



Susan Bysiewicz  
SECRETARY OF THE STATE  
CONNECTICUT

October 14, 2005

To: Connecticut Mayors and First Selectmen  
Connecticut Registrars of Voters  
Connecticut Town Clerks  
State Legislators  
Democrat and Republican Party Town Chairpersons  
Democrat and Republican State Central Committee Members

This letter is an update to my previous correspondence regarding the recent Election Assistance Commission (EAC) Advisory 2005-005: Lever Voting Machines and Help America Vote Act (HAVA) Section 301(a).

#### **Preservation of Local Choice**

On September 8, 2005, the EAC issued an advisory banning the use of lever voting machines in the 2006 federal election. If the advisory is found to be binding on the State of Connecticut by the United States Department of Justice (the federal agency empowered to enforce all aspects of HAVA), no municipality in the State will be permitted to use lever voting machines in the primaries or elections held for federal office on or after January 1, 2006.

Our office has asked Attorney General Richard Blumenthal whether the ruling is binding on our state. Even though this effort is being made on behalf of this office and the State of Connecticut, we must be prepared to move forward should the Department of Justice determine that the ruling is binding upon Connecticut. Attached is a copy of the letter that Attorney General Richard Blumenthal sent to the Department of Justice.

In July of 2003, our state submitted a plan to the EAC outlining a phase-in of new voting technologies. Our plan to give municipalities choice regarding voting machine technologies has not changed. What may **change** are the options available to the towns and cities in Connecticut. Before the ruling the options available to municipalities were:

1. Lever voting machines
2. Optical Scan machines (approved for use in CT since 2001)
3. HAVA Complaint machines under the RFP.

After the ruling the options available to municipalities are:

- Optical Scan machines
- HAVA Compliant machines under our current Request for Proposal ("RFP").

### **Demonstration set for new technology**

Currently, the State of Connecticut is involved in an RFP for electronic voting equipment. This process allowed all eligible voting machine companies to submit proposals to the State of Connecticut regarding their company's voting technology. As part of the RFP process, we have required that the voting machine company participate in a public demonstration in each of the five Congressional Districts in Connecticut. Our intention is to demonstrate all qualifying machines during the week of November 14th so that the general public and local election officials can try each machine. You will be receiving a brochure with more details shortly. In addition, we will provide an opportunity for each town's registrars of voters, town clerks, and chief election officials to participate in a presentation where each company will discuss their training programs. After both the demonstration and presentation, participants will be given the opportunity to grade each aspect of the company and their voting system and such grades will be included in the total results for the RFP. Once these totals are added to the existing scoring in the RFP and pricing has been examined, a voting machine will be selected.

In the event that the Department of Justice finds that no municipality in the State will be permitted to use lever voting machines in the primaries or elections held for federal office on or after January 1, 2006, I have sent a letter of inquiry and invitation to all voting machine vendors on the most recent federal certification list to gather information regarding any optical scan voting technology that they may possess. This will provide my office with important information about the voting equipment available to the State of Connecticut. Attached is a copy of the letter for your information.

### **Federal funding for new machines**

*As the Chief Elections Officer, I am responsible for the interpretation and administration of federal and state election laws. You may have recently received erroneous information regarding the cost to your municipality for new voting machines so I would like to take this opportunity to clarify the issue.*

As part of the RFP process, this office is prohibited by strict state contracting and purchasing laws from reviewing the total costs of each machine until after the final scoring of the RFPs. Therefore, we are unable to provide you with detailed

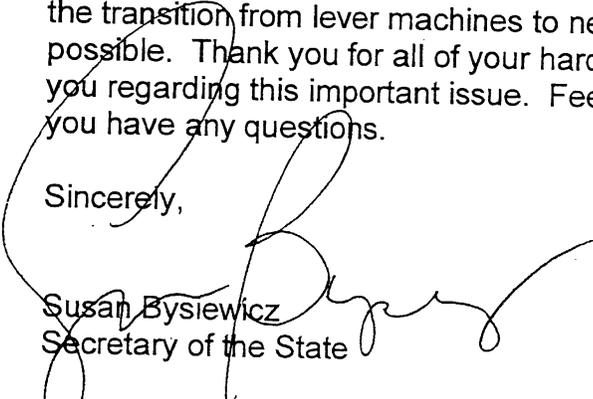
information in terms of cost. However, we do estimate that we will be able to fully supply each municipality with one HAVA compliant voting machine per polling place. Once this is accomplished, we will be in a better position to determine how much federal funds are remaining and how those funds can best be used to supply each municipality with additional voting systems. Our Office is developing a strategy to fully implement HAVA and to maximize the available federal funds with the ultimate goal of fully funding the replacement of our lever voting systems without expense to the municipalities.

Our office has received approximately \$33 million in federal funding that will be used to purchase the accessible voting machines by January 1, 2006 as required by HAVA. Since we are still in the process of reviewing bids, the cost per voting machine is not yet known. Once that figure is known, we will determine how we will replace the lever voting machines. On September 21<sup>st</sup>, I convened a meeting, in my office, of local leaders. In attendance were Herb Rosenthal, President of the Connecticut Conference of Municipalities, William Smith, President of the Connecticut Council of Small Towns, Richard Abbate, President of the Registrars of Voters Association, and Sandra Hutton, President of the Town Clerks Association. The Senate Co-Chairman, Donald DeFronzo and the House Ranking Member, Livvy Floren, of the Government Administration and Elections Committee were also in attendance. We all agreed that uniformity of voting technologies is the best solution for our state.

While the final answer to this inquiry truly depends on the total cost of each machine and all associated training and support requested, we anticipate that we will be able to fully fund the replacement of the lever voting machines in the State of Connecticut.

