

ELECTION LAW

ACTION TAKEN UNDER LWVUS POSITIONS

The League of Women Voters of the United States believes that voting is a fundamental citizen right that must be guaranteed. Statement of Position on Voting Rights, as Announced by National Board, March 1982, (LWVUS *Impact on Issues*, 2010-2012, p. 13.)

The League of Women Voters believes that voting is a fundamental citizen right that must be guaranteed; therefore, its basic mandate is to protect, extend and encourage the use of the franchise. Underlying all League positions is a philosophy that emphasizes participation in the electoral process.

The first election law reform advocated by the League of Women Voters of New York State was the one which gave birth to its founding as an organization—the women’s suffrage amendment. Since the 1920s the League has been in the forefront as a grassroots advocate on behalf of all voters. Its steadfast dedication to the issues and its history as a responsible presence in Albany have earned the League the respect of legislators, governors, boards of election and the public. Many areas of the election law have come under League scrutiny and have been subject to its campaigns for reform.

REGISTRATION PROCEDURES

Permanent Personal Registration (PPR) became mandatory in 1967, primarily due to the unflagging pressure of the League of Women Voters. In 1926 the League began a long campaign to attain a system of permanent personal registration for New York State. Although the 1938 Constitutional Convention authorized such a system, it was not until 1954 that the legislature provided for optional PPR. By 1965 as a result of the work of local Leagues, eighty percent of New York’s counties had provided for PPR, with the remainder falling into line when PPR became mandatory in 1967. The system was further improved in 1969 when the mandatory house-to-house check of registrants was eliminated and replaced with verification by postcard. In 1970 another successful League effort led to a statewide, uniform final day of local registration.

In 1973 the League reached consensus for a simple and accessible voter registration system, including registration by mail. A system of mail verification passed the legislature in 1975 and survived a 1976 challenge to its constitutionality in the state Court of Appeals. After 11 years of League prodding, in 1985 the legislature approved and the governor signed a bill providing for the printing, purchase and distribution of a standard voter registration form by the state Board of Elections.

It is a continuing goal of the League of Women Voters to simplify and clarify the Application for Registration Form by eliminating irrelevant questions that serve to intimidate or turn away prospective voters. The passage of legislation to remove the questions relating to employment on the application form was a long-sought victory for the League and other good-government groups who have continuously lobbied for its demise.

In the process of lobbying for a simplified registration system, the League has clearly supported safeguards against fraud, such as the signature check, the mail verification and periodic purging of the rolls. In 1967, the League accepted the two-year Purge that was written into the New York State Election Law; it was formally adopted by LWVNYS consensus in 1973. A review of that consensus in 1975 reversed League position and returned to the pre-1967 position advocating a four-year purge. In 1979 the legislature added primaries and special elections to general elections as voting opportunities where participation would maintain a voter's active status. In 1989 the LWVUS in its Advocacy for the Voter Campaign, came out in favor of repealing the purge of voter registration rolls; the LWVNYS removed its 1975 position by consensus in 1991, affirming the LWVUS position against purging.

The League has always supported the widespread availability of registration forms; therefore, it responded positively to a Governor's Executive Order in 1984 to place the forms in some state agency offices. This order withstood a court challenge, with League support as an amicus curiae, and was declared legal in 1985. The League joined good government groups backing the Governor's Program Bill of 1991 that mandated state agencies to make voting registration forms and assistance available, as of April 1, 1992. League has been lobbying for the extension of agencies distributing the registration forms, for monitoring the visibility of and publicity for agency-based registration forms, and for the goal of trained assistance for those wishing information about registration. The LWVNYS was represented on the ad hoc Advisory Task Force on Implementation of the National Voter Registration Act of 1993, a committee appointed by the New York State Board of Elections, to ensure New York State compliance with federal law.

The National Voter Registration Act (NVRA) became effective January 1, 1995. This federal legislation requires the state to have "motor-voter" registration, "agency based" registration and "mail in" registration. It also forbids the state to purge voters from the registration list because they have not voted.

The League has actively supported the implementation of NVRA in New York State. The law mandates that the agencies use a combined form for voter registration and that the agency staff assist in helping register voters. The League opposed any cuts in the funds necessary to provide the proper training, monitoring and oversight of agency employees. The League actively monitored the various agencies across the state for compliance. In **April 2009**, the League provided testimony to the NYS Senate Elections Committee in NYC on the record of NYS implementation of the NVRA. LWVUS President Mary Wilson in a letter of March 2009 to the US Senate Committee on Rules and Administration alerted that Committee to the failure of states to fully implement the requirements of the NVRA. The US DOJ was also cited for its failure to enforce provisions of the 1993 NVRA. The League urged the Senate to investigate the track record of the NYS BOE in fulfilling the NVRA mandate through the DMV and other state agencies and to assure that voter registrations are processed in accordance with the provisions of the NYS Election Law.

Since its adoption in 1976, registration by mail has become widely accepted throughout New York State. For the 1990 general election, the New York State Board of Election figures show 89% of statewide registrations were made by mail and only 7% were made at local registration days. The League worked for the abolishment of local registration days because of the costs involved for few

registrants. With the 1991 passage of legislation making local registration days optional to the locality, the position on abolishment of local registration days was dropped (as accomplished) at LWWNYS convention in June 1995.

The League promotes election-day registration at polling places, within strict guidelines to prevent fraud. The 1991 passage of legislation permitting in-person registration at a board of election on any day except a day of election and reducing mail registration deadlines was a welcome step.

Between the years of 1991 and 2006 there was no action on same day voter registration. The League continued to advocate for this, but during the administration of Governor George Pataki no legislation was introduced to address this issue. In January 2007, following the election of Governor Eliot Spitzer, same day voter registration again became a priority. Governor Eliot Spitzer's Transition Team on Government Reform recommended same day voter registration and early in the 2007 legislative session, the Governor introduced a program bill to address this issue. By the end of the 2007 legislative session, neither house of the legislature has introduced the Governor's program bill.

VOTING QUALIFICATIONS

In 1963 a LWWNYS consensus resulted in support for reduction of the New York State residence requirement to three months, retention of the requirement for literacy in English and the voting age of 21, and elimination of the 90-day waiting period for newly naturalized citizens. Two years later, however, in 1965, with passage of the Federal Voting Rights Act, literacy in Spanish was permitted, and in 1967, the legislature reduced the residency requirement to three months, only to have the 1970 Federal Voting Rights Act further reduce the residency requirement to 30 days in the election district. In 1969, a court ruling eliminated the 90-day waiting period for naturalized citizens.

In 1988 LWWNYS successfully supported passage of legislation giving newly naturalized citizens the right to register in person at the Board of Elections up to ten days before an election. This law permits those who were naturalized after the 30-day registration deadline to participate in the next election.

In 1969, a LWWUS re-evaluation resulted in a change in position on the voting age to support the franchise for 18 year olds. League members then worked for ratification of the 26th Amendment to the United States Constitution. The League supported the right of 17 year olds who would be 18 by Election Day to register and urged that they be allowed to participate in a primary election to choose candidates for that election.

In 1972, LWWNYS members concurred in a position supporting the right of students to establish residence in their college communities for voting purposes. A class action suit on this issue was brought in 1980 and is still awaiting a decision. At present the right to vote in college communities is determined by local boards of elections; the League monitors those boards who attempt to exclude voting at college residences by using any standard, practice or procedure not used by all applicants. The League continues to lobby for a law to make the students' voting right mandatory statewide. In **April 2009**, the League testified before the NYS Senate Elections Committee on specific election legislation which is needed to clarify the right of college students to register and vote where they want to. Legislation has been routinely introduced in the Assembly which would change the definition of

residence in the election law to conform to that set forth in Ramey v. Rockefeller to clarify the meaning of “gaining or losing a residence,” and to make more specific the criteria by which a board of elections may determine a voter’s qualification to vote in a particular election district. Of particular concern to the League is that under the current law residency requirements for voter registration are applied arbitrarily and often in a discriminatory fashion specifically in dealing with college students. The eighteen to twenty-four year age group is a mobile population in transition; however, they should not be selectively targeted by local boards of election in applying different residency standards than other applicants.

