

From: "Brad Williams" <bradw@nysilc.org>
To: <HAVATF@elections.state.ny.us>
CC: <CCFI99@aol.com>, "Bruce Darling" <bdarling@rochestercdr.org>
Date: 4/10/2009 9:26 AM
Subject: Input on HAVA Implementation Plan
Attachments: SBOE Complaints.doc

On Election Day 2008, poll workers were not properly trained regarding the new Ballot Marking Devices (BMD's). The instances ranged from, "what machine" to "the machine is broken" to "I can't get it to work" to "you don't want to use it" to "I don't trust it." All inappropriate responses tended to reflect a lack of training, preparation, or outright refusal to make the new technology operational.

Another theme was that the BMD was "the disabled machine" and disappointment over limited use of the device. What does it really reflect? Really poor public education on the part of election officials with the disability community. Money needs to be spent with disability and other targeted groups to design effective campaigns and turnout groups. If you pay nothing for it and expect these groups to do it for you for nothing and give all the money to local BOE's - you will get exactly what you pay for - NOTHING! It is time to invest the money elsewhere with other groups (language and good government) to help you achieve results. You could also start small and work with a few regional projects first. Expand out if they prove successful.

I want to add that "the disabled machine" tag needs to be addressed as well because when the State finally gets around to replacing the lever machines (next 1-2 years) the BMD system will serve as the basis and will be expanded with scanners for a good portion of the population. So this attitudinal barrier that "the disabled machine is a waste of tax payer time and money" is ridiculous. The entire State will eventually be voting on a component of this new system and election commissioners and poll workers better get used to it. Also, not everyone with a disability (3.3 million in NYS) will be using the BMD - only those who need it. A person in a wheelchair may choose to fill out a ballot and go to the scanner. The BMD will be for those people who cannot fill out a ballot by themselves or review the ballot by themselves.

I have attached a document that summarizes some of the complaints that I received on Election Day 2008.

I feel that in order to improve poll worker training, two things need to happen. In addition to the various products that you have developed, more face-to-face training must occur. I think that you need to develop a specific training program that focuses on how to accommodate voters with disabilities (disability etiquette), how to operate the BMD's, and how to survey polling place accessibility. However, I believe you need to contract with vendors like the upstate and downstate HAVA projects or ILC's who have

technical expertise on the topic and include people with disabilities IN THE TRAINING. I think this is missing. Like mentioned above, I think you can start small and expand out with success. It is time to start this new approach with specialized vendors.

I also feel that you need to conduct evaluative criteria with your objectives to know when they are working. You should survey a sample of voters with disabilities to see if they are aware of the BMD, how they find the voting process, and if they feel poll workers are properly trained. You should survey poll workers to find out if the training they receive met their needs. If not, what do they need? While you could do this, it is probably better to have a third party do it for you (more reliable). NYSILC has experience. However, we know some other vendors (SUNY Research). It should be done.

My last comment as to WHY you should start involving third parties in training, public outreach, and surveying is that NYSBOE recently experienced a State budget cut and has less staff. Thus, it would be difficult for you to assume more duties. It would make more sense to contract out those tasks at this time and to engage in new partnerships.

Brad Williams

NYSILC

Issues with the Implementation of the Ballot Marking Devices (BMD's) on Election Day 2008

Warren County

- Individual asked to vote on the BMD. The response should have been, "Come this way. Instead, poll worker remarked, "Oh, no you don't." Person insisted. Poll worker repeated, "Oh, no you don't."
- Individual stated that he was involved in the suit that ordered the Ballot Marking Devices (BMD's) and had a right to vote on the machine. Poll worker replied, "It will take you at least twenty minutes to vote on that machine versus two minutes on the lever machine, if you want to waste your time..."
- Individual informed the poll worker that he had conducted focus group testing on the machine and that maybe a first time user could take up to twenty minutes, but a person familiar with the system would only take 8-10 minutes tops.
- Poll worker conceded, but then asked in front of a room full of people, "What is your disability?"
- Individual responded, "That is an illegal question. Do not ask that question of another person who comes in here. While the BMD accommodates a person with a disability, people with and without disabilities can vote on that system." The poll worker was taken back at the direct challenge and instructed the individual to sign in and meet them back at the BMD.
- After signing in and confusion over how voting on the BMD might through off their lever machine counts, the individual went to the BMD to vote. The poll worker was busy reading instructions. She had the power on and fed a blank ballot into the printer. The poll worker could not enter codes into the system to download a ballot on the screen. As a result, she rebooted the machine and asked the individual to read the instructions with them. She went over each step (i.e., poll worker and voter). Together, they could not figure out how to load a ballot.
- After 15 minutes, the individual (who used to be a poll inspector) told the poll worker that they would vote on the lever machine, but she should contact one of the county commissioners as soon as possible so that they could load a ballot and make the system operational.
- When the individual exited the polling place, the poll worker was on the phone.

