by the Task Force and there is no record of further meetings. (NYS Board of Elections, minutes of task force for help America vote, March 5-26, 2003.)

Another outgrowth of HAVA, the Citizens Modernization Advisory Committee (CEMAC) met in 2005-2006 with the more specific mandate of advising the SBOE on the selection of the new voting systems. The failure of the State Board staff to appoint a NYSILC representative to CEMAC, as called for in the Rehabilitation Act of 1973, prompted NYSILC to take legal action. An article 78 motion was filed in State Supreme Court demanding that the SBOE comply with section 1A of

ERMA. This law mandates the inclusion of a NYSILC representative on CEMAC. (Susan Cohen, "New Yorkers with Disabilities Want a Seat at the Table," News Briefs, (Fall 2005). Stanley Zalen, the chief state election official, then agreed to the appointment of Bruce Darling as the NYSILC representative to CEMAC. In the same communication, Zalen removed disability advocate Clifford Perez from the committee, an action seen by the disability community as retaliation for NYSILC's filing of the Article 78 motion. (Brad Williams to Neil W. Kelleher, SBOE, January 9, 2006.)

The United States Department of Justice (based upon an earlier draft of this paper by Brad Williams and Joseph G. Adler)

On January 10, 2006, the United States Department of Justice (DOJ) issued a letter to the State, putting it on notice for violation of HAVA and demanding full cooperation and compliance with that law. DOJ pointed to the State's failure to meet the deadline under HAVA for replacement of the mechanical lever machines, which was January 1, 2006. The attorneys for DOJ noted that New York was 'not even close to approaching full HAVA compliance and ...' was further behind than any other state in the country." In February, Brad Williams of NYSILC submitted a packet of information to DOJ-Civil Rights Division, as examples of many polling places statewide which were still inaccessible, and of the State's "unwillingness to change law and provide clarity. (Memo of Brad Williams to Brian Heffernan, February 1, 2006, with packet of information.) The State acknowledged in late February that it was out of compliance with HAVA and had no present plans to comply. The DOJ then filed suit in federal court on March 1, 2006 and issued a press release noting that the Civil Rights Division "had repeatedly urged New York to come into compliance on a voluntary basis." ("Justice Department Sues New York State Over Voting Rights," Press Release, March 1, 2006.)

The SBOE subsequently filed a series of papers with the Court in response to the lawsuit. One document included a column of quantitative information clearly reflecting an attitudinal barrier regarding people with disabilities. The figures had been obtained by the state board from the county election boards, which had been polled about the number of persons with disabilities in their respective counties. The total came to only 2,264 voters, with seventeen of the counties declining to even a hazard a guess. Many counties simply took the number of persons who voted by absentee ballot and "recycled" it to represent the number of voters with disabilities! Never

mind that some persons vote by absentee ballot because of travel plans or because their residence is outside the United States. Never mind that many people with disabilities vote at the polling place in their neighborhood, despite physical and other barriers. Some voters also cast their ballots with the assistance of a relative or a friend. In sum, the figures submitted to the federal department of justice had neither face or content validity, and were not based upon any scientific method. (The figures were obtained by NYSILC's pro bono legal counsel, Proskauer and Rose.) Moreover, the data supplied had no bearing upon the implementation of the law. As Brad Williams noted, the election officials could have obtained more complete data of potential voters from several other informational sources, including the US Census Bureau website, the Bureau's American Fact Finder, lists of wounded veterans in New York State and First Responders impacted by disability concerns post 9/11. (draft of unpublished paper by Williams and Adler, "Voters with Disabilities: The Sleeping Giants of American Politics.").

On March 23, 2006, Judge Gary Sharpe of the Northern District of New York issued an injunction in the DOJ lawsuit which referenced the SBOE's earlier admission that it was not compliant with HAVA. The Court determined that the State was out of compliance with sections 301 and 303(a), portions of the law pertaining to the right of voters to verify or correct their vote in a "private and independent manner." Other violations cited included the lack of an audit capacity (later remedied) and alternative language accessibility. (www.fed.gov/HAVA/law/ext.txf) On June 2, 2006, Judge Sharpe issued a second remedial order requiring New York to take specific actions "toward full compliance" with HAVA. ("Supplemental Remedial Order, US District Court Northern District of NY, USA plaintiff against NYSBOE defendant, case 1:06 cv0263-GLS, Document 185-3, filed 0111512008.") One such action, a stopgap measure, was the ruling requiring the placement of one electronic voting machine in every county by Primary Day 2006. The state deadline for the full implementation of HAVA, which had been extended to September 1, 2007 was also approaching. Yet as of June 1, 2007, the State had not yet certified a single voting system for use by the counties. Since use of the lever machines was to be unlawful after September 1, 2007, it appeared for a time that New York City would have to utilize paper ballots in the September primary and count tens of thousands of ballots by hand. This unwelcome prospect was averted in July when the state legislature approved, and Governor signed, an "extender bill", permitting each polling place to function temporarily with one ballot-marking machine. The deadline for the requirement to replace all lever machines was also extended from September 1, 2007 to March 1, 2008.