In 1977 the LWNYS supported legislation establishing a procedure permitting voters whose poll cards are missing from the ledger on Election Day to vote by affidavit ballot pending confirmation of their registration. Similar provisions were added to the law in 1981 to enable voters who claim their enrollment records are incorrect to vote in primary elections. The 1985 session saw the strengthening of the affidavit system; League-supported legislation now requires election officials to inform voters of their right to an affidavit ballot. In addition, provisional ballots are required by the HAVA federal legislation in 2002.

ABSENTEE VOTING

Recent League Activity

In 2010, after seventeen years of advocacy to support revision of the absentee ballot application that required certain unnecessary personal information, the League achieved success on this much needed reform. For our successful efforts in reforming the absentee ballot application, the League received a “pen certificate” from the bill’s sponsor, Assemblywoman Sandra Galef, AD 95 in June 2010. Another statutory change to the absentee ballot application process included allowing requests for a form by letter, telefax, or other written instrument.

The 1963, LWNYS position stipulated that all those otherwise eligible to vote in New York State should be able to vote by absentee ballot. That same year the voters, with active LWV campaigning, approved an amendment to the state constitution authorizing the legislature to extend absentee voting to all eligible voters who would be absent from their counties on election day; therefore, in 1964, “vacations” was added to the list of acceptable reasons for an absentee ballot.

In 1972 a League consensus called for absentee voting in primary elections. This passed in 1974, followed in 1975 by a provision for absentee voting in special elections.

A three-fold plan was developed by the League in 1977 to simplify the absentee voting process:

1. Wide distribution of absentee ballot applications;
2. Ability to apply in person for absentee ballots through the day before the election and fill out the ballot immediately; and

3. Simplification of the absentee application form.

The second of these became law in 1978. Continued prodding resulted in further easing of the law in 1981 to allow local boards of elections to provide “an appropriate number” of applications to distribution sources that request the forms and are approved by either the state Board of Elections or any of the local boards.

In 1988 after several years of League effort, the election law was amended to permit a letter to serve as an application for an absentee ballot. Prior to that time a voter was required to write a letter to request an application, a system that required double effort on the part of the voter as well as of the Board of Elections.

Also in 1988 the League initiated legislation, now law, to amend the election law in regard to obtaining an absentee ballot after the deadline for application by mail had passed. The law now allows a person other than the absentee voter to obtain the ballot from the local board of elections by presenting the voter’s completed and signed application.

In 1993, the League testified at statewide hearings called by the State Board of Elections on the absentee ballot application, arguing for simplification of the process and the form. No modifications to the form have been made although legislative and agency proposals have been introduced.

Absentee voting by residents of nursing homes and residential care facilities is governed by section 8-407 of the New York State Election Law. Implementation by local boards of election of this provision has been permissive, not mandatory. Leagues, which monitor elections throughout the state, found evidence of irregularities in the conduct of this type of absentee balloting that violates the integrity of the electoral process. Residents of nursing homes and adult homes, many of whom are elderly, may be subject to undue pressure to vote for a particular candidate or to cast a ballot. League-supported legislation to mandate implementation of the existing law requiring bipartisan election officials to supervise absentee balloting in institutions where there are five or more residents was introduced in the legislature in January 2001. It was passed with intensive League advocacy and signed into law by the Governor in August 2001.

DIVISION FOR SERVICEMEN’S VOTING

In 1943, a Division for Servicemen’s Voting (DSV) was established to assure adequate servicing of military absentee ballots at a time when our country was at war and there was no separate state body whose sole charge was to inform and assist military personnel in voting information and procedures. The creation of a statewide Board of Elections in 1974 and the assignment of responsibility to the Department of Defense for encouraging military personnel to vote made the DSV obsolete. The League lobbied repeatedly for the repeal of legislation continuing the DSV. In the final hours of the legislative session in July 1991, the DSV was abolished.

THE PRIMARIES **(See also Ballot Access)**

Recent League Activity

In 2011, League legislative action turned to the immediate need for NYS to become compliant with the federal Military and Overseas Voter Empowerment (MOVE) Act. This Act aimed at ensuring the fullest possible participation of America's armed forces serving outside of New York along with qualified citizens and NYS voters who reside abroad. New York was under a federal court order to become compliant after receiving several waivers due to delays in the Help America Vote Act implementation. Legislation was introduced and enacted to be effective with the Presidential Primary, scheduled for April 24, 2012.

In 2012 the League, along with the NYS Election Commissioners Association, the New York State Association of Counties, and good government groups, collaborated in endorsing a single June Primary. Otherwise New York State would hold four elections during the year: a Presidential Primary, a federal (congress) primary, a NYS Legislature primary, and a General Election. A press conference, memos and lobbying were not successful. The NYS Assembly passed legislation to make the change, but the Senate did not take up the bill. An additional concern was to maximize the ability of boards of elections compliance with the MOVE Act. The MOVE Act requires that ballots to military and overseas voters be received by at least 45 days before a primary or general election, almost a virtual impossibility under the current September primary New York schedule.

One of the founding principles of the League was support for the direct primary as the nominating procedure for all offices, including those elected statewide. New York was among those states that had adopted the direct primary in the wave of reform that swept the country in the early part of the century; however, its extension to statewide offices came only in 1968. While the League has worked since the 1920s on a number of major provisions regarding primary elections, its present action position is limited to the date of the primary election.

The LWNYS extended its position on the primary in 1957 to include support for a permanent, single, June primary date. The legislature passed a "permanent" June date in 1965, but the League found vigilance was needed annually when the political calendar was determined. Then, in 1974, over vehement League opposition, the legislature established a "permanent" September primary, with a second primary to be held in April during presidential election years. A League reevaluation of its position in 1978 reaffirmed the permanent, single June primary as being best for voters, candidates and boards of elections. On the strength of this reaffirmation, the League continues to work for a constitutional amendment to guarantee this reform.

In 1977 LWNYS lobbying achieved an extension of the right to vote in a primary to those voters who were newly registered up to 30 days before the primary and to those who moved to another county after the previous general election and re-enrolled in the same party.

In 1991 legislation, the registration deadline for which a mail registration may be received before a primary, general or special election, was reduced from 30 to 20 days; it also allowed qualified voters

who moved within the county to re-register in person up to ten days before the primary in order to vote in the primary.

Public dissatisfaction with a presidential primary ballot, which did not list the names of the presidential contenders, led the LWVNYS to call for a change in the law in 1976, 1980, and 1984. Legislation was passed in 1983 allowing presidential candidate names to appear on the ballot with their pledged convention delegate candidates. However, each party may or may not choose to use this option. League efforts, therefore, continue to stress the need for a primary system for both parties in which voters can cast a meaningful ballot and express a clear choice in selecting delegates to national nominating conventions.

In a related ballot access case, *Molinari v. Powers*, which challenged the witness residence requirement for designating petitions (section 6-132, NYS Election Law) in the 2000 NYS Republican Presidential Primary, the Eastern District New York Court ruled that this requirement “placed an undue burden on the right to vote under the First Amendment.” Plaintiffs in this suit were Sen. John McCain and Steve Forbes, Republican presidential candidates. The New York State League was amicus to the brief filed by the Brennan Center for Justice that was successful.

A similar case, *Lerman v. Board of Elections* (2nd Circuit, 2000), dealt with the same provision of the NYS Election Law as it applied to a petition to gain party nomination for a New York City Council seat in the primary election of September 1999. The League was again amicus to the brief filed by the Brennan Center. The case was appealed from a judgment of the U.S. District Court for the Eastern District of New York, which upheld the requirement. The U.S. Court of Appeals for the Second Circuit reversed that decision holding that the witness residence requirement “significantly burdens interactive political speech and political association, without advancing any legitimate state interest and, therefore, violates the First Amendment.” As a result, a candidate can send a team of campaign workers into any district to collect signatures as long as the workers are registered members of the party in New York State.