As the Chief Elections Official for the State of Connecticut, I will continue to work with chief municipal and election officials and legislative leaders in order to make the transition from lever machines to new voting machines as smooth as possible. Thank you for all of your hard work and I look forward to working with you regarding this important issue. Feel free to contact me at (860) 509-6200 if you have any questions.

Sincerely,



Susan Bysiewicz  
Secretary of the State

Attachments

RICHARD BLUMENTHAL  
ATTORNEY GENERAL



55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Office of The Attorney General  
State of Connecticut

October 5, 2005

Hans von Spakovsky, Esq.  
Chris Herren, Esq.  
Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

By regular and electronic mail

Dear Attorneys Spakovsky and Herren:

Thank you for speaking with a representative of my office, Assistant Attorney General Perry Zinn Rowthorn, on Friday, September 23, 2005, about a recent advisory opinion of the Election Assistance Commission (EAC) concerning lever voting machines and Section 301(a) of the Help America Vote Act, 42 U.S.C. § 15481 ("HAVA"). As you know, on September 8, 2005, the EAC opined that "lever voting systems have significant barriers which make compliance with Section 301(a) difficult and unlikely." See Advisory Opinion (September 8, 2005)("the Advisory Opinion") at 1.

The Advisory Opinion was the EAC's first formal pronouncement on the legality of lever voting equipment, and it was issued less than four months before the January 1, 2006 deadline for replacing non-HAVA compliant voting systems. The Advisory Opinion does not have the force of law; nor is it directed at, or binding upon, any particular jurisdiction. See HAVA at § 209 ("The Commission shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any state[.]"). Nevertheless, given its close proximity to the January 1, 2006 deadline, the Advisory Opinion is of grave concern to the many cities and towns in Connecticut that rely primarily on lever voting machines.

You have invited my office to present arguments demonstrating that Connecticut's lever voting machines comply with HAVA. We very much appreciate the opportunity to do so. As discussed below, Connecticut's state and local election officials reasonably, in good faith and, in my view, correctly proceeded on the understanding that their lever voting machines comply with

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HAVA and, therefore, in conjunction with one direct recording voting machine per polling place, were appropriate for use in federal elections after January 1, 2006. Requiring replacement of those lever voting machines by January 1, 2006—even assuming it were possible—would impose significant and unfair logistical and economic hardships on the State of Connecticut and its municipalities.

I. Relevant statutory sections

As you are aware, HAVA was passed in 2002 to address a variety of perceived deficiencies in voting and elections administration, including problems with certain voting systems like the now infamous "butterfly ballot" used in some precincts in Florida during the 2000 presidential election. To my knowledge, lever voting machines, which are regarded as generally reliable, secure, accurate and robust, were not associated with any of the problems underlying the enactment of HAVA.

Section 301 of HAVA establishes a variety of requirements that any voting system must meet to be used in a federal election after January 1, 2006. Generally speaking, HAVA requires that voting systems: (1) permit the voter to verify his or her vote before it is cast and counted; (2) provide the voter an opportunity to change or correct the ballot before it is cast and counted; (3) prevent voting for more than one candidate for the same office; (4) provide alternative language accessibility to the extent required by the Voting Rights Act of 1965; (5) meet error rate standards established by the Federal Election Commission; (6) be accessible to disabled individuals, although the provision of one accessible direct record voting machine at a polling place is sufficient to satisfy this standard; (7) produce a permanent paper record with a manual audit capacity. See HAVA at § 301(a). As to this last requirement, HAVA does not define "manual audit capacity," but states that the paper record must be available as an official record for a recount. See HAVA at § 301(a)(2)(B)(i). As will be discussed below, lever voting machines used in Connecticut meet all of these standards.

While Section 102 of HAVA creates a purely voluntary mechanism by which states may obtain federal funds for replacement of punch card or lever voting machines, HAVA does not prohibit lever voting machines or any other particular voting system. To the contrary, nothing in HAVA "shall be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000," from retaining that system provided it meets, or can be modified to meet, the system requirements set forth above. See HAVA at § 301(c)(1).

As a condition of receiving federal funds for the implementation of HAVA, each state is required to submit a state HAVA plan to the EAC explaining its implementation strategy, including "[h]ow the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301." See HAVA at § 254(a)(4). The filing of state

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plans permits the EAC to monitor states' HAVA compliance efforts and, presumably, to the extent the EAC considers those efforts inconsistent with the requirements of law, to so advise the states. No legal action may be brought against a state based on information contained in its state plan. See HAVA at § 254(c).

## II. Relevant history of Connecticut's compliance with HAVA's voting system requirements

Elections in Connecticut are administered in a decentralized fashion, with Connecticut's 169 cities and towns bearing the primary responsibility for administering and funding elections, including the responsibility for purchasing and maintaining voting equipment. With the exception of three towns that use optical scan voting systems, every one of Connecticut's municipalities uses lever voting machines. There are currently some 3,300 such machines in use in Connecticut's 769 voting precincts.

Since HAVA's passage in 2002, Connecticut's state and local election officials have made significant efforts towards full compliance with the statute, including its requirements concerning voting systems. As set forth below, Connecticut's Secretary of the State, Susan Bysiewicz, has fully advised the EAC of those efforts, including Connecticut's intentions with regard to retention of lever voting machines. To date, Secretary Bysiewicz has not received any indication from the EAC that Connecticut's implementation efforts are unacceptable in any respect.

On April 29, 2003, Secretary Bysiewicz certified to the federal government, pursuant to Section 102 of HAVA, that Connecticut would voluntarily replace its lever voting equipment over time and seek federal funding to do so. On the same date, then-Governor John G. Rowland advised Secretary Bysiewicz that he did not wish to pursue Section 102 funding, noting that HAVA "does not require Connecticut's municipalities to replace their existing lever equipment, so long as the voting equipment meets federal voting requirements." See Gov. Rowland Letter, April 29, 2003 (copy attached hereto as Exhibit A).