Bronx

- Individual asked to vote on the accessible voting machine. She was told, "We don't know what you're talking about." They offered her assistance with voting on the lever voting machine instead.
- I referred her to several complaint sources, including the Feds because this was in direct violation of the court order.

Brooklyn

- Individual went to polling place in lobby of apartment building. He asked to use the BMD and was told it was broken. The printed wasn't working. Through conversation, he found out he was the first person to inquire about the machine. If this was true, then was skeptical about their claim that it was broken. He was told, "If you really want your vote to count, you should use the lever machine." The individual went back to their apartment, called counsel, who contacted the BOE. They eventually dispatched a technician to the site.
- The technician plugged in the system. Was it really broken if it wasn't even plugged into the socket? They then turned on the power button. The technician couldn't make the system operational.
- The individual left and went to the Brooklyn BOE to appear before Supreme Court Judge Schack. He obtained a court order to vote at any polling site in the election district that had a functional BMD with trained staff. BOE staff called around and with input from the individual they identified the Joralemon Street polling site.

- Three different individuals attempted to make the system operational without success. He was not able to cast his ballot. The BMD was pulled away from the wall and unplugged. It never properly rebooted. A significant amount of time had elapsed.
- The individual went back to Judge Schack to obtain another court order to vote by absentee ballot and have it counted the night of the election. As an attorney, the individual asked the Judge for sanctions against the BOE. His entire voting ordeal took more than five hours.
- See NY1 article below:

NY1 for You: Disabled Voter Claims He was Disenfranchised on Election Day

By: Susan Juhn

November 11, 2008

For most of the county, Election Day was an historical event, signaling a significant change to our country's political character. But, as NY1's Susan Juhn explains in the following report, for disabled voters who have had trouble voting in the past, Election Day was just more of the same.

Disabled voter T. K. Small describes his experience at the polls on Election Day as "somewhere between dreadful and horrible."

"The Board of Elections was completely unprepared to use the Ballot Marking Devices, which are designed for disabled voters," said Small.

The BOE was required by law to equip all the city's polling sites with the new accessible machines for this past election.

Although they were at polling sites, voters like Small found they were not at all accessible.

"The machine was pushed up against the wall in between two tables and they had supplies piled up on top of it, and then when they pulled it out, it got unplugged, which set off a whole string of software, electrical problems," Small said.

Once the machine was finally up and running, Small says poll workers could not figure out how to use it. This was after Small tried voting at another location, but was told the Ballot Marking Device there was broken.

Unfortunately, Small was not alone that day. The center for Independence of the Disabled in New York surveyed disabled voters about their experiences on Election Day and found countless complaints.

"What we found over and over again was that poll workers were so uncomfortable with the machine that they actively discouraged people from even using them," said CIDNY voting rights coordinator Rima McCoy.

NY1 reached out to BOE and a spokesperson told the station they sent a tech to Small's polling site within an hour of receiving a call and fixed the Ballot Marking Device. However, Small still could not use the machine because poll workers did not know how to work it.

BOE blames that on a lack of funding from the Mayor to have dedicated BMD poll workers.

However, CIDNY found training in general was lacking after hearing from poll workers who claimed they only had 20 minutes of training and never touched the machines.

"They hadn't actually ever even handled the machines before until the general election day," said McCoy. So, from my perspective, the Board of Elections could have done a better job just using the time that they had."

In Small's case, the attorney by profession went before a judge twice and spent six hours trying to vote. In the end he had to cast an absentee ballot, which was not counted that day.

"I feel I was effectively disenfranchised from the right to vote," he said.