In the 2007 legislative session, bi-partisan legislation was introduced to move the date of the New York State Presidential Primary to February 5, 2008. This was driven primarily by the need by both Democrats and Republicans to make New York State more relevant in the Presidential Primaries. New York State will join eight other states having Presidential Primaries on February 5th, in what is being called “super-duper Tuesday.”

UNIFORM ADMINISTRATION OF THE ELECTION LAW

The omnibus 1973 LWVNYS position on election procedures recognized the state responsibility for uniform and efficient administration of elections, the need for a single state elections office and improved election officials training. In 1974, a four-member bipartisan state Board of Elections was established to assume this responsibility. Mindful of its leadership role in the creation of the state Board of Elections, the League encourages and supports the board’s attempts to provide strong administrative leadership to local boards of elections.

Recognizing the importance of adequately trained election officials to the uniform administration of election law around the state, the League developed a legislative program in 1977 for improved training for commissioners, inspectors, poll clerks and other election workers. League-supported legislation, effective after 1986, required all boards of elections to reproduce a booklet of instruction prepared by the state Board of Elections and required each election inspector be given a copy. Also, as of 1986, election inspectors must attend a course of instruction every three years; in many areas, more frequent instruction is offered and/or required.

To avoid problems at the polls, which often result from inadequately trained, minimally paid personnel, the League continues to work for legislation in these areas and supports the role of the state Board of Elections in improving election procedure.

The presidential election of 2000 revealed flaws in our national and state election laws and processes. In New York State and, specifically, New York City, there were many cases where violations of the election law and poor election practices led to the disenfranchisement of eligible voters. The New York State League documented these cases as did other organizations and called for bipartisan hearings by the Legislature and the Governor to identify the problems and recommend solutions. Both houses in the Legislature responded by creating their own task forces and holding separate hearings. Governor Pataki did likewise. Attorney General Spitzer also issued a report after conducting an investigation. League members around the state testified at all hearings by providing their experiences at the local level. Problem areas of the election process which were identified are: insufficient numbers of election inspectors, inadequately trained election inspectors, out-of-date and unreliable voting machines, inaccessible polling places and machines, unnecessarily complicated absentee ballot application and process, inaccurate voter registration lists. Agreement on some immediate solutions proposed by the Legislature and Governor was reached with an appropriation of \$25-30 million tentatively approved. However, this appropriation was eliminated in the baseline budget passed by the Legislature in August 2001.

Concerns over a projected budget shortfall in 2002 as well as the economic impact of the September World Trade Center disaster on the state budget impacted this appropriation and there became little hope for election reform at the state level. The final report of the Governor's Task Force on Election Modernization was released in June 2002 and contained many recommendations for improving elections in the state as identified above. It also recommended amending the election statute requiring the full-face ballot to allow other technologies, paving the way for electronic type voting machines (ATMs). To read the final report, please go to:
<http://www.state.ny.us/governor/electionmodernization>.

The Governor's Task Force Report and the Attorney General's Report identified the issues for a major overhaul of New York election laws, but those reforms were being considered against the backdrop of a major Congressional reform effort under negotiation in Congress, titled The Help America Vote Act (HAVA). One of the goals of HAVA is to establish uniformity in federal election procedures throughout the decentralized state administered elections system.

Help America Vote Act of 2002

On October 29, 2002, President Bush signed the Help America Vote Act (HAVA). The bill authorized \$3.86 billion dollars over three years to improve elections as a response to the problems which occurred in the 2000 presidential election. The intent of the legislation is to modernize and standardize the election process nationwide and to ensure that every eligible voter is enfranchised and every legitimate vote is counted.

New York State is slated to receive over \$200 million dollars. It is estimated that \$140 million dollars will be used to replace New York's aging lever machines. The remaining \$60 million dollars will be used to create a statewide voter registration list at the NYS Board of Elections, provide voter education, poll worker training, and improved accessibility of polling places. To obtain federal funds, HAVA required that each state submit a State Plan documenting how it would meet the requirements of the law. A HAVA Task Force was appointed (LWVNYS Off-Board Elections Specialist, Aimee Allaud, was one of two citizen representatives appointed to the Task Force) which met five times during February and March, 2003. The highly partisan Task Force did not have binding power; ultimately the HAVA State Plan was written by the staff of the State Board of Elections. After public hearings around the state, the Plan was submitted to the Federal Election Commission in September, 2003. The Plan calls for replacement of nearly 20,000 lever machines in New York by the first federal election in 2006. HAVA also requires that all states have in place by January 2006 a statewide voter registration database which becomes the official list of registered voters.

Both the State Assembly and Senate introduced legislation in June 2003 to implement HAVA, but no action was taken. A joint conference committee process was initiated in April-May 2004 but failed to resolve the major differences between the bills. New York State did obtain a waiver for the establishment of a statewide voter registration database and for replacement of lever voting machines until 2006. Stopgap legislation to implement the new ID requirements was passed in August, 2004, and went into effect for the primary and general election in 2004. This legislation, while it met the federal mandate, did not go far enough in naming a wide variety of IDs which would be acceptable for first-time voters registering by mail who are required to provide ID. Also, a noncontroversial bill which would meet a HAVA requirement to provide a voters' bill of rights, and sample ballot in polling places was signed into law effective for the November 2004 election.

In **June 2007**, a Citizen Election Modernization Committee (CEMAC), created under the original 2005 HAVA state implementation statute, was extended until the voting machine selection process was completed. A League representative on the committee was guaranteed under the statute. This committee would have the power to approve the qualifications of voting machines after testing and certification processes had occurred and to make recommendations for purchase by the counties. The four commissioners of the NYS Board of Elections would vote on the qualified machines to be submitted to the counties. Bo Lipari, LWVNYS and Tompkins County LWV member, and Executive Director of New Yorkers for Verified Voting (NYVV), was asked to represent the League on the Committee because of his expertise in computer technology and security issues with optical scan voting machines.

In **November 2007**, the League and New Yorkers for Verified Voting (NYVV) held a press conference to announce our opposition to a NYS Board of Elections plan that would allow DREs (direct recording electronic voting machines to be used as accessible marking devices. A follow up

FAX Blast/Action Alert to members and the public resulted in over 3,000 calls to the NYS Board of Elections protesting this proposed waiving of the standards.

In **December 2007**, the League, NYVV and NYPIRG submitted an *Amici Curiae* brief to the Federal District Court for the Northern District of NY in response to the US Department of Justice Motion to Enforce NYS Compliance with HAVA by September 2008. The grounds for the Brief were that by requiring the NYS to comply with HAVA by the 2008 presidential election the very rights that the Help America Vote Acts would seek to ensure would be jeopardized. The Court accepted the application.

In **January, 2008**, the League and NYVV asked League members in an Action Alert to contact county election commissioners to urge that they select ballot marking devices (BMDs) which would be compatible with the scanner they would be purchase for general voting use in their county. County boards of election commissioners also received an information packet.

In **January 2008**, CEMAC released their report of the Committee's evaluation of BMDs. The report evaluated devices which had been submitted for their usability for persons with disabilities.

In **September 2008**, the League and NYVV continued to press for full certification of voting machines despite pressure from the US Department of Justice to expedite the process by using uncertified scanners and BMDS for the fall presidential election. (New York was two years behind the 2006 deadline for HAVA implementation.) A compromise was achieved resulting in the Court permitting the use of lever voting machines to record votes and BMDs placed in polling sites for accessibility.

In **January 2009**, the League as a member of the statewide NYS Citizens Coalition for Voter Participation and Fair Elections, signs on to a letter to the NYS Secretary of State that lists "Thirty-one Common Sense Steps to Better Elections in New York State."