A copy of Governor Rowland's letter was forwarded to the General Services Administration ("GSA"), which allocates Section 102 funding. On May 14, 2003, the GSA, citing Governor Rowland's letter and the conclusions of its own General Counsel, advised Secretary Bysiewicz that Connecticut would not receive any Section 102 funding to replace its lever machines. The GSA did not dispute Governor Rowland's statement that HAVA does not require replacement of lever voting machines.

On July 23, 2003, Connecticut filed its state HAVA plan ("the Plan") pursuant to HAVA Section 254. See The Plan (relevant portions attached hereto as Exhibit B). The Plan explained Connecticut's efforts to investigate alternative voting technologies, but disclosed its current

reliance on lever voting machines and its likely inability to replace those machines prior to January 1, 2006. In particular, the Plan stated:

The ultimate goal of the Secretary of the State was to replace all lever voting systems within the State. However, with the rejection of the State of Connecticut's HAVA § 102 application, which would have provided additional funds and authority to replace all lever voting systems in the State, this ultimate goal may be delayed. Therefore, to fully comply with the provisions of HAVA regarding accessibility for individuals with disabilities, the State of Connecticut will purchase one electronic voting system for each polling location in Connecticut (currently 746)<sup>1</sup> for use by individuals with disabilities. In addition, the State of Connecticut is now working with all municipalities on a "Phase-In" plan (described below) for replacement of lever voting systems ...

Implementation: The State of Connecticut will place one electronic voting system in each polling location in Connecticut. After such initial step, Connecticut will require each municipality to assess the overall condition of their voting equipment and submit a plan to the Secretary of the State indicating whether the municipality will seek to replace all lever voting systems; only a portion of the lever voting systems; or continue to rely solely on such systems for all elections in the municipality. Such plan will also detail the municipality's plan for implementation if lever voting systems are to be replaced.

See Plan at 4-5.

Thus, the EAC was specifically advised on July 23, 2003, that Connecticut would retain its lever voting machines after January 1, 2006, and employ them in conjunction with one electronic voting machine per polling place. Indeed, the above-quoted passage alerted the EAC that Connecticut's municipalities were continuing to consider whether they would *ever* replace *any* of their lever machines. Nevertheless, in the more than two years since the Plan was filed, the EAC has never taken issue with any part of it. In fact, after filing the Plan, Connecticut received full HAVA funding.<sup>2</sup>

On December 21, 2004, in accordance with the Plan, Connecticut issued a Request for Proposal to procure one fully accessible direct recording voting machine for each polling place in

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<sup>1</sup> As of this writing, the number of polling places in Connecticut is 769.

<sup>2</sup> In addition, on January 26, 2005, Secretary Bysiewicz wrote the EAC seeking specific guidance on, among other issues, certain aspects of Section 301's voter system requirements, including those relating to voter verified paper receipts. To this day, the EAC has not responded to the Secretary's inquiry.

accordance with the Plan and as expressly permitted by Section 301(a)(3) of HAVA. That RFP process is currently on schedule to meet the January 1, 2006 deadline.

Thus, in good faith reliance on its interpretation of HAVA's voting system requirements, the acceptance of the Plan by the EAC, the prohibition of participation in the Section 102 lever machine buyout program, and the absence of any contrary indication or instructions from the EAC, Connecticut has not yet commenced the process for replacing its 3,300 lever voting machines.

III. Connecticut's lever voting machines are HAVA compliant.

In its Advisory Opinion of September 8, 2005, the EAC opined for the first time that *in all instances* lever machines are incapable of satisfying Section 301(a)'s requirement of a permanent paper record with a manual audit capacity. In addition, the EAC stated that lever machines may *in some instances* be incapable of providing a documented error rate in compliance with Federal Election Commission standards; providing alternative language capability in accordance with the Voting Rights Act; or permitting accessibility for individuals with disabilities. The three areas of possible non-compliance identified by the EAC clearly do not apply to Connecticut's lever machines, and therefore will be addressed only briefly. The EAC's interpretation of HAVA's manual audit capacity requirement will be addressed in greater detail, as that interpretation is not only erroneous but, if adopted, threatens significant expense and disruption to Connecticut.

A Connecticut's lever voting machines meet HAVA's requirements concerning manual audit capacity.

Section 301(a)(2)(B) of HAVA requires that voting systems create a "permanent paper record with a manual audit capacity [.]". With regard to this requirement, the EAC opined as follows:

Clearly those lever voting systems that are not capable of producing a paper record are not in compliance with HAVA Section 301(a)(2)(B). Similarly, it is the position of the EAC that those machines which produce a limited paper record (documenting only vote totals) also do not meet these requirements. HAVA makes it clear that the reason it requires a paper record trail is to ensure that all voting systems create a permanent, manually auditable record for use in a recount. (HAVA Section 301(a)(2)(B)(i) and (iii)). Given these facts, to meet HAVA's audit capacity requirement, systems must create a paper record that can serve as an audit trail. In other words, the document must be a "chain of evidence connecting...summary results to original transactions." A document is not an

appropriate audit tool when it is, itself, a summary that cannot show the original actions that make up its whole.

See Advisory Opinion at 1-2. As discussed below, this analysis is unsupported by statutory language, reason or sound public policy.

"In every case involving construction of a statute, the starting point is the language itself." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 197 (1976)(internal citations, quotations omitted). As noted above, nothing in the language of HAVA explicitly bars the use of lever voting machines. Nor does the statute define "manual audit capacity." Indeed, the *sole* support cited for the EAC's interpretation of that phrase—an interpretation that would bar the use of lever voting machines—is a fragment of a definition of the phrase "audit trail" in an entirely different context contained in Black's Law Dictionary. The full text of that definition reveals that it is entirely inapposite to an elections statute: "Audit trail: Chain of evidence connecting account balances or other summary results to original transactions and calculations. The flow of events between the original transaction and the account balances in the financial statements." See Black's Law Dictionary, 6<sup>th</sup> Ed., at 131.