The link to this article is as follows: <http://www.ny1.com/Default.aspx?ArID=88755>

Harlem

- See NY Times article below:

Confusion Over New Ballot Machines for Disabled
By Kathryn Carlson AND Ann Farmer NYT 11/4/08

This year, ballot-marking devices "intended to help disabled voters vote without assistance" became available in all 1,351 polling places in New York City.

The ballot-marking machines enable voters to make their selections by touching a computer screen " or, less commonly, by 'puffing' and 'sipping' air through a straw, pumping a foot pedal, or pressing flat plastic shapes ' two triangles, a circle and a square' affixed to the four corners of a specially configured keyboard.

But the new ballot-marking devices, introduced in 2006 and not available citywide until this year, have generated considerable confusion and uncertainty among poll workers and voters, as evidenced by the scene today at one polling place, Public School 149 in Harlem.

Voters there complained that there were only two voting machines in use, while the ballot-marking device had been sitting unused since polls opened at 6 a.m. When asked why the ballot-marking device which is based on a touch screen was not open for use, a Democratic district leader at the polling place, William Allen, said that nobody in line was willing to use it because of fears that votes would be miscounted for the wrong candidate or not counted at all.

At that moment, Susan L. Chute, a librarian at the New York Public Library, who was waiting in line and overheard Mr. Allen's comments, piped up and offered to use the machine, and said she was angry that it had not been announced as an option six hours earlier, when polls opened.

"People have been welcome to use the machine, but I'm not going to make an announcement or encourage it," Mr. Allen said. "People should know about it from the news, and they can ask to use it," he said, adding, I don't trust the machine, and I know people want their votes to count."

Mr. Allen did say that Ms. Chute could go ahead and use the machine when it was her turn, but a poll worker initially told Ms. Chute that the machine was broken. Mr. Allen then spoke with the poll worker, and they determined that the machine was actually fit and ready for use.

Ms. Chute, who waited in line for nearly four hours, said she was frustrated that she and those who voted before her were never given an opportunity to decide for themselves whether they would use the new machine.

"Why wouldn't anyone have mentioned that earlier?" She said. "There should have been an announcement and the people at the roll book should have told people they could use the new machine."

"It's very easy to use," she added. "It's like an ATM machine. People use screens like that every day."

After Ms. Chute asked to use the machine, Mr. Allen made a quick announcement to the people in line in the multipurpose room that they could use the ballot-marking device, and poll workers at the front of the line started asking voters if they would like to use the touch-screen machine.

Some people did start using it, and placed their paper ballots into a rickety cardboard box that was not sealed or reinforced in any way.

"This might speed things up now," said Deitra Herbert, as the hour was now approaching 1 p.m. and the line continued out to the schoolyard. "I think the machine is fine. There's no levers, just a simple touch screen. It's actually quite quick to use."

While other voters in line said they did not trust the machine and would be using the lever-style booths instead, Ms. Chute said she was confident that her vote was accurately cast. "I do trust the machine, but I also know that my candidate has New York so I'm not too worried," she said, adding: "Even if it were a closer election here, I'd still use the new machine. I trust that it works just as well as the lever kind."

Nicky Jackson, 39, said she was not so sure that the machine is reliable. "I don't know or trust that machine; I've never seen it before," she said. "I'll be using the lever machine. And I'm not mad people haven't been told they can use it, because I'd rather have a longer wait and know that things are accurate than have the line move more quickly but not know if things are being counted right."

Darlene Johnson, 45, a legal assistant, said she shared Ms. Jackson's opinion. "My feet and back are telling me to use that machine, but I'm just nervous about the accuracy," she said, adding that her boss said to take as much time as she needed to vote. "I've been waiting 3 hours and 17 minutes. I know people just want to vote, but people might not use it because they don't trust the system."

In other places, though, disabled voters said they appreciated the ballot-marking devices.

At Public School 62, in Richmond Hill, Queens, Raymond Baksh, an unemployed, blind man in his 40s, used the ballot marking device. Usually, he said, "my dad goes inside and helps me" use the voting booth.

"This year I did it on my own," Mr. Baksh said. "It was easy. It was more easy this way. If you know Braille, it's easy."

A voice comes on inside a headpiece and instructed him what to do; Mr. Baksh used Braille to make his selection. After he finished voting, a scanned ballot came out, which was placed into a ballot box.