In **February 2009** the League and NYVV released a position statement, "Do Lever Machines Provide a Better Voting System for Democracy?" This joint campaign is a response to an emerging call by some county legislatures to retain lever voting machines.

In **April 2009**, the League in a letter to the US Department of Justice Voting Rights Division urged the DOJ to allow New York to proceed with a full certification process for voting machines and to delay full statewide implementation until 2010.

The League is also represented on the second HAVA Implementation Task Force convened by the NYS Board of Elections under the federal HAVA. The first stage plan (2003) set out goals and timelines for the implementation. With other members of the HAVA Coalition, the League commented on the draft amended plan. The amended plan reviewed implementation to date and established new benchmarks and timelines.

In **May 2009**, LWVNYS presented testimony to the NYS Senate Elections Committee on legislation introduced by the Senate Democrats on a variety of elections issues.

In **November 2009**, the League initiated an online Election Survey to record voter responses to the introduction of the paper ballot optical scan voting system in the NYS Board of Elections Pilot Project for some jurisdictions in the state.

Also, in **November 2009**, the Election Survey 2009 Report was presented as part of testimony provided to the NYS Senate Elections Hearing in Albany. The LWNYS also provided testimony to the NYS Assembly and Senate hearing on elections in October. League Testimony emphasized the need for uniformity in elections in the state and recommended that the dates for local elections throughout the State be realigned so that county boards of elections could more easily administer elections.

With the passage of the NYS County Consolidation Act of 2007, which abolished town and city ownership of voting machines, the way was paved for uniform procedures and administration of all local elections at the county level.

In **January 2010**, the NYS Board of Elections commissioners approved two optical scan voting machine systems for use in the state following a three-year voting machine certification process. LWNYS was represented on the CEMAC by Bo Lipari. (Mr. Lipari dissented in the full committee approval of the two systems) County boards of elections were required to make their selections and enter purchase orders for equipment for use in the fall 2010 elections.

In **November 2010**, the first complete statewide use of optical scan voting equipment in the General and Primary elections occurred. To prepare voters for this experience, NYS LWV and NYVV produced a pre-election voter education article, "How You Can Be Pro-Active with the New Voting System." LWNYS Voter Services also emphasized education on the voting machines as part of the 2010 Facts for Voters materials.

LWNYS conducted an online Election Survey that documented over 1,000 responses to questions about all aspects of the voting process in the polling place. The major areas for improvement recommended in the Election Survey Report 2010 were

- ⤴ Ensuring privacy for the voter while executing her paper ballot and in the scanning process,
- ⤴ Revising the paper ballot to improve usability,
- ⤴ Increasing voter education on the new machines, and
- ⤴ Improving training for elections personnel.

In **December 2010** LWNYS announced the results of the Survey in a Press Release and distributed copies of the Survey Report 2010. In January 2011, the Survey report was presented to the NYS Board of Elections commissioners and staff at their monthly meeting.

Also in **January 2011**, the League's Legislative Agenda endorsed better ballot design for usability, but no bill is introduced in the legislature.

In **February 2011**, the League testified before the Joint Fiscal Committees of the NYS Senate and Assembly on the budget of the NYS Board of Elections. The testimony requested increased funding for the campaign finance unit and emphasized the need for state assistance to local boards of elections

in the initial years of HAVA implementation and in order to fully comply with the requirements of the Military and Overseas Voter Empowerment Act (MOVE) which the Board will fully implement in 2012 under a US DOJ court order.

In February 2011, the League urged Governor Cuomo to veto legislation which would permit the continued use of lever voting machines in village elections. However, the legislation was signed into law in both the 2011 and subsequent 2012 legislative sessions.

In the **2012** legislative session, the League issued a memo of opposition to a bill that would permit the continued use of lever voting machines for school district elections; however, the Assembly and Senate passed the legislation which was signed into law for school district, villages and special districts, effective until December 31, 2014. The League position has been that uniformity in election procedures and equipment is important for voter understanding and for accuracy and integrity of the ballot canvass.

In **November 2012** LWNYS conducted the third online Election Survey that resulted in over 1,000 voter responses to twenty questions on the voting process.

Results of the survey were summarized in a report presented to the NYS Board of Elections commissioners and staff in February 2013, and copies were sent to all county boards of elections commissioners. Local league presidents were asked to contact their local boards of elections to discuss the Report and encourage collaboration where possible.

Major HAVA Requirements

The primary impact of HAVA will be on the voter registration system and election administration:

- Each state must establish a statewide computerized voter registration list.
- New ID requirements – a) first-time voters who register by mail must show ID at time of registration or when they first vote, unless identifying numbers described below are matched in an existing state database, b) all new applicants must provide a driver's license number or the last four digits of their social security number unless the applicant has neither number.
- A provisional ballot (affidavit ballot in NYS) must be provided to any person who declares they are (1) registered to vote and (2) eligible to vote in a federal election.
- States must put training systems in place for poll workers and other election officials.
- States must develop a uniform and nondiscriminatory administrative procedure that allows the filing of complaints.
- Voter education information, such as sample ballots, must be posted in every polling place on Election Day after January 1, 2004.

The League has been a major player in a statewide voting coalition, NYS Citizens Coalition on HAVA Implementation. The Coalition, composed of some thirty statewide organizations, has produced position papers on all aspects of HAVA implementation to demonstrate the impact of proposed

legislation on the future of voting in New York State, testified at hearings, and met with legislative staff and members since 2003. The Coalition presented testimony before the Assembly Elections Committee at a hearing in NYC on December 20, 2004, reiterating the broad positions adopted by the Coalition for implementation. In addition, the NYS League has initiated Action Alerts through Citizen Action ToolKit (CATT) on some specific HAVA related issues. Through updates in the State Board Report (SBR) and the website we have encouraged members and local Leagues to keep pressure on the Legislature to enact legislation in a timely fashion which would ensure that state and local elections officials and New York voters are well prepared for the implementation date of 2006.

In 2005, the Senate appointed a new Elections Committee chair, Senator John Flanagan (R), Suffolk County. The Senate passed their package of HAVA bills in mid- February, 2005, paving the way for a HAVA conference committee. The Assembly had passed their slightly modified 2004 HAVA package in early January 2005. The League noted with concern that the Senate did not introduce legislation to consolidate election operations at the county level (not a HAVA requirement) although the Assembly had passed such legislation. This had also been a recommendation of the Governor's Task Force on Election Reform as well as the NYS Election Commissioners Association.

The first HAVA joint conference committee met on March 7, 2005, and met for five times during March. As a result of often contentious discussions between legislators, resolution of differences on creation of a statewide voter registration database, voter ID, funding in the budget, and a complaint process for aggrieved voters was finally accomplished. The HAVA Coalition issued a strong memo of opposition to the joint Assembly-Senate database bill citing a lack of specific privacy protections for confidential voter information and detailed specifications concerning the state databases of agencies offering voter registration in the bill. The Coalition supported the joint administrative complaint procedure bill and issued a memo of support.

The conference committee process stalled again during April because of a continuing partisan disagreement between Democrats and Republicans over the issue of appointing an Executive Director and Deputy Executive Director at the NYS Board of Elections. The Board of Elections is the implementing agency for HAVA in the state and should be fully bipartisan in staff and in the appointment of its four commissioners to ensure the fair and equal representation of all voters in the state. The League supported legislation to correct that imbalance and lobbied the Senate to pass legislation which would create co-Executive Directors (the Assembly had passed their bill in March 2005).

The New York State League Board voted on March 9, 2005, to endorse the use of optical scan voting machines, with the addition of ballot marking devices for accessibility, to replace lever voting machines statewide. Using the LWVUS' criteria of secure, accurate, re-countable and accessible, the Board decided that the League's voice should be heard in the public debate about the best voting system for NYS.