Thus, absent any statutory basis whatsoever, the EAC would apparently impose on Connecticut the expensive and disruptive obligation to replace virtually all of its voting machines in under four months, based on a definition taken out of context. Not only is this result contrary to principles of statutory construction, it is also in conflict with traditional notions of federalism, which require that federal statutes be construed not to infringe on areas of traditional state autonomy, such as election administration, or to impose obligations on states and localities unless Congress clearly intended to do so. See, e.g., McNally v. United States, 483 U.S. 350, 360 (1987)(refusing to "construe the statute in a manner that leaves its outer boundaries ambiguous and involves the Federal Government in setting standards of disclosure and good government for state and local officials.")

It is evident in the language of HAVA that Congress contemplated the use of lever voting equipment after January 1, 2006. As noted above, Congress made clear that the statute is not to "be construed to prohibit a State or jurisdiction which used a particular type of voting system in the elections for Federal office held in November 2000," from continuing to use that system after January 1, 2006, provided that it meets, or can be modified to meet, HAVA's voting system requirements. See HAVA at § 301(c)(1). Indeed, in establishing the requirements applicable to voting systems to be used after January 1, 2006, Congress expressly referenced "*any lever voting system*["] See HAVA at § 301(a)(1)(A). The EAC's opinion nullifies this reference to lever voting systems, violating the well-settled principle that statutes must be construed to give effect to every word wherever possible. See, e.g., Duncan v. Walker, 533 U.S. 167, 174 (2001).

The EAC's interpretation of the manual audit requirement springs from a faulty premise. While the EAC is correct in its conclusion that the manual audit capacity requirement is designed to create records for use in a recount, it failed to consider that recounts are conducted pursuant to state law. HAVA, itself, does not define a recount or dictate the manner that recounts are to be conducted; nor does it grant the EAC authority to do so. Thus, the question of whether a record or manual audit is adequate for purposes of facilitating a recount must be determined solely by reference to state law. Connecticut's lever voting machines' audit capabilities meet the requirements of Connecticut state law governing recounts.

Under Connecticut law, a paper record demonstrating machine *totals*, as opposed to individual votes, qualifies as a sufficient record for purposes of conducting a recount, or "re canvass" as the procedure is known in Connecticut. Connecticut General Statutes § 9-311 sets forth the recanvass procedure: "recanvass officials, in the presence of [a] clerk and moderator, shall immediately proceed to open the counter compartment of each such [voting] machine and, without unlocking such machine against voting, recanvass the votes thereon[ ]" See Conn. Gen. Stat. § 9-311(b). That statute provides further that, in a recanvass, "votes shall be announced and recorded in the manner prescribed in section 9-309 [of the Connecticut General Statutes]." See Conn. Gen. Stat. § 9-311(c). In turn, Connecticut General Statutes § 9-309 states that, at the end of the election, the moderator shall "read and announce in distinct tones the *result* shown by the counter numbers..." (emphasis added). Therefore, a recanvass, as prescribed by Connecticut law, requires that the moderator re-read and announce the vote *totals* on the back of the voting machine.<sup>3</sup> Thus, because Connecticut recount law requires only the recanvassing of machine totals, HAVA's manual audit requirement, as applied to Connecticut, should not be construed to require a paper record demonstrating individual votes. Connecticut's lever voting machines can readily be equipped with the capacity to produce a paper record of machine totals sufficient to satisfy both Connecticut's recanvass laws and HAVA's manual audit capacity requirement.

Requiring Connecticut to provide a paper record of individual votes would serve no purpose, as such a record would not be consulted under Connecticut's recanvass law and procedure. In addition, lever voting machines are generally reliable and provide voters the opportunity and ability to verify their individual votes before those votes are cast and counted—a key requirement of HAVA. On the other hand, one might sensibly require paper records of individual votes cast on electronic voting machines, the reliability of which many still consider unproven and which otherwise would compile data—including vote totals—only in electronic form. Such electronic machines are presumably subject to at least some of the data vulnerabilities affecting computers and other electronic devices. Reconstructing lost electronic voting data can perhaps best be accomplished if paper records exist of each voting transaction. By contrast, while lever voting machines occasionally experience mechanical difficulties, their

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<sup>3</sup> Connecticut law does not establish an "audit" requirement for lever voting machines.

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long history of use in Connecticut demonstrates the improbability that mechanical difficulties will result in complete data loss.

The EAC's Advisory Opinion, which would have the affect of prohibiting the use of an entire category of voting technology, represents conduct far in excess of its proper role:

The EAC has two main duties. The first is to administer funding to the State... The second is to act as a national clearinghouse and facilitator for research on election administration, including developing best practices and *voluntary* guidance for the states on compliance with the requirements of Title III [which includes Section 301's voting systems standards.]

See Spakovsky, *The Help America Vote Act, A Statutory Primer*, at 4 (emphasis added). Clearly, Congress was aware of the continuing existence of lever voting machines and could have prohibited their use in federal elections after January 1, 2006, but did not do so. The EAC, which has no such power, should not be permitted to do what Congress, itself, chose not to do.

It is also noteworthy that the EAC's interpretation of the manual audit requirement has not received the endorsement of knowledgeable commentators. To the contrary, one such commentator has opined that "[t]he HAVA manual audit standard merely requires that DRE's print out a paper receipt showing the total number of ballots cast on each machine at the end of election day when voting stops." See Spakovsky, *The Help America Vote Act, A Statutory Primer*, at 6.