In voting without assistance, "you have more privacy," Mr. Baksh said, declining to say whom he had voted for.

Elena Carpenzano, 29, a student who was working the polls at the school where Mr. Baksh voted, said she had received training to be able to show voters how to use the device.

<http://cityroom.blogs.nytimes.com/2008/11/04/confusion-over-new-ballot-machines-for-disabled/Yonkers>

- Person initially discouraged from using the BMD. Individual had a visual impairment and was accompanied by wife. Poll worker suggested he use the lever machine using the logic, "Can't he walk?" After they insisted on using the BMD, poll workers attempted to present the system to the voter but had to make numerous adjustments. They were terribly misinformed about the machine. Once the poll workers left them alone, the wife had to assist the individual. Together, they were able to navigate the voting system and cast a ballot. While better than not being able to not cast a ballot, it was neither independent nor private. The poll workers were misinformed and lacked proper training.

Plattsburgh

- The BMD's experienced limited use. A disability rights advocate upon voting inquired about the system. He was given negative feedback by the poll workers about "the disabled voting machines being a waste of tax payer dollars." The advocate found this interesting because in the next one to two years, when the lever machines get replaced, the BMD system will serve as the basis of the voting system for ALL New Yorkers (plus scanners). The BMD voting system is not just for people with disabilities. All New Yorkers will be voting on it in the next 1-2 years. Where do these poll workers get these attitudes? They better learn how to use this technology fast.

Long Island

My Voting Experience

It's 7:38am and I'm in the 7:24 from Sayville to Penn St. We got up and out early to make sure we voted before work. My partner and I didn't know what time we'd be home. Our voting location was the Blue Point Public Library on Blue Point Ave in Blue Point, NY, of course. We arrived at 6:40am.

We hadn't been there b4 so we parked on the wrong area so we had to walk around the building. If we would have followed directions on the sign, we would have parked in the right area and wouldn't have had the long walk. Anyway, we went inside and were pleasantly happy to see a bit of a line. We had given ourselves extra time to vote but I still wanted to catch the 7:24 train.

As a wheelchair user and a disability advocate, I was excited to see if they had a sequoia machine available to use. With the lever machines I can never get as close and comfortable with the machine as I want. I waited on line and signed in. I was sad to see they didn't have the machine. Then I asked the poll worker to lower the lever machine. Another poll worker approached and I asked about the sequoia machine and at first she didn't know what I meant. She said 'no, we'll have them next year'. But then she said 'oh, wait! ...' and motioned for me to follow her. She walked to the beautiful sequoia that I had been seeking. She then asked me to wait a sec as she got an individual to help me. I did not wait long. While I was lead to the sequoia, my partner remained on line for the lever machine. We were in no way identifying ourselves as partners (it's not like we were dressed in the same outfit). However, after the poll worker returned from showing me the sequoia, she told my partner 'you know, you could have gone in with him!' He, and I, both thought that was a terrible thing for him to be told – especially in my absence!

In the meantime, I was in the other side of the room with the sequoia. The poll worker charged with helping me to vote started off by letting me know that I was the first and I should be patient. I told her I was excited about the opportunity to try it out and that she had my patience. She then made me aware that it would take 25 minutes to vote. She also felt the distinct need to let me know that the machine wasn't really meant for me. She said it was really for the blind or 'sip n puff' folks. I explained

that it was also for me and that I appreciated the opportunity to have access to exercise my greatest civil right!! While she did not tell me I couldn't, she did dissuade me several times in our interaction. I told her all I had initially asked for was that the lever machine be lowered (since I must admit, while I was pretty sure all polling places had to have the new machine, I wasn't 100 % positive). She once again told me 'this machine isn't really for u -- it has to read everything to u and will take a long time -- but they will lower the lever machine'. I did allow myself extra time, but did want to catch my train. So, I opted to return to the lever machine.

Now back at the lever machine, which I'm very familiar with as I've been voting on it for ages. The poll worker didn't know how to lower it and said she would have to go find 'so and so' to find out. I explained that they needed a key and a crank. A moment or two later, a man came with a crank and said 'they only gave us one...'. I told him that he needed a key and he prepared to crank the machine down without lowering the front panel -- a disaster waiting to happen as I know from previous experience... Viola!! He had a key ring in his pocket, and there was the key!! They lowered the machine and I voted in all the clunky goodness of the opportunity.