The Assembly proposed legislation which described both DREs and optical scan voting machines technologies by setting forth specific standards for these voting systems. The Senate legislation, while it did not exclude optical scan equipment, did not specifically name it, as the Assembly bill had done and only addressed only general standards for new machines. Both bills included requirements for a

voter verified paper trail for DREs. However, there are no machines currently qualified by the federal government and certified for use in NYS which meet that requirement. Machine selection was further complicated and limited because of New York's full-face ballot requirement which the Legislature did not repeal despite the recommendation of the Governor's Task Force and the advocacy efforts of the HAVA Coalition and others.

The HAVA joint conference committee resumed on May 4, 2005 with discussion on the three remaining issues and several new compromise proposals were shared between Assembly and Senate conferees. The League endorsed a report issued by NYPIRG on Election Day Registration in New York State and appeared at a press conference in support of the proposal (a LWVUS position).

After two years of intensive work to ensure that the Help America Vote Act was implemented so that New York voters could be assured of more accurate, modern, uniform elections, legislation was passed in June 2005 and signed by Governor Pataki in July of that same year.

The following is a brief description of the new law:

- I. Election Reform Modernization Act – voting machine replacement. This law will allocate \$190 million dollars to purchase new voting machines that will have to be certified by the State Board of Elections to determine compliance established by the legislation. Funds will be allocated based on the percentage of voters in each jurisdiction. Localities can choose to purchase either optical scan machines or electronic voting machines. If local elections commissioners cannot agree on the type of machine for their county, the State Board of Elections will execute a contract for the purchase of the required voting machines and charge the county for the expense. If electronic voting machines are certified by the state, they must be equipped with a voter-verified paper ballot.

An appointed Citizen's Election Modernization Advisory Committee will advise the SBOE on which machines meet the standards. Once the SBOE certifies that a machine meets the standards it is eligible to be purchased by a county. The SBOE will act as the purchasing agent and direct the State Comptroller to release HAVA funds to vendors who in turn deliver the machines to the county and will ensure bulk purchase savings and that manufacturers provide counties with educational and technical support.

Every polling place must have at least one disability-ready machine for use in the November 2006 election and remaining replacement of lever voting machines must be accomplished by September 2007. An automatic random audit of 3% of the voter verifiable audit records of an election is required.

Provisions of the bill would also allocate funds for the training of poll workers, increase compensation for those training sessions and require a public campaign to educate voters on the new voting machines and other changes affecting voters at the polls on Election Day.

- II. Election Consolidation and Improvement Act of 2005 – county consolidation of election operations and voting machines. This law will consolidate election administration within the local boards of elections. Counties will own the voting machines and all equipment related to the conduct of elections and be required to conduct at least one annual mandatory training session for poll workers with an exam. Counties will be permitted to charge back to the municipalities within the county for the cost of election operations within that municipality.
- III. Voter Registration – new ID requirements for first-time voters who register by mail and have not previously voted in a federal election. This law makes permanent the identification legislation which was enacted in 2004 and was in effect for the November 2004 election. It was in effect for one year only (until July 2005). Under the bill, the following identification can be submitted by a voter to avoid identification requirements at the polls:
1. A driver's license or DMV non-driver's photo ID number;
 2. The last four digits of the individual's SS number;
 3. A copy of a current and valid photo identification; and,
 4. A copy of a current utility bill, bank statement or government document that shows the name and address of the voter.
- IV. Voter Verification -- establishes the process for verifying the identity of individuals registering to vote through state databases or with Social Security numbers. HAVA requires that states should attempt to "match" information provided on voter registration applications with that in driver's license and social security databases for the purpose of verifying the accuracy of the information provided by new registrants in order to prevent voter fraud. This law requires board of elections to offer the new registrant multiple opportunities to correct the registration record before Election Day or to inform him/her that they must present HAVA ID in order to vote on a machine. (all voters are allowed to vote using provisional (affidavit) ballots if they forget ID or are not listed in the poll books.) Affidavit ballots are counted after election officials verify the individual's identity and voter registration.
- V. Administrative Complaint Procedure – HAVA mandates that a complaint procedure for aggrieved voters to be administered by the NYS Board of Elections be established. This legislation was passed and signed into law earlier in the 2005 session.
- VI. Statewide Voter Registration Database – HAVA requires that states must establish a statewide voter registration system, effective January 1, 2006. The statewide voter registration list will serve as the "official" list of registered voters and will merge the existing county registration lists into a statewide list, available to all counties. This law, passed earlier in the 2005 legislative session, appropriated monies and the requirements for the system.

VII. New York State Board of Elections Governance – alters structure of the board in order to achieve bipartisanship. This law was not required under HAVA.

Bipartisanship will be achieved in two ways: creation of two co-chairs on the board of SBOE commissioners and co-executive directors at the staff level, with salaries set by the SBOE commissioners (for staff). The law will also establish that if a vacancy occurs among the commissioners, and if a recommendation for appointment is not approved by the governor within 30 days of the recommendation, the appointment can be made by the legislative leaders themselves.

The effective date for the NYS BOE governance law was August 1, 2005. At the August 8th meeting of the NYS BOE, the two co-executive directors were formally acknowledged by the commissioners in their new positions. However, the board still lacked a fourth commissioner (Democratic appointment). The recommendation for this appointment was to be presented by the Senate Minority Leader, David Patterson. At the December 15th NYS BOE meeting, a new Democratic Commissioner was seated filling the vacancy and returning the board to two Democrats and two Republicans.

HAVA action now goes to the local BOE for decisions regarding new voting machines.

Delegates to the 2005 biennial state League convention approved a *Convention Action Motion* which was sent to over 1,000 county elected officials throughout the state: “As delegates to the League of Women Voters of New York State convention, held in Albany, New York, on May 20-22, 2005, we request that you support precinct-based optical scan voting systems with accessible marking devices to replace lever voting machines currently in use in the state.”

Recognizing that the decision on new machines was to be made by local officials, the League moved to educate our members with an intense Campaign for Optical Scan in the summer of 2005. A series of four advocacy training sessions in Buffalo, Syracuse, Albany and NYC were held for League members and others. The trainings were conducted by the League’s elections specialist and a colleague from New Yorkers for Verified Voting. A videotape of the training session was produced and made available for purchase for those unable to attend.

New York’s HAVA statute required the New York State Board of Elections to prepare voting system standards to implement the requirements of the law. The League and fellow members of the NYS Citizen’s Coalition on HAVA Implementation submitted testimony on the Draft Voting System Standards in December 2005. The League’s separate comments criticized the proposed standards as weak, inadequate, and unable to protect the integrity of New York State’s voting process for the following reasons:

1. Public confidence in the election process is directly linked to the transparency of the process (which we objected to as being non-transparent);
2. The standards should be written by independent voting system and computer professionals who should be selected by a diverse cross-section of computer scientists and professionals and government and civic representatives;

3. Vendors are given the power to determine what information they will provide to the State agency to satisfy state requirements for equipment;
4. Testing of machines should be done publicly and by a truly independent body;
5. There should be a transparent and public certification process;
6. The Citizen's Election Modernization and Advisory Committee should be representative of the public as well as the elections community and should have access to all information that the Board of Elections has in order to fulfill its mandate;
7. The proposed Regulations are incomplete and inadequate and should be re-written.

A revised set of standards was issued in February 2006 but only minimal changes were made and continue to stand as the requirements for voting systems. The League, along with fellow members of the NYS Citizen's Coalition, in a February press conference, called for the commissioners of the BOE to reject the revised regulations.