Finally, the fact that Section 102 of HAVA creates a funding mechanism for replacement of lever machines in no way indicates that such machines cannot comply with Section 301's voting systems standards. To the contrary, Section 102 creates a *purely voluntary* machine replacement process. See Spakovsky, *The Help America Vote Act, A Statutory Primer*, at 3 ("The funding provided under Title I can be used to replace punch card and lever voting machines, although the use of either type of voting machine is not prohibited by HAVA"). Indeed, Congress appears to have contemplated that states that applied for Section 102 funds might not have completed replacement of their lever voting machines by Section 301's January 1, 2006 deadline. Under those circumstances, Congress did not explicitly mandate that states complete the replacement of lever machines; nor did Congress create penalties for retention of such machines. Rather, those states are simply required to return portions of Section 102 funds, without penalties or interest, that are unspent as of January 1, 2006. See HAVA at § 102(d).

B. Connecticut's lever voting machines meet HAVA's requirements concerning error rates, alternative language capability and accessibility for individuals with disabilities.

As noted above, lever voting machines are generally regarded as accurate, reliable and robust. If called upon to do so, Connecticut will demonstrate compliance with HAVA's error rate requirements by providing the report of an independent testing agency and/or evidence derived from existing studies of lever voting equipment, including studies conducted at the California Institute of Technology and the Massachusetts Institute of Technology. Consistent with Connecticut's experience, those studies demonstrate the accuracy of lever voting machines.

Connecticut and its municipalities also comply with all applicable alternative language requirements. Under the Voting Rights Act, the State of Connecticut is mandated to provide one alternative language (Spanish) on the election ballots in eight municipalities. This requirement was in place for several years prior to the existence of HAVA, and it is my understanding that the affected municipalities have faithfully complied with it.

Finally, HAVA expressly permits states to satisfy the requirement of providing voting systems that are accessible to the disabled "through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." See Section 301(a)(3)(B). As discussed above, and disclosed in its HAVA Plan dated July, 2003, Connecticut will provide at least one fully accessible voting system in each polling location in the State for the federal primaries in August of 2006. The pending RFP process to procure such machines is currently on schedule to meet the January 1, 2006 deadline.

### III. Conclusion

As I hope you will agree, the EAC's general conclusion that lever voting machines cannot comply with HAVA's voting system standards is erroneous, or at the very least greatly overstated. The EAC did not analyze Connecticut's present voting systems or the relevant provisions of Connecticut's election laws. Were the EAC to do so, it could not reasonably conclude that Connecticut's lever voting technology does not meet HAVA standards and must be replaced. Moreover, in light of the timing of the Advisory Opinion, Connecticut's significant efforts to comply with HAVA, the disclosure of those efforts to the EAC and the EAC's apparent approval thereof, it would be manifestly unfair to require the replacement of nearly all of the state's voting equipment before January 1, 2006.

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I look forward to discussing this matter with you further and to participating in a cooperative dialogue with the Department of Justice concerning Connecticut's compliance with HAVA. Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,



RICHARD BLUMENTHAL

encls.  
RB:PZR

EXHIBIT A



STATE OF CONNECTICUT  
EXECUTIVE CHAMBERS

REC'D APR 29 2003  
11:30 P.M.

HAND DELIVERED

JOHN G. ROWLAND  
GOVERNOR

April 29, 2003

The Honorable Susan Bysiewicz  
The Secretary of the State  
State Capitol, Room 104  
Hartford, Connecticut 06106

Dear Secretary Bysiewicz:

The Help America Vote Act of 2002, was signed into law by President George W. Bush on October 29, 2002. The states are eligible to receive federal funding to assist them in meeting new federal voting requirements. In order to receive that federal funding, the states must file a formal certification under Title I of the Act by today.

Were the state to file a certification under Section 102 of the Act, that section then requires the state to ensure that all lever voting machines in each of the 780 precincts across the state are replaced by next year's federal election or, with a one-time waiver, by January 1, 2006. While I certainly support taking all steps necessary to meet the new federal voting requirements, I do not wish to file a Section 102 certification and mandate that the municipalities replace all of their existing lever voting machines within the time allotted, without affording them the opportunity to explore alternatives available to them under the Act. Indeed, the Act does not require Connecticut's municipalities to replace their existing lever equipment, so long as the voting equipment meets federal voting requirements.

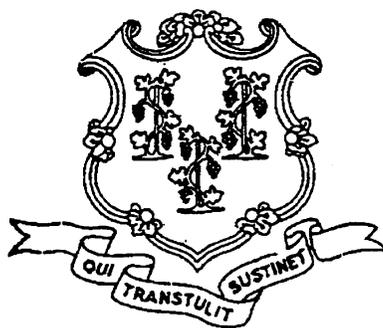
Please file the requisite electronic certification under Section 101, and not under Section 102, on behalf of the State of Connecticut.

I appreciate your efforts as the Chief Election Official in keeping this office abreast of federal voting requirements and assisting the municipalities in meeting those requirements. I look forward to the results of this November's demonstration project with the electronic voting machines that your office is overseeing.

Sincerely,

JOHN G. ROWLAND  
Governor

**EXHIBIT B**



# State of Connecticut

## State Plan

As required by the Help America Vote Act

Public Law 107-252, Section 253(b)

July 23, 2003

**Secretary of the State Susan Bysiewicz**  
State Capitol  
210 Capitol Avenue  
Suite 104  
Hartford, CT 06106



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## STATE PLAN APPROACH

The State of Connecticut administers elections through a two-tiered system. The Secretary of the State is the Chief Election Official and through the Secretary's agency administers and supervises the electoral process at the state level. Each of the 169 towns in Connecticut have a town clerk who is either elected or appointed and two registrars of voters who are elected for two or four year terms. These officials work in cooperation to effectively administer successful elections at the local level. The Secretary of the State, as an advisor, the town clerks, and registrars of voters must work together to serve all political candidates and the nearly 2 million registered voters in Connecticut.