So that's pretty much the story of my voting. Lots of confusion, apologies and the general nervousness of folks around us cripples. Fortunately, I made by train. It's 8:41am and we're pulling into Penn station. So much drama just to cast a ballot! When will it end?!

Bronx

This election day, 11-04-08, I went to my polling site to use what is called a Ballot Marking Device (BMD), a machine with a touch screen, which is suppose to allow people with disabilities a mechanism to vote independently. I am dismayed that despite the state buying the BMD machines, there is still grave difficulties for people having disabilities in voting. Some of the issues are with the machine, itself, but, more frustrating, is the lack of sensitivity, respect or civility offered me and to my personal care assistance by the staff of the poll site, especially the Democratic site coordinator.

On arriving at my polling place, I asked if there was a BMD on site. The first poll worker gave me a blank stare, and called for one of the site coordinators. The first site coordinator refused to listen to me. I do have a speech disability, yet most of the time I can get my points across. It is my style to encourage people to ask me to repeat myself if they are having trouble with my speech. But this woman just refused to listen to me, even when I directly requested she do so, as my voice and irritation level grew exponentially. Her blanket statement was, "I can not understand you." After that she wouldn't look at me when I spoke

The woman continued yelling questions to my personal assistant, obviously having no training in disability sensitivity. She tried to convince me my vote would not be counted today if I used the BMD, although my information via the disabled community said the exact opposite. Then she stated my personal assistant could easily take me into the polling booth and pull the levers for me. I just shook my head.

She had no idea how the disabled community advocated intensely for these machines so we could operate them ourselves, but I did, and I was there to use a machine I had lobbied for. At that point, I was convinced that neither she nor any of the staff had received any training of using the Ballot Marking Device, therefore, she was working hard to get me and any other disabled voters, who might follow me, to use the general voting machines.

The BMD was placed in the narrowest spot in the back of the auditorium, not being an expert motorized wheelchair driver, I had difficult maneuvering to get myself directly in front of the screen so that I could operate the machine.

The second site coordinator, who was trying quite hard to be cooperative and nice, had a manual for the BMD, but instead of telling me how to use the machine, and giving me privacy to vote on my own, she stood there explaining it, and watched every entry I marked on my "private" ballot. The first time we tried to print it, it came out blank. We repeated everything a second time, this time we received a printed ballot. The site coordinator then took the ballot, I did not fold it or see it actually put in the ballot box.

The day after the election my personal care assistant told me she had been verbally confronted by the first coordinator, after I went to use the BMD with the second site coordinator as to why she "hadn't been cooperatively with her." My assistant replied, I wanted to use the BMD, and that was all she knew. Then the coordinator asked my assistant if she was a citizen. My assistant declined to answer the question.

Albany

- Note improvement from complaints on Primary Day to feedback on Election Day. Four to five people were encouraged and able to vote on the BMD's.

Long Island

- Individual voted on BMD. Poll workers were clueless about its operation, but 45 minutes later she successfully cast her ballot.

Queens

- I report this every election, and it still continues! I voted today at Halsey JHS in Rego Park. Even with my wheelchair at its highest elevation, I could not reach the top row to vote for president, nor the propositions. ONCE AGAIN, my privacy was totally compromised because someone had to come into the booth to pull the top row lever.

New York City

- Use of Ballot Marker Device in P.S. 11 Polling Site, Woodside. With the exception of the entry/exit door to the mini-school site remaining fully open (a first), there was nothing positive about my ability to vote independently. Herewith is a brief description of today's experience.

I located my district sign-in table, once again in the hallway, with the booth immediately past the table, with insufficient space between it and the wall to negotiate into with my wheelchair. Since my physical limitations don't allow for independent voting using the current setup, I had gone alone because I planned on using the ballot marking equipment on the site for the first time. I saw no such machine and there was no signage as a guide and so asked the woman manning the table where it was and where I should sign in. She directed me to the room where other district areas were set up.

I noticed a metal object on wheels and surmised this might be the Ballot Marker device. When the nearest poll worker noticed me at the end of the line, I mouthed my request to use the machine and told her my district #, asking where I should sign in. She said to go back into the hallway and tell the worker there to have me sign in. I did and was handed a card, the one you give back after pulling the lever. In reading it, I saw that she had written a number on the line for Machine 1 and the printed line for the Ballot Marker was left blank.