In January 2006, New York was officially notified by the US Department of Justice that the State was not in compliance with the federal HAVA deadline of 1/01/06 for establishment of a statewide interactive voter registration database and an implementation plan to provide for replacement of voting machines. (NYS had received a waiver until 1/01/06) The State was told that unless a negotiated settlement between the State and the DOJ could occur, the Court would impose a settlement, a solution no one wanted. Such settlement might require full compliance by September 2006. In March the League, fearing that such a possibility existed, decided to become interveners in a lawsuit to oppose the suit by the DOJ. A coalition of four individuals and the League filed a Motion to Intervene asserting that the relief sought by the DOJ – rushing out new electronic voting machines for the September 2006 primary -- would inevitably cause mass chaos on election day and would deny the right of citizens to have their votes counted. The Motion was denied by the U.S. District Court Judge in the case on the grounds that the case would become too unwieldy if too many parties became involved, but held open the possibility that the proposed Interveners might be allowed to participate later, at a point when a specific plan for HAVA compliance was proposed. The Court also asked for clarification from DOJ on whether it was seeking to force full and complete HAVA compliance by September 2006. Attorneys for DOJ said that they did not intend to do so. The Court also ordered the NYS BOE to produce a proposed compliance plan by April 10, 2006. In April 2006 the BOE proposed "Plan B" which would provide partial compliance for accessibility by allowing each county to determine the number and location of accessible voting equipment to be in place for the Primary election in September. The Court accepted this solution, as well as an interim solution for the establishment of a statewide voter registration database.

"Plan A" (the original plan would have required full compliance by September 2007), the BOE was required to provide the full description of the process of testing, certification, ordering of new voting machines and the process for county acceptance testing and related procedures by August 2006.

Legislation which would expand the Citizen's Committee with two additional members, one from a representative of the League of Women Voters, was introduced in January 2006 by Senate Elections Chair, John Flanagan. The bill had Assembly sponsorship and passed both houses of the legislature in April 2006 and was signed by Governor Pataki. We had called for an expanded Committee and supported this bill. Our appointee to the committee is a member of the League with expert technical credentials and professional experience. Committee members observed the first stage of certification processes in summer 2006 when ballot-marking devices were tested by the NYS BOE.

League members continued local advocacy during the summer of 2006 by focusing on county legislatures and elected officials in a *Campaign for Accountability*. Some county legislatures indicated their support for optical scan voting by passing non-binding resolutions favoring optical scan. Petition drives and letters of support were initiated.

Widespread failures of DREs and some optical scan systems in the November 2006 election received national media coverage. The League and fellow advocates for paper ballot optical scan voting held a press conference in November to point to these failures as an example of how New York election officials could take advantage of this experience by selecting optical scan for their counties.

With a newly-elected governor, the opportunity for gaining support for a single statewide optical scan system increased. The League had a member appointed to sit on the transition team. One of the top recommendations of the team on election reform was that the state should implement a single statewide system using optical scanning equipment which would also provide accessibility. Advocates held a press conference in February calling on the new governor to endorse optical scan voting and learn from Florida's mistakes, as well as others. We followed that with an Action Alert/blast FAX campaign urging the governor to take the lead and introduce legislation to achieve this. Unfortunately, the Governor did not respond and the 2005 statute leaving the decision on voting machine technologies in the hands of county election commissioners continued.

The certification process which began in fall 2006 came to an abrupt halt in January 2007 when NYS suspended testing with the independent testing authority under contract to New York because this agency was disqualified by the US Election Assistance Commission for inadequate security testing procedures. New York would have to issue a new contract for an Independent Testing Authority (ITA), making it unlikely that the state would be able to meet the September 2007 DOJ court order for full implementation ("Plan A"). However, until a renegotiated agreement occurred, counties continued to make plans for September implementation.

In a related matter, in April, the Troy City School District (Rensselaer County) voted to accept the loan of uncertified voting machines from a prospective vendor for use in their May school district election. The League and our partner, New Yorkers for Verified Voting, mounted an intensive campaign to counter the vendor's claims of security and reliability and urged the school board to reconsider their decision. Because of a loophole in the NYS Education Law which governs school elections, this was a permissible decision. The Assembly's Education Committee chair introduced legislation disallowing such action in the future, but the election was held using the uncertified electronic voting machines. LWVNYS sent a letter to the 716 school district superintendents in the state to inform them of the danger of using uncertified voting machines in school district elections.

The 2007 NYS Legislature concluded with the passage of a bill which extends the life of the Citizen's Election Modernization Advisory Committee until 2010. (The previous bill was a one-year authorization) Under provisions of this bill created in statute, the committee gains access to all technical and proprietary information on voting machines submitted for NYS certification and the testing of same. A League representative will continue to sit on this advisory committee. In an unusual situation, the League issued a memo in opposition to a bill which didn't then exist! Having learned of a potential threat to the HAVA statute of 2005 which requires voting machine vendors to place in escrow their source code information and documentation, we issued a memo in opposition to alert the legislature of that possibility. This is a frequently used lobbying strategy to scare off the introduction of legislation because public awareness existed of its potential evils. When the Legislature returned for a special session in July they took up the 2007 implementation date which New York had passed in 2006 and recognized that it was no longer feasible. The new statute reflected reality and required that counties provide at least one location per county with one or more ballot marking devices for persons with disabilities and permits the use of lever voting machines until new machines are certified and available for purchase by the counties.

The League issued a memorandum of support for this solution to a difficult situation.

ELECTRONIC VOTING EQUIPMENT

Since the appointment of a New York State Temporary Commission on Voting Machine Equipment in 1984, the League has favored legislation that would allow local governments the option of using electronic voting equipment. After a year of study and equipment testing, the Commission recommended changes in the state law allowing the use of electronic voting machines. The New York State Board of Elections developed a comprehensive set of regulations and guidelines for the machines' certification, testing and management; the machines would be purchased and maintained by individual counties, cities or towns. In 1986 legislation was passed enabling localities to replace their antiquated, failing equipment with electronic machines. They are being used, selectively, in many areas across the state. Since 1984 the LWVNYS has favored government action to advance the evaluation of electronic voting systems and has favored legislation that would allow local governments the option of using electronic voting equipment.

In 2001, the League supported bipartisan legislation which would allow the State Board of Elections to authorize a county board of elections to use a voting system (i.e., machine) not previously approved by the State Board. By giving this discretionary power to the State Board, county boards would be able to test newer machines before purchasing. With the passage of the Help America Vote Act in October 2002, which will require the replacement of all lever voting machines in the state by 2006, this recommendation became moot.

PETITIONING PROCESS: BALLOT ACCESS

League concern about the petitioning process is long standing. Since the 1950s the League has been a strong advocate for simplifying the format and procedures for obtaining petition signatures for potential candidates. Complexities in the process and minutiae in the petition format create

opportunities for inadvertent errors. Such errors have increasingly been the cause for court challenges to the validity of the petition signatures. The League believes that simplifying the petitioning system and at the same time, including fraud-prevention measures, will benefit would-be candidates and provide voters with a broader choice on election day.

The League is an active member of the Coalition for Effective Government, a lobbying group that formed in 1990 as an outgrowth of the Governor's New York State Commission on Government Integrity, Feerick Commission. The election law goals of the coalition are the simplification and improvement of ballot access, agency-based registration, elimination of the non-voting purge, 17-year-old registration, college student voting, the 15-day registration deadline and intra-county re-registration.

In October 1994 a federal Court judge in Albany rendered a decision in a case involving the nominating petitions of a minor party candidate for governor which will probably impact on the future interpretation of the NYS election law with respect to the requirement that petitions include the election or Assembly district of each person who signs a petition. This requirement has often meant that petitions have been totally rejected for the lack of perhaps only a few legally valid signatures. The decision directing the courts to "liberally interpret" the intent of the election law governing petitions will be precedent setting. In fact, in the Assembly legislation passed in January 1995, this provision to "liberally interpret" which had appeared in previous Assembly ballot access bills was deemed unnecessary following this decision. However, there has not been any movement on the reduction of signatures requirement that directly impact less well financed campaigns.