### Status of State of Connecticut's HAVA implementation:

The State of Connecticut is near completion of a centralized voter registration system that will connect all 169 towns to a central database of all registered voters in the State. Currently, the State of Connecticut has 149 towns out of 169 towns connected to the centralized voter registration system. An additional 10 towns have committed to joining the system before the Federally mandated deadline and have sent in the appropriate information to the State of Connecticut to enable them to join. Upon completion, the centralized voter registration system will allow registrars of voters to effectively monitor their official registry list, to keep track of those electors who may have moved in or out of their municipalities, and to more effectively prevent voter fraud and duplicate registration.

Considerable efforts are necessary for the State to meet all of the other HAVA requirements. The State of Connecticut will need to complete the centralized voter registration system by adding the remaining towns to the system (in accordance with recent State legislation passed, Connecticut Public Act 03-117, An Act Concerning the State-Wide Centralized Voter Registration System, requiring all towns to participate on the centralized voter registration system by September 1, 2003), redesign the election administration processes, establish a provisional ballot system, revamp training, and investigate voting system alternatives (through passage of H.B. 6592, An Act Concerning Implementation and Administration of the Help America Vote Act). The State of Connecticut's ability to provide ongoing operations as well as maintenance of new and required capabilities is dependent on adequate resources and funding from the Federal level.

### State of Connecticut's Future Approach:

This State Plan is organized as specified in HAVA §254. Each section of this document corresponds to a subsection of §254 and addresses a State Plan requirement specified in HAVA. The plan outlines HAVA requirements and the State's current status in regard to those requirements, and defines the actions planned to help the State meet those requirements.

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## STATE PLAN REQUIRED ELEMENTS

### A. TITLE III REQUIREMENTS AND OTHER ACTIVITIES

*How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections. (HAVA §254(a)(3)).*

#### 1) §301(a) Voting System Standards Requirements

Deadline for Compliance: January 1, 2006

The State currently uses two voting systems in its 169 towns, lever voting systems, and optical scan voting systems. Before the enactment of HAVA, the State of Connecticut began investigating other voting technologies. In the 2001 and 2002 legislative and special sessions there was proposed legislation that would have allowed at least three municipalities to participate in a voting demonstration project using electronic voting technology. This legislation was not passed. In the 2003 legislative session, the Secretary of the State again proposed legislation that would allow at least three municipalities to participate in a voting demonstration project using electronic voting technology. On April 29, 2003, Governor John Rowland signed Connecticut Public Act 03-7, An Act Concerning a Demonstration Project for the use of Electronic Equipment for the Casting and Counting of Ballots and Prohibiting the use of Punch-Card Voting Machines, that allows the State of Connecticut to test electronic voting technologies in different municipalities. After the demonstration, a full report will be issued to the legislative committee having cognizance over this matter detailing the success and failures of the different voting technologies along with individual voter feedback. This report will be useful as the State of Connecticut begins the process of moving toward electronic voting systems.

Three of Connecticut's 169 municipalities currently use optical scan voting systems to tabulate the results of the full election ballot. Several of the State's 169 municipalities use optical scan voting systems for absentee balloting. The remaining municipalities use lever voting systems. Pursuant to Connecticut General Statutes §9-238, one lever voting machine is required for each nine-hundred or fraction of nine-hundred electors whose names appear on the last completed registry list of the municipality. This results in approximately 3,308 lever voting systems used throughout the entire State. Research with regard to the electronic voting systems capacity as to how many voters the electronic systems can accommodate during an election must be continued. The electronic voting systems will be closely monitored during the demonstration project to determine the actual number of voters each electronic voting system can accommodate during Election Day.

It is expected that the State of Connecticut will incur significant costs to train poll workers and election officials and to conduct voter outreach on the use of the new electronic voting equipment. Adequate federal funding is vital to ensure the State of



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Connecticut's compliance with this provision of HAVA. If the electronic voting equipment available can accommodate 900-1000 voters per Election Day, it would require Connecticut to purchase 3,308 electronic voting systems. Implementation of these systems would cost approximately \$16 million for hardware (3,308 x \$5000 / per machine).

In addition, the State of Connecticut is actively reviewing whether the current lever machines used in the municipalities would be compliant with HAVA if they were "retro-fitted" with a "print-o-matic" function. This function would allow election officials to make a carbon copy of the official counters located inside the machine by use of a special device that makes an imprint on the carbon paper. This method would produce a paper record of the machine results for audit purposes. It remains unclear whether the paper audit record required by HAVA is a paper audit record for the machine or a paper audit record for each vote. The State of Connecticut understands that several of the electronic voting systems available comply with both the disability and audit requirements provided in HAVA.

The ultimate goal of the Secretary of the State was to replace all lever voting systems within the State. However, with the rejection of the State of Connecticut's HAVA §102 application, which would have provided additional funds and authority to replace all lever voting systems in the State, this ultimate goal may be delayed. Therefore, to fully comply with the provisions of HAVA regarding accessibility for individuals with disabilities, the State of Connecticut will purchase one electronic voting system for each polling location in Connecticut (currently 746 statewide) for use by individuals with disabilities. In addition, the State of Connecticut is now working with all municipalities on a "Phase-In" plan (described below) for replacement of lever voting systems.

Finally, §301(a) of HAVA requires states to define what constitutes a legal vote for each type of voting system used in the State. Connecticut already complies with this provision. For each voting system in current use, the Secretary of the State produces a manual defining what constitutes a legal vote in the case of a canvass or recanvass. The State will continue to define a legal vote in a uniform manner for each voting system used in the State.