Predictably, the Republican state commissioners and many county officials were critical of Judge Sharpe's orders. Some commissioners utilized the old saw that there were no persons with disabilities in their county who wished to vote in person. Even if there were a few such voters, they could vote by absentee ballot. Several of these county officials even made a special trip to Washington in the hope of persuading House Speaker Nancy Pelosi to issue a Congressional waiver of the Judge's orders. This effort failed, however, because disability stakeholders in New York State flooded the Speaker's fax machine with hundreds of messages opposing the waiver.

One byproduct of the 2006 lawsuits was that the election board staff became more accessible to groups of voting stakeholders, including the League of Women Voters, the State Independent Living Council and New Yorkers For Verified Voters. The latter group, founded by software engineer Bo Lipari in 2004, had determined that the optical scanning machines such as the AutoMark voting system offered the best opportunity for New Yorkers to vote privately, independently and with less risk of ballot-tampering. In addition to providing equal voting access to nearly all voters with disabilities, the AutoMark system provided the voter with a verifiable paper ballot. (Adler Interview with Lipari, September 15, 2009.) The results of several focus groups coordinated by NYSILC staff demonstrated that most voters with physical, sensory, neurological, emotional and developmental disabilities could vote successfully on the AutoMark machine.

While the stakeholders were making modest inroads toward collaboration with the SBOE, Judge Sharpe began to lose patience with the state election commissioners. This change in the Court's outlook became evident on December 20, 2007 at a special court hearing. After reviewing a litany of missed deadlines and false assurances, the Judge castigated the state commissioners (who were represented by SBOE attorneys) for thinking that they could flout his earlier ruling that "Federal Law Trumps State Law!" His Honor proceeded to reflect outloud on his judicial options: He could throw the commissioners in jail until they complied with his orders or direct the State to issue a check reimbursing the Treasury for fifty million dollars in voting transition funds. Instead, Judge Sharpe selected much less drastic measures: He directed the SBOE to select more realistic dates (subject to his approval) for full compliance with HAVA, and to submit weekly written progress reports. Finally, he explicitly warned the commissioners that should the Board deviate in any way from this new plan, the Court would appoint a special master to oversee its full compliance with

HAVA. ("Transcript of Proceedings. US District Court, December 20, 2007; Adler's notes from proceedings; "Supplemental Remedial Order 06-CV-0263", filed 1/15/2008).

On January 8-11 2008, the Election Board filed revised HAVA implementation plans with the Court, which were vetted by attorneys for the Justice Department. Recognizing the State's inability to fully comply with HAVA in time for either the February Presidential Primary or fall primary and elections, Judge Sharpe approved a plan for partial compliance. This plan called for the installation of at least one accessible ballot marking machine per polling place. Full compliance with HAVA was to be accomplished no later than the fall 2009 primary and general elections. ("Supplemental Remedial Order, 1/15/2008.) This new date would also not be met by the SBOE, however, Judge Sharpe did not carry out his threat to appoint a Special Master. As late as April 20, 2010, Brian Hefferman of the Department of Justice wrote to Judge Sharpe to urge the Court move more quickly to secure New York State compliance with the voting system requirements of HAVA. (Brian Hefferman, DOJ to Hon. Gary L. Sharpe, April 20, 2010).

The elections operation unit of the SBOE recommended in 2008 that the state commissioners certify the Image Cast voting system (manufactured by Dominion Voting Systems of Canada) and the DS-200 optical scanner, with its companion AutoMark ballot marking machine. This recommendation was accepted by the state commissioners, thus clearing the way for the county commissioners to choose from the two systems and place their orders with the machine vendors. A large majority of the counties in New York elected to purchase the Image Cast system. Yet testing and re-testing of some of the new machines would continue for many months, since it was required whenever a modification was made to the hardware or the software.