The Take Back Democracy Coalition, consisting of the League, Common Cause/NY, the New York Public Interest Research Group, and United We Stand America/NYS, has taken an active role in pursuing ballot access reform in New York State Election Law. In 1996, the Governor introduced a Program Bill simplifying the ballot access process; thus making it simpler and fairer for candidates in political party primary elections and for independent candidates in general elections. Legislation passed both houses and was signed by the governor (Chapter 709 of the Laws of 1996).

Monitoring and close scrutiny of the process continued in 1997 as regulations implementing this new law were promulgated by the State Board of Elections. Following much delay and one statutory extender, proposed regulations were finally issued in March 1997, but only after League criticism in the media of the apparent procrastination by both political parties. Draft regulations were forthcoming and during the public comment period, the Take Back Democracy Coalition submitted joint comments, which were eventually incorporated into the final regulations. Following Justice Department review, the regulations were in place for the June 1 primary process. Following submission of primary petitions in the New York City Council races, challenges to those petitions continued at a rate equal to or greater than the 1993 New York City-wide elections. The League will continue to bring to the governor's and legislative leadership's attention the need for further simplification of ballot access.

Historically, ballot access laws in New York State have been used as a tool by candidates to have challengers thrown off the ballot. Once a bill becomes law, the need to monitor the process does not end. The League continues to observe, comment and lobby on all steps of our governmental process, including in this instance, the regulatory process.

SIMPLIFICATION OF ELECTION LAW

A major recommendation of the LWVNYS's 1963 election position was the need for a complete recodification of the Election Law. During the following decade, a Select Committee on Election Law worked on recodification, with advice and encouragement from the League. When the results were introduced in bill form, the League lobbied through three legislative sessions, finally achieving a recodified law, which became effective December 1, 1978.

SCHOOL ELECTIONS

In 1979 the League succeeded in getting a prohibition against electioneering within 100 feet of the polls in school elections.

CAMPAIGN FINANCING

The League of Women Voters of the United States believes that the methods of financing political campaigns should ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office, and allow maximum citizen participation in the political process. (LWVUS *Impact on Issues*, 2010-2012, p. 20) Statement of Position on Campaign Finance, as Announced by National Board, January 1974 and Revised March 1982.

A clear focus on campaign financing emerged from the LWVUS concern about spending abuses in the presidential and congressional campaigns of 1972. In 1973 an accelerated member study and agreement led to the initial Campaign Finance Position of the LWVUS, first announced in January 1974 and revised in March 1982. It was under this National League position that the LWVNYS took action until April 14, 1991, when the New York State League consensus was adopted.

**CONSENSUS STATEMENT: ELECTION LAW
CAMPAIGN FINANCING**

Statement of Position

As announced by the State Board, April 1991

The League of Women Voters of New York State reaffirms its belief that it is necessary to improve methods of financing political campaigns in order to ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office and promote citizen participation in the political process. (*LWVUS Impact on Issues*).

In order to restore public confidence in the political process:

Appropriate limits should be placed on campaign contributions which can be made to each candidate from individuals, corporate funds (in the aggregate where there are subsidiaries), political party monies, donations by PACs and special interest groups.

Funding limits on statewide candidates should be set at a higher level than on candidates running in smaller districts.

Equal access to the political process for candidates should be enhanced by supporting measures which would open the system to challengers and by enacting a public financing law for statewide offices.

The New York State Election Law should enable rather than limit candidates' attempts to gain ballot positions. All qualified candidates aspiring to public office should have access to the ballot through a fair, simplified petition system that is straightforward and that does not present a maze of technical minutiae. Basic safeguards against fraud should not require excessive rigidity.

Enforcement of the election law pertaining to campaign finance requires analysis of the data collected under the established procedures for reporting the receipt and expenditure of funds.

**CONSENSUS STATEMENT: ELECTION LAW
CAMPAIGN FINANCING**

Statement of Position

As announced by the State Board, April 1991 (continued)

The League calls for centralized computerization of campaign finance records for local and statewide elections. In order for this information to have any meaningful effect, it must be monitored, analyzed, and disclosed. Oversight and enforcement must be vested in a government entity with the independence, power, and adequate resources to enforce the law.

The League supports measures to restore integrity to a system which has become flawed by political partisanship.

The League of Women Voters of New York State supports passage by the legislature of a legally valid Fair Campaign Code. Fair Campaign Practices Committees can play an important role in establishing ethical campaign guidelines at all levels of government and can focus public opinion on the conduct of campaigns. We urge their widespread use across the state.

Recent League Activity

In 2008, the League drafted the “Campaign finance reform, enforcement, transparency, and accountability Act of 2008.” This act strived to improve disclosure, enforcement and transparency. It also attempted to lower campaign contribution limits. Unfortunately, it failed to garner support in either house.

In 2010 both houses passed ethics reform legislation that included campaign finance reform. While there were some concerns with this legislation, it represented a welcomed and needed improvement over the status quo. In February 2010, Governor Patterson vetoed the bill, stating it failed to go far enough. The league lobbied the legislature to override the veto. This legislation included critical changes to campaign finance enforcement by strengthening the independence of the State Board of Elections, and by requiring them to garner a majority vote in order to stop an investigation from proceeding. It also improved disclosure requirements by creating a mandatory uniform format electronic disclosure system and requiring disclosure by groups who expend or contribute independent of the candidate.

In 2011, the League joined with NYPIRG to support a bill which provided for public financing for the position of Comptroller. That bill passed the Assembly but was not passes by the Senate.

In 2012, Governor Cuomo included campaign finance reform as one of his goals in the State of the State Address. Thereafter, Assembly Speaker Silver introduced campaign finance legislation which included public financing. The League and its good government colleagues at NYPIRG and Citizen Union expressed some misgivings about this legislation because it created a two-tier system in which persons who participated in public financing would be subject to one set of rules administered by one regulatory body whereas those who did not participate would be governed by another set of rules, administered by a different regulatory body.

Also in 2012, acting in response to the actions of the Governor and the elevated interest in campaign finance law piqued by the United States Supreme Court's decision in Citizens United, and the huge influx of money into the presidential and other campaigns fostered by that and other Supreme Court cases which permit unfettered contributions and expenditures for independent expenditures, LWVNYS developed a power point presentation, supplemented by background materials, for use by the local leagues in their attempts to foster active efforts by league members and others to encourage the passage of meaningful campaign finance reform. The League obtained a grant from the Robert Sterling Clark Foundation to support this campaign. The program was presented in leagues throughout the state and before other civic organizations.

Throughout this time, the League continued to work with other good government groups in support of campaign finance reform. The lobbying focus has been on public financing of campaigns, real and independent campaign finance enforcement, and regulatory reforms. The League continues to advocate for both, believing that meaningful reform of the current laws is a necessary substrate to a successful public financing system. A beginning for these reforms is the campaign finance aspects of the 2010-vetoed Ethics Reform Act. Other focuses include:

- Significantly decreasing sky-high campaign contribution limits that are among the highest in the country.
- Eliminating soft money by limiting donations to "housekeeping accounts."
- Eliminating the transfers of campaign contributions. Currently, there is no limit to the amount that parties and candidates can donate to other parties and candidates.
- Banning campaign fundraising during the legislation session.
- Limiting lobbyists involvement in campaign activities
- Disclosure of employers and bundlers.
- Banning personal use of campaign funds by candidates.

Past League Activity

While functioning under the national position, the LWVNYS supported campaign-financing rules limiting contributions and expenditures. The League consistently lobbied for partial public financing of

campaigns for statewide offices and strongly endorsed a funding system incorporating a state income tax check-off.

In 1982, the League interpreted its campaign financing position to include ballot issues as well as candidates. During the 1983 legislative session, the League actively supported a bill, subsequently signed into law, that would require political action committees to report all contributions and expenditures made for the purpose of supporting or opposing ballot issues.

Closing a serious gap in the state election law, a bill that prohibits candidates and political committees from diverting excess campaign funds to personal use passed with League support in 1985. Until this restriction became law, candidates and committees were free to use excess funds in any manner they desired. Loose enforcement of the law has resulted in continued misuse of campaign funds for personal expenses.

