

## A Broken System Stays Broken

by Jillian Matundan

Thursday, August 05, 2004 12:00 AM -

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Few have completely forgotten the debacle in Florida during the presidential election of 2000, where thousands of voters were disenfranchised because their ballot was so confusing that they chose the wrong candidate (the so-called "butterfly ballots"), or because the ballots were so poorly designed that it wasn't clear who the voter had voted for (the "hanging chads"), or because they were simply deleted from the voting rolls. Manual recounts took months, and then it was the Supreme Court who decided the presidency.

The nation was shocked, outraged, embarrassed. The federal government vowed to do something about it.

Little has changed in New York.

When, in response to Florida, Congress passed the Help America Vote Act (commonly referred to as HAVA), the plan was to provide state and local governments with millions of dollars to upgrade their voting systems. What this meant in New York was money to:

- \* replace our clunky 40-year-old lever voting machines
- \* create a state-wide voter database to prevent fraud
- \* institute procedures that will prevent scenarios like the East Side State Senate race in 2000, where it took more than six weeks to declare a winner.

But when the federal Election Assistance Commission recently gave out \$861 million to 25 states, New York was not one of them.

That's because the only thing more dysfunctional than New York's voting system is the State Legislature in Albany. Lawmakers failed to meet the federal requirements to get the funding, and so New York did not receive its share of the payment.

There is still hope that we will eventually get the funding, but legislators must act quickly.

Money earmarked for the Empire State is sitting in Washington, but, according to a federal election staff member, Congress may use the money for other purposes if Albany does not claim it by the end of the year. And even if New York does get its share of the money, Albany's partisan bickering and failure to deal with difficult issues raise serious questions about whether the voting system can be overhauled by the deadline of 2006.

### **NEW YORK'S PART**

Over the next few years, New York should receive an estimated \$235 million in federal funding to improve its voting system. But that money is being given out in stages, with certain requirements that states must meet. (New York has already received \$66 million). In order to receive this latest payment from the federal government, Albany legislators had to do three main things:

- \* Create a specific account to deposit the money in so that it stays separate from other state

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money.

\* Match five percent of the federal money (about \$11.8 million) with state funding.

\* Agree to a procedure by which voters can complain if they feel their voting rights have been violated.

Lawmakers failed to achieve any of these requirements.

For the 20th year in a row, Albany missed its budget deadline and politicians left for the summer without passing much of the legislation that accompanies the budget. No financial account was created, and the state did not match the money even though it is only \$11.8 million out of a \$100 billion state budget.

At times in the last year, there were reasons to hope that Albany would produce concrete guidelines for reform.

In February, the Assembly and Senate each passed their own versions of how to implement the Help America Vote Act. Advocates and civic organizations immediately called for the creation of a conference committee, where the two sides could meet to work out their differences. Uncharacteristically, the Senate and Assembly agreed to meet.

But the lawmakers got stalled on the details.

One of the main sticking points was the issue of what kind of identification voters must show to register and to vote. The federal guidelines require that first-time registrants by mail must provide proof of identification, but leaves it up to the states to decide what constitutes "current and valid photo identification."

Only about half of New York City residents have drivers' licenses and so some lawmakers worry that the ID requirement may disenfranchise immigrant and young voters.

After much deliberation, the Assembly and Senate agreed to a list of appropriate forms of ID, but got hung up on the phrase "including, but not limited to" at the top of the bill. The State Assembly wanted more flexibility for city residents; the State Senate did not want more exceptions to the rule and wants the State Board of Elections to decide.

The two sides could not reconcile their differences and no compromise legislation was drafted.

### **VOTERS AT THE POLLS**

Nevertheless, New York voters will still see some differences at the polls this year because of the Help America Vote Act.

One new addition is a revised version of the New York State Voter's Bill of Rights, which outlines what each voter is entitled to (things like the right to privacy in the booth, the right to vote regardless of disability, the right to an emergency ballot if the machine breaks). This

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Voter's Bill of Rights must be posted at every polling place.

But voters may also encounter some confusion this year.

Without an acceptable list of the types of ID that will be required, local boards of elections and some good-government groups fear that individual poll workers will decide what are and what are not acceptable forms of identification. This will likely vary from polling place to polling place and there will be no statewide uniform system.

It is also unclear exactly what voters will be able to do if they feel their rights have been violated since the legislature failed to agree on a complaint procedure. The best advice is to write down your polling site and names of poll workers and register your complaint with the Board of Elections and other government watchdog groups like the New York Public Research Interest Group.

### LOOKING AHEAD TO 2006

The significant changes, -- new voting machines, a new statewide database, and better procedures in counting votes -- will not be in place until the 2006 elections.

There is still much work to be done, and since legislators are routinely stuck on small details there is little confidence that they will be able to resolve difficult issues like what kinds of voting machines to purchase and how to verify electronic vote counts. Voting machines have recently undergone a large amount of scrutiny based on states that have already purchased new electronic machines. The concern for machine fraud is well-based; there are numerous problems in the states that have already bought the new machines. Issues such as machine malfunctions, unsolved security problems, and lack of voter-verified paper trails are now being settled in the courts - such as in Maryland where the Board of Elections ruled that votes would not be counted for voters who voted by paper ballots because they did not want to vote on the machines in the March primary. (See "[How They Could Steal The Election This Time](#)" in The Nation.) In Ohio, the president and CEO of Diebold Election Systems caused a stir when he promised to "deliver Ohio's electoral votes to President Bush in 2004." Ohio votes on Diebold machines, along with Maryland and a few other states.

New York legislators are aware of the issues surrounding voting machines and both houses have introduced provisions in their pieces of legislation that will safeguard New York against possible problems with electronic machines, such as voter-verified paper trails and the use of an independent panel to verify machine integrity, hardware, and source code. However, New Yorkers will have to wait until the legislature decides to meet again on the issue.

The longer Albany holds off in passing Help America Vote Act legislation, the longer it will take New York to get its fair share. The longer we are forced to wait, the harder it will be to create a voting system we will be required to have by 2006.

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