A Shift of Focus: Polling Place Accessibility

As progress continued toward the full replacement of the lever machines, Brad Williams noted that the disability stakeholders had begun to shift their focus from voting machines to polling place accessibility. (Williams, "A Shift in Focus" News Briefs, (Winter 2008). While Warren County had become fully accessible by 2006, there were still only a handful of counties in full compliance with HAVA and IRMA. Following Election Day 2007, NYSILC received written complaints from voters and advocates at more than one hundred polling places, ranging from the failure to post required

signage to the more difficult problem of architectural barriers. As long as county election officials continued to obtain waivers from the SBOE permitting them to continue using sites with accessibility issues, full compliance with state and federal law was unlikely. A strong state polling place accessibility law was clearly required. Such legislation had been introduced almost annually since 2001; however, all of the bills had either died in committee or failed to receive Senate approval. A related bill, legislation facilitating relief for New Yorkers with disabilities in public facilities, was approved by the legislature and signed by Governor Spitzer in August 2007. This new law required that local officials make reasonable modifications in public facilities, including the removal of structural, architectural and communication barriers, unless doing so would result in an undue burden. (New York State Laws of 2007, Chapter 506).

At the start of 2007 legislative session, NYSILC drafted a robust polling accessibility bill in consultation with Assemblyman Kevin Cahill's staff. Brad Williams then secured the Senate sponsorship of William Larkin. Although the bill died in committee, the groundwork had been laid for a strong campaign for reporting the bill out of committee in future sessions. It was not until 2009, however, that the bill passed both in the Assembly and the Senate, and was sent to Governor David Paterson's desk. The disability stakeholders were assured repeatedly by the Governor's legislative liaison that the bill would be signed. Nonetheless, successful late intervention with the Governor by New York Mayor Michael Bloomberg resulted in a veto by the Governor. (Veto message of Gov. David Paterson, 9/16/ 2009, Re Assembly Bill 584A/S105A-Veto#60.) The Mayor and his aides spread the canard that the cost to the city of polling place modifications would be prohibitive, even though the State had already received enough federal funding to reimburse the City. It is likely that the disability community is on target in its contention that the Mayor is less than favorably disposed toward them. Mr. Bloomberg's stated positions and comments during the polling place and taxicab controversies, (see forward) for example, suggest that he has been insensitive to hardships experienced by the disability community. (Author's interview with Brad Williams, 8/1/2012; "Memorandum of Opposition", Micah Lasher to Senator Joseph Addabbo, 5/4/2010; Stephen Duffy, "Hail No! Nissan Was Ready for Handicapped Cabs, but Bloomberg Put On the Brakes", New York Daily News, 12/1, 2011); Edith Prentiss, quoted in "Taxis For All to Hold 'Roll-In' for Civil Rights at Display of Non-Accessible 'Taxi of Tomorrow'", 11/2/2011. Melanie Shaw, executive director of the New York Association on Independent Living, among other disability leaders,

sent a strong letter to Governor Paterson pointing out that as of June 2010 only two New York City sites had a waiver of requirements that polling places be accessible, and that the State could be reimbursed for costs incurred in make polls accessible for people with disabilities. (Melanie Shaw to Hon. David A. Paterson, June 18, 2010). Disability leaders also launched an effective media campaign to garner support for the bill, including meetings with Assembly and Senate leader. On December 18, 2010, outgoing Governor Paterson signed the bill into law. This comprehensive measure provides for the accessibility of all polling places, establishes basic accessibility guidelines to assure consistency and eliminates the practice of granting waivers to the counties. The enactment of this law was celebrated in the disability community. Decades of persistent effort had borne fruit.

Primary Day and Election Day 2010

The fall 2010 primary and elections marked a watershed in that they were the first time that all voters utilized the new voter technology. Despite the high expectations, Primary Day fell short. In New York City, although voter turnout was very light, about ten per cent of eligible voters, many voters experienced delays in using the new machines. There were also reports of broken scanners, a lack of space to allow privacy while completing the paper ballots, and dissatisfaction with the small print on crowded ballots. The Mayor aptly characterized Primary Day as a “royal screw up.” (Ailsa Chung, “Reports of Voting problems City Wide,” WNYC.com. September 14, 2010.)

On Election Day, there were fewer problems than predicted, but more glitches than some SBOE officials acknowledged. In addition to voicing some of the same complaints as on Primary Day, a number of voters reported that their poll workers were unfamiliar with the operation of the new voting systems. (Many of the poll workers were new on their jobs, as their predecessors had retired just prior to the introduction of the new technology.) Nonetheless, few people experienced long delays in voting. A number of voters with disabilities reported positive voting experiences.

Remaining Issues

Since the fall of 2010 advocates have turned some of their attention to polling sites which are still inaccessible, as well as periodically re-inspecting approved sites. Since neither the State nor the federal government have the resources to monitor compliance on an ongoing basis, this time-consuming job has been left to the stakeholders.