Back in the room with the Ballot Marker, I pointed out what I thought was an error. The poll worker had no idea what line should have been filled in. I inquired whether their training included the new machine and was told "You are the first person to use it". (It was now 2:30 pm.) I next had to

request that the machine be pulled out, so that I had clearance to go behind it and face toward the screen. Next I asked whether it was set up for my district. "No, give me a minute to get the ballot". Four minutes later she returned with the long paper ballot, making several attempts to feed it into the machine so that it would appear on the screen.

The screen indicated I was ready to proceed, but pushing "Next" on the bottom of the screen didn't bring up the ballot, so I called the poll worker over to ask what I should do. She touched the "More" area on the upper part of the screen and it worked.

[Note: individual described a long and difficult voting process]

At any rate, a paper ballot emerged reflecting my vote. I was directed to fold it and go out and place it in the box at my district table. She was told that the ballot would be counted here tonight.

When I got back to the exit door, a person in a manual wheelchair was being pushed by an assistant. They spoke Spanish to the worker at the door and as they were moving on, I asked the worker if she mentioned the Ballot Marker and she shouted something in Spanish, but they were too far along to have heard.

My elapse time at P.S. 11 was one half hour. Had I taken my marked absentee ballot and placed it in the box, I would have been out in three minutes. Had I come with an assistant and used the inaccessible booth, I would have been out in three minutes, something I no longer want to be subjected to.

For more years than I care to reveal, I have been active in obtaining independent voting rights for all persons with varying types of disabilities - public testimonies, written experiences and evaluations, site surveys following the Hill vs. New York City settlement agreement by Brooklyn Legal Services, testing numerous potential machines, responding to all the requests to the members of the major disability organizations.

It is disgraceful to have been subjected to this voting experience.

Brooklyn

- I voted on the ballot marking device about 4:30. I was the first person to do so at my polling place at P.S.127 in Bay Ridge, Brooklyn, and probably the only person to do so since there weren't any signs about it and it was hidden out of sight. I liked it that it was private voting, but I don't think I was the only person there to vote in a wheelchair or with a disability. There was someone else in a wheelchair in the polling place when I was there. He looked like a worker or a visitor. I would not have been able to vote independently in a lever machine this year so I was happy to have the ballot marking device.

The poll worker told me that the chief poll worker for that site was the only person who had been trained to use the ballot marking device and ironically she had broken both ankles between the primary and the election and wasn't able to work the election. But this kid had paid attention when I voted the last time and got information from the chief poll worker over the phone on how to use the machine. They begged the BOE to send someone who was trained to use the ballot marking device but they did not send anyone. He didn't know how to feed in the ballot so it would scan; it took a few tries to get it right, but everything else went smoothly. When I finished voting, I folded my ballot and put it into a folder he had for privacy and he put it into a box for me.

It didn't occur to them that others probably would have used it had they known about it!

New York City

- I went through the process of voting on the BMD, only to have the machine jam when printing out my ballot. The poll worker had to go into the machine to retrieve the ballot. He then looked at it and told me that everything had been printed and marked except for the proposal, which was to be printed on the other side of the ballot. He apologized for looking but said he wanted to prevent me from having to redo the whole thing, only to possibly have the same thing happen with the printer. So, essentially, my vote wasn't private in the end. How very disappointing this was. In truth, I don't even really know for sure that anything got printed - how could I tell as a blind person? I guess/hope the poll worker put my ballot in the ballot box. He didn't give it to me to do. Then again, I would've needed someone to show me where to put it anyway.

New York City

- During the primary election, it went flawlessly by simply touching the screen with a pen in my teeth. However, on Tuesday, it was an entirely different situation: several poll workers advised me that the device was inoperable & several times called for technical assistance over the phone to no avail. Embarrassed, they kept telling me "in a few minutes," but I wound up waiting about an hour. Finally they said the device could not be made to work. So I wound up voting with assistance the old fashioned way. I did it since I wanted to cast my vote. Whether the staff was trying to be genuinely helpful or lied and put on a show to avoid using the BMD up for me - I have no way of knowing. However, consistent and standardized training must be done in advance of future elections.