Implementation of Connecticut's Voting System Compliance will progress as follows:

- a) Planning - Connecticut will conduct a demonstration project using electronic voting technology pursuant to Connecticut Public Act 03-7. Such demonstration project will require a full written report of the results of such project. The report will then be used as a reference when Connecticut proceeds with final certification of electronic voting equipment.
- b) Implementation - The State of Connecticut will place one electronic voting system in each polling location in Connecticut. After such initial step, Connecticut will require each municipality to assess the overall condition of their voting equipment and submit a plan to the Secretary of the State.



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indicating whether the municipality will seek to replace all lever voting systems; only a portion of the lever voting systems; or continue to rely solely on such systems for all elections in the municipality. Such plan will also detail the municipality's plan of implementation if lever voting systems are to be replaced. Upon receipt of such plan, Connecticut will review procurement options for the electronic voting systems and create schedules, work plans and trainings to effectively replace all noncompliant voting systems in the State.

A more detailed explanation of Connecticut's compliance with Section 301, Voting System Standards, can be found in *Appendix A*.

**2) §302, Provisional Voting and Voting Information Requirements**

Deadline for Compliance: January 1, 2004

HAVA addresses the process of provisional voting to ensure that no individual who appears at the polls intending to cast a ballot is turned away without having the opportunity to do so. Currently, Connecticut General Statutes §9-232 allows an elector to cast a challenge ballot if the elector's name appears on the last completed registry list but the elector is challenged on the grounds of want of identity, disfranchisement or lack of bona fide residence.

In reaction to the passage of HAVA, the Office of the Secretary of the State assessed the State's current challenge ballot procedures to determine those elements needing modification in order to fully comply with HAVA. The Secretary of the State determined that the HAVA requirements on provisional ballots differ greatly from the current challenge ballot procedures in state statute. Therefore, the Secretary of the State drafted new legislation, H.B. 6502, An Act Concerning Implementation and Administration of the "Help America Vote Act", currently before the General Assembly, that creates a provisional ballot procedure compliant with the procedures set forth in HAVA.

In addition to provisional voting requirements, HAVA mandates that states publicly post specific information at the polls on Election Day. Connecticut currently displays certain voting information at each polling place, however, the Secretary of the State must adjust and include some content to these postings in order to comply with HAVA.

HAVA further provides that voters who vote (pursuant to a court or other order), during extended hours after the normal close of a polling place, cast provisional ballots. These ballots must be kept separate from other provisional ballots. As with other provisional ballot requirements, the State of Connecticut does not currently have this provision in state statute. Therefore, H.B. 6592 creates a procedure for this circumstance.

Implementation of Connecticut's Provisional Voting Procedures will progress as follows:

- a) Impact Assessment - The Secretary of the State assessed the requirements of HAVA §302 and reviewed and compared existing State law with HAVA.



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# APPENDIX

## A



State of Connecticut's Current Status (Meets Requirement, Partially Meets, Does Not Meet)		Actions Planned
<b>Requirement</b> <b>SEC. 301. VOTING SYSTEMS STANDARDS</b> (a) REQUIREMENTS- Each voting system used in an election for Federal office shall meet the following requirements <b>(1) IN GENERAL-</b> (A) Except as provided in subparagraph (B), the voting system (including any lever voting system, optical scanning voting system, or direct recording electronic system) shall (i) permit the voter to verify (in a private and independent manner) the votes selected by the voter on the ballot before the ballot is cast and counted; (ii) provide the voter with the opportunity (in a private and independent manner) to change the ballot or correct any error before the ballot is cast and counted (including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error); and (iii) if the voter selects votes for more than one candidate for a single office-- (I) notify the voter that the voter has selected more than one candidate for a single office on the ballot; (II) notify the voter before the ballot is cast and counted of the effect of casting multiple votes for the office; and (III) provide the voter with the opportunity to correct the ballot before the ballot is cast and counted. (B) A State or jurisdiction that uses a paper ballot voting system, a punch card voting system, or a central count voting system (including mail-in absentee ballots and mail-in ballots), may meet the requirements of subparagraph (A)(III) by		
Does Not Meet.		The State of Connecticut will meet this provision after implementation of the Voting System Standards plan set forth above.
Does Not Meet.		The State of Connecticut will meet this provision after implementation of the Voting System Standards plan set forth above.
Meets.		No action needed.



State of Connecticut's		
Requirement	Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(i) establishing a voter education program specific to that voting system that notifies each voter of the effect of casting multiple votes for an office; and	Meets.	No action needed.
(ii) providing the voter with instructions on how to correct the ballot before it is cast and counted (including instructions on how to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error)	Meets.	No action needed.
(C) The voting system shall ensure that any notification required under this paragraph preserves the privacy of the voter and the confidentiality of the ballot.	Meets	No action needed.
<b>(2) AUDIT CAPACITY-</b>		
(A) IN GENERAL- The voting system shall produce a record with an audit capacity for such system.	Partially Meets. <ul style="list-style-type: none"> <li>A portion of lever machines used by municipalities have a "print-o-matic" function.</li> <li>The remaining lever machines do not have the "print-o-matic" function but maybe capable of being retro-fitted with such a function.</li> </ul>	The State of Connecticut needs to further investigate the issue of whether lever voting machines with "print-o-matic" functions comply with the audit capacity provisions of HAVA.
<b>(B) MANUAL AUDIT CAPACITY-</b>		
(i) The voting system shall produce a permanent paper record with a manual audit capacity for such system.	Does Not Meet. <ul style="list-style-type: none"> <li>Lever machines that have a "print-o-matic" function are capable of producing a permanent paper record of the total votes cast on the system.</li> <li>CT will continue to research whether the paper audit trail required by HAVA is a record of the voting system or of each vote cast.</li> </ul>	If lever machines with a "print-o-matic" function do comply with the provisions of HAVA all lever machines would need to be retro-fitted with that function. If lever machines with a "print-o-matic" function do not comply with the provisions of HAVA new voting systems will have to be implemented statewide as explained above.