Perhaps the most formidable of the remaining challenges is the development of a statewide program to bring out the disability vote. A broader voter education effort is needed to reach thousands of persons with disabilities who are not connected with or known to the independent living centers. In an effort to identify these potential voters, NYSILC has commissioned various disability voting trend polls since 2006. (www.nysilc.org key documents) This method works for persons who are already voters and are willing to self-identify as either persons with disabilities, or share information about other persons in the family. In May 2012 NYSILC submitted FOIL requests to several state agencies in a successful effort to identify the number of New Yorkers with disabilities who live independently, or reside with families, or participate in one of several congregate living programs such as supportive housing, or reside at developmental centers or psychiatric centers. In order to gain a full picture, all of these groups need to be counted and identified by county of residence. NYSILC's findings will be shared, along with other pertinent information, at a statewide conference on disability voting in Syracuse scheduled for September 2012. Jim Dickson will be the keynote speaker at this conference.

New Challenges-The Voter ID Laws

The majority of states still require that a paper form be filled out by persons registering to vote. New York's reliance until 2009 upon a nineteenth-century registration method rather than online registration is one reason for the State's low voter participation rate. Ten states current allow people to register online and a number of other states are preparing to do so. In seventeen states, registration data is sent electronically from motor vehicle offices to election board offices. Beginning with the Democrats in the Presidential Election of 2008, a major political party mounted a successful, highly selective voter registration drive with the goal of enhancing its candidate's chances of election. The lesson learned was turned upon its head by the Republicans in gearing up for 2012: The Tea Party wing of the Republican Party is seeking to discourage certain groups of voters who tend to vote Democratic from registering, or voting if already registered.

This strategy was first tested in 2010. Since then, ten states have passed voter ID laws. (New York has not yet passed such a law.) In Florida and several other states, the governor or secretary of state has changed registration procedures by executive order. While the laws or executive orders differ from state to state, they share a common objective: While ostensibly designed to update voting rolls by removing the deceased and protecting against voter fraud, the main purpose is to reduce the number of ballots cast by voters unlikely to vote Republican. The target groups include lower-income voters, including many Hispanics, and undocumented immigrants of several nationalities. Hardest hit have been the poor, the elderly, as well as younger voters. While not specifically directed against voters with disabilities, the voter ID laws are affecting them disproportionately to their numbers. For example, many voters with physical and other disabilities are unable to drive and therefore cannot use their license as an acceptable form of identification. Most of the states with voter ID laws require these voters to purchase a photo ID in order to register. A few states require the registrant to display their passport or other proof of citizenship. Non-drivers residing in spread-out states such as Texas may also be required to travel long distances at their own expense to an office selling the special ID. Finally, several state legislatures have resorted to one or more of the following tactics: curtailed voting hours, eliminated advance voting, prohibited registration and voting on the same day, and restricted third party registration. (Wendy R. Weiser and Lawrence Norden, " Voting Law Changes in 2012," Brennan Center For Justice, 2012, pgs. 4-36; Wendy Weiser, "Testimony at House Hearing on Restrictive Voting Laws, US House, Subcommittee on the Constitution Judiciary Committee, April 18, 2012, Brennan Center, pg.1-15.)

Florida is an egregious example of the imposition of voter ID laws. Governor Rick Scott requested the Secretary of State to identify all noncitizen voters on the election rolls. The first database search turned up 180,000 names of persons registered to vote and suspected of being non-citizens. Further checking narrowed this list to about 2600 voters out of a total of eleven million voters. County election supervisors were then requested to contact each of these voters by letter to direct them to provide proof of citizenship within thirty days; otherwise, their name would be deleted from the voting rolls. This directive has been contested by local election supervisors, civil rights groups and the Brennan Center for Justice as a possible violation of both the Voting Act of 1965 and the National Registration Act of 1993. In June 2012, Governor Scott refused a federal government order to halt the purging of the State voter rolls. As of early August, 2012, this controversy was still unsettled. ("Despite Brennan Center Victory, Florida Continues Voting War,"

Brennan Center for Justice, June 12, 2012; “Gov. Rick Scott: Voter Purge Lawful, Feds Are Wrong and Breaking the Law,” Miami Herald, June 6, 2012.)

In addition to the Florida case, there have been several other legal challenges at the state and federal level. In June 2011, the Justice Department found that the voter ID laws in South Carolina and Texas were too restrictive. As the Brennan Center’s Senior Counsel Myrna Perez noted: “Decades ago, our nation passed the Voting Rights Act to combat this kind of discrimination. We urge the federal court to stand up for voters by blocking this law.” (Keesha Gaskins, “The Latest News on Voter ID Laws,” June 15, 2012, Brennan Center; Perez quoted in Erik Opsal, “Voting Newsletter: DOJ Rejects Texas Voting Law, March 13, 2012, Brennan.