State of Connecticut's		
Requirement	Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(ii) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced.	Meets.	No action needed.
(iii) The paper record produced under subparagraph (A) shall be available as an official record for any recount conducted with respect to any election in which the system is used.	Meets.	No action needed.
<b>(3) ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES-</b> The voting system shall-		
(A) be accessible for individuals with disabilities, including nonvisual 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;	Does not meet	The State will meet this requirement upon implementation of the State voting systems program described above.
(B) satisfy the requirement of subparagraph (A) through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place; and	Does not meet.	The State will meet this requirement upon implementation of the State voting systems program described above.
(C) if purchased with funds made available under title II on or after January 1, 2007, meet the voting system standards for disability access (as outlined in this paragraph).	N/A	The State will meet this requirement upon implementation of the State voting systems program described above.
(4) ALTERNATIVE LANGUAGE ACCESSIBILITY- The voting system shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965 (42 U.S.C. 1973aa-1a).	Partially Meets.	The State will continue to educate the local election officials regarding their duties pursuant to this requirement.



State of Connecticut's		
Requirement	Current Status (Meets Requirement, Partially Meets, Does Not Meet)	Actions Planned
(5) ERROR RATES: The error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and not attributable to an act of the voter) shall comply with the error rate standards established under section 3.2.1 of the voting systems standards issued by the Federal Election Commission which are in effect on the date of the enactment of this Act.	Meets.	No action needed.
(6) UNIFORM DEFINITION OF WHAT CONSTITUTES A VOTE- Each State shall adopt uniform and nondiscriminatory standards that define what constitutes a vote and what will be counted as a vote for each category of voting system used in the State.	Meets.	The State will continue to develop procedure manuals that define what constitutes a vote for each system used in the State.



Susan Bysiewicz  
SECRETARY OF THE STATE  
CONNECTICUT

September 28, 2005

As the Chief Elections Officer for the State of Connecticut, I am writing this letter of inquiry and invitation to all vendors on the most recent NASED Certification listing. The purpose of this letter is not to solicit bids or proposals for any voting equipment but to gather information regarding any optical scan voting technology that your company may possess. I must be very clear that this letter does not constitute a request for proposal or bid from your company and is merely a letter of inquiry and an invitation for submittal of your technology for State of Connecticut Certification.

As you may be aware, almost all of Connecticut's 169 towns currently use lever-voting systems to conduct our elections, primaries and referenda. In addition, you may also be aware that the United States Election Assistance Commission ("EAC") has recently issued guidance that appears to disqualify from use, lever-voting systems for the 2006 federal elections. As such, I must begin to explore additional options for the replacement of our lever voting systems.

Therefore, enclosed with this letter you will find all of the relevant qualifications that your optical scan voting equipment must satisfy to be certified for use in the State of Connecticut. Unlike many other states, the State of Connecticut requires that all voting systems must be certified by both the State of Connecticut and NASED (or equivalent certification recognized by the EAC) before the equipment can be used for any elections, primaries or referenda in the State of Connecticut. As such, I have provided the following documentation:

Connecticut Constitution (Art. XXIV of Amendments)

- Connecticut General Statutes §§9-241, 9-242, 9-242a, 9-249b, 9-250, 9-250a, 9-253, 9-437, 9-470 and 9-472
- Connecticut Regulations relating to the Approval of Voting Machines (Conn. Regs 9-241-1 to 36)
- Connecticut Regulations relating to the Use of Marksense Voting Machines
- Electronic Voting Machines – Connecticut Application Process (DRE, P&M) [informational], and
- Connecticut Public Act 05-188 An Act Concerning Voter Registration, Certain Nominating Procedures, Campaign Accountability, A Voter Guide, Push Polling and Electronic Voting Machines.

May I point out that Connecticut General Statutes §9-250 requires that the names of the political parties be arranged on the machines, either in columns or horizontal rows immediately adjacent to the column or row occupied by the candidates of such party. This means that on one screen or ballot the voter must see at least 9 party rows and 15 to 30 columns of candidates, with the candidates of a party appearing on the row of the appropriate party to the right of the party name.

It is clear that the statute does not allow a “vote by office” ballot set-up but requires a single column for the names of the political parties and for the names of the candidates to be listed immediately adjacent thereto. This has been the standard ballot language in the State of Connecticut since the 1930’s and was drafted to reflect a ballot layout identical to that of the current lever voting machines and as such, requires a “full face” ballot layout.

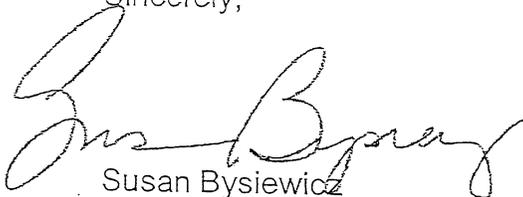
May I also point out that Connecticut Public Act 05-188 requires that any optical scan voting equipment approved for use after July 2005 must first be certified to meet the voluntary performance and test standards for voting systems adopted by the Election Assistance Commission (i.e. the 2002 voting system standards). This requirement applies to *any* optical scan voting equipment approved for use after July 2005 that is presented for use in the State of Connecticut independently *or as part of a overall voting system.*

If you feel that the technology produced by your company meets all of the above referenced standards, I respectfully request that you submit the documentation necessary to establish that your voting system does in fact comply with such standards. In addition, I would also request that you submit information on the availability of your voting system and the ability of your company to supply the State of Connecticut with approximately 2,200 machines to meet the HAVA deadline on or about January 1, 2006.

If I have not received a response from your company by October 15, 2005, I will assume that the optical scan technology available through your company does not meet the minimum standards for certification in the State of Connecticut.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Bysiewicz".

Susan Bysiewicz  
Secretary of the State

Enclosures

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