The Taxicab Controversy in New York City

In New York City, disability stakeholders have long been concerned about the small number of accessible taxis, just two percent of the fleet. In Manhattan, persons in wheelchairs find it difficult, if not impossible, to schedule a reliable pick-up or to flag down an accessible taxi. The City has some 60,000 wheelchair users and an unknown number of tourists and business travelers who cannot use the regular yellow Checker (medallion) cabs. Among many other functions, the disability community utilizes taxis for transportation to and from polling places.

When the City put out bids for a fleet of more than 13,000 taxis to be ordered by 2020, and gave no indication that it was looking to purchase accessible taxis, several disability organizations sued the Taxi and Limousine Commission. The plaintiffs contended that the TLC was in violation of the equal access provision of the ADA, which states that persons with disabilities be afforded the same access to public accommodations as the non-disabled. While this matter was still in litigation, the TLC selected a non-accessible vehicle and unveiled it at a “Taxi For Tomorrow” exhibit: the Nissan NV200, which has been described as “a bulky four-door van that seems more soccer mom than Travis Bickle.” (Michael M. Grynbaum, “City’s Next Taxi: A Nissan Van Short on Looks, Perhaps, but Full of Comforts,” New York Times May 3, 2011.) Several disability stakeholders in wheelchairs staged a well-publicized ‘roll-in’ to protest this exhibit. It was also reported that Nissan had considered submitting a “handicap accessible “ (*sic*) model, but dropped the plan because company officials felt that the Bloomberg Administration was indifferent to the proposal. (Duffy,

Hail No! Nissan Was Ready....” , New York Times, pg. 1-3) In December 2011 Federal Judge George B Daniels ruled that the TLC’s operation of an inaccessible taxi fleet constituted discrimination against people with disabilities. (Noel I v. New York City Taxi and Limousine Commission), but this decision was overturned on appeal. A compromise proposal negotiated by Governor Cuomo with city officials, which would have increased the number of accessible taxicabs to 2000, was rejected by Judge Daniels. There seemed to be recognition by all parties that an improved taxi dispatch plan was desirable, but the details were still in dispute. Disability leaders were insisting upon a dispatch plan that would improve livery service for the disabled in Brooklyn, Queens, the Bronx and Staten Island. (Edith M Prentiss to author, August 1, 2012, E-mail)

Conclusion

While the stakeholders protracted struggle to obtain equal voting rights in not over, it is certainly far enough along to pose this question: “What did New York State get right about HAVA compliance and what did it get wrong?” (The author acknowledges the assistance of Dennis Boyd, ESQ. with this section. Boyd, Dr. Sandor Schuman and Brad Williams reviewed the entire article and offered constructive criticism.) The decision of the legislative leadership and the SBOE to delay establishing standards for voting machine certification until after the EAC issued its guidelines was right in principle but wrong in application. For over four years, 2002-2006, the counties received little guidance in the choice of the new voting systems, and the State fell behind all other states in HAVA implementation. Then, by allowing each county to select its own voting systems (from an approved list), state leaders largely forfeited their control over the transition process. Some of the county election board commissioners continued to receive waivers to utilize inaccessible polling sites, and there was generally little pressure from the SBOE to get on with the task of federally-mandated HAVA compliance. With the SBOE political culture of partisan differences and resistance to outside pressures, it required the joint involvement of the disability stakeholders, the Justice Department and the Federal District Court to prod the state and county election commissioners toward a systems change. Even in the best of circumstances, the transition process would have taken three or four years. As events transpired, it has taken fully a decade, and many polling sites remain out of compliance with federal and state disability law. Had the State Election Board taken advantage of opportunities offered to partner with the disability

leadership and utilized their areas of competence, the transition process would have proceeded much more quickly.

Much that has been achieved would not yet be in place had it not been for disability advocates and other stakeholders who did legal research, conducted site inspections, hosted focus groups, analyzed data, arranged media contacts, trained poll workers, courted politicians, educated consumers, and so much more.

Based on this solid track record of leadership and accomplishment, there is good reason to expect that the disability community in New York will not rest until full equality is achieved in every area of American society. Efforts underway in other states to turn back the clock by the passage and implementation of voter ID laws attest to the need for sustained vigilance. The second decade of the twentieth century will likely be devoted to a consolidation and expansion of recent gains. Finally, more resources need to be devoted to a full statewide “get out the vote” campaign. Until voters with disabilities come out to vote in large numbers, the full promise of the judicial and legislative victories described here will remain unfulfilled.