Another loophole in the law was addressed in 1988 when the legislature passed a law requiring the disclosure of "housekeeping" funds. These funds are for the purpose of maintaining political party offices and are to be used only for normal office expenses. They are not meant for use in political campaigns. However, since the law formerly required no reporting of these funds, there was no way to determine that they were expended properly. The new law has not been successful in eliminating the abusive practices in connection with housekeeping accounts, however.

In 1999, the State Board of Elections began requiring candidates in state elections, who spend more than \$1000, to file their financial disclosures electronically. This electronic disclosure is then published on the Internet. This law was expanded in 2006 to include all candidates for local elections who spend more than \$1000, as well.

Through the 2000's, LWVNYS continued to support campaign-financing legislation that met the criteria of our position. In the 2000 session, the Assembly leadership introduced the same partial public financing bill that had been introduced for the past fifteen years. In the 2001 session, the League, Common Cause and NYPIRG lobbied members of the Democratic majority conference to amend their campaign financing legislation to include a 4-1 public match component patterned after New York City's successful public financing law. Assembly Democrats amended their legislation to reflect the system in New York City, and it passed the house. The League then turned its attention to the Senate where we were able to secure a majority sponsor (Sen. Goodman) for similar-to legislation. This bill will have to pass the Senate in a future session in order to go to joint conference committee to resolve differences. Full public financing, "Clean Money, Clean Elections," was introduced as far back as the 1998 legislative session. Only Democratic sponsorship in the Senate could be secured and the legislation was never addressed in committee. In the Assembly the bill had majority sponsorship, but, as in the Senate, was not taken up in committee. No action on this legislation has taken place since 1998. The Governor has repeatedly said that he is not in favor of full public financing of elections.

On the last day of the regular 1999 session in June, Governor Pataki announced a campaign finance program bill. Although disappointed the legislation came so late, League supported this comprehensive approach and requested that the Governor become an actual advocate for his legislation. Clearly this legislation came too late to be debated fully by the Legislature and did not get sponsorship or was not introduced during that regular session. The League will continue to urge the governor to push for Senate sponsorship during the 2000 session.

The Governor's program bill on campaign finance reform did not obtain a Senate sponsor until late in the 2001 session (introduced by Rules Committee). The bill did not see any action in the 2001 session. The bill would have:

- Ban soft money
- Dramatically lower contribution limits
- Crack down on sham issue ads
- Restrict fundraising during the legislative session
- Enhance disclosure
- Toughen enforcement

Campaign Finance 2002-2003

The League has lobbied extensively for reform of the Campaign Finance laws for several years. Passage of the McCain/Feingold law at the national level brought hope for reform of New York's lax campaign finance laws. Although the Assembly Speaker sponsored comprehensive legislation in 2002 that passed overwhelmingly in the house, the Senate has never introduced or passed similar to legislation.

The Speaker has publicly stated his support of going to a public, joint conference committee on campaign finance reform if the Senate acts on the Governor's proposal. The League has called on the Governor and the Senate to support a plan based on the successful New York City system of public financing, in which candidates receive public funds to match small private contributions raised. At a minimum, the League has urged the Senate to support the Governor's legislation and to take up the Speaker's offer of a joint conference committee negotiation on campaign finance reform. Although the League has continued to lobby for campaign finance reform, no action was taken on this legislation in 2003 or 2004.

With an incumbency rate of over 99%, this legislature is likely to continue the status quo that works for them.

In the 2005 session, the League, in coalition with NYPIRG, Common Cause, and Citizens Union, continued to support comprehensive campaign finance reform through the following recommendations:

- Creating a voluntary system of public financing modeled on New York City's,
- Overhauling existing campaign finance laws,
- Requiring candidates for local government to report their contributions in electronic format and then posting those filings on the Internet as contributions for state office are,
- Limiting the use of campaign contributions to those activities directly involved in campaigning.

Again, the Assembly passed legislation the League supported. Governor Pataki had proposed a comprehensive campaign finance plan that was similar to the Assembly legislation except it did not include a public financing system. The Governor continued to not push the Senate to act on his plan. Unfortunately, the Senate did not offer its own reform plan and blocked more limited measures to

reform the system. Advocacy on this issue has been directed at moving the Senate to act on the Governor's bill so that a conference committee could resolve differences on the two bills. Campaign finance reform was one of ten issues targeted during the reform lobby day in May 2005.

The session of 2006 preceded legislative elections and a gubernatorial election. The reform coalition continued to push the legislature to adopt the Assembly Speaker's campaign finance legislation, but began the process of making the issue of campaign finance reform a campaign issue for both the legislature and candidates for governor. For the first time, every legislator was a "reformer" and reform day in 2006 drew hundreds of citizens into the legislature to push for reform issues, most prominently, campaign finance reform. Unfortunately, the session concluded with no legislative action, but with a clearer vision for renewed anticipation of a more receptive Governor and legislature in 2007.

The election of November 2006 brought a new Governor and several new legislators into office. The League was asked to sit with other reform groups on Governor Elect Eliot Spitzer's Transition Team, specifically on the government reform committee. One of the recommendations given to the new Governor was on campaign finance reform. This Governor had campaigned on a reform agenda and there was anticipation that campaign finance reform would be a top priority. In the Governor's first State of the State message, he talked about the need for campaign finance reform.

"To neutralize the army of special interests, we must disarm it. In the coming weeks, we will submit a reform package to replace the weakest campaign finance laws in the nation with the strongest. Our package will lower contribution limits dramatically, close the loopholes that allow special interests to circumvent these limits, and sharply reduce contributions from lobbyists and companies that do business with the state.

But reform will not be complete if we simply address the supply of contributions. We must also address the demand. Full public financing must be the ultimate goal of our reform effort. By cutting off the demand for private money, we will cut off the special-interest influence that comes with it." State of the State Address, Assembly Chamber, The Capitol, Albany, NY, Monday, January 3rd, 2007"

Shortly after the Governor's State of the State address, reform groups including the League were asked onto the second floor (Governor's Offices) to help craft comprehensive campaign finance legislation. Negotiated language with the Governor's office included elements listed below, however, during the regular legislative session of 2007, these reforms were not introduced as actual legislation.

- Lowered campaign contribution limits.
- For statewide candidates – from current total maximum of \$55,900 from a single source per cycle to \$20,000 total.
- For Senate candidates – from current \$9,500 general/\$6,000 primary to \$5,750/\$5,750.
- For Assembly candidates – from \$3,800 for each primary and general to \$2,300/\$2,300.
- For party and legislative committees from current \$94,200 to \$50,000 per year.
- While we supported the Governor's plan, his contribution limits would have moved New York from having the highest contribution limits of states with limits, to second highest.
- Limited donations to "housekeeping accounts." The proposal would limit "soft money" contributions, currently unlimited, to \$50,000 in aggregate from each source per year.

- The Governor's proposal would still allow staggeringly high donations, but would have eliminated the possibility that one entity would be able to pour millions of dollars into one party's political committee – which would have diminished the appearance of a conflict of interest.
- Close loopholes. The proposal would have closed the loopholes that allow corporate subsidiaries and LLCs to skirt the law.
- Strengthened enforcement. The Governor's plan would add a fifth commissioner to the State Board of Elections. This bipartisan appointee would have broken enforcement logjams that exist currently.
- Strengthened disclosure. The proposal would require all contributors to provide information on their occupation, employer, and business address; would require additional reports during the legislative session; and add a 15-day pre-general election disclosure report.

Campaign finance reform was also highlighted at reform day April 2007. Governor Spitzer and Speaker Sheldon Silver attended and committed to pass reforms, however, Senate Majority Leader Joseph Bruno did not attend and made it clear that his conference did not intend to pass campaign finance reform. In response to Majority Leader Joseph Bruno's assertion that citizens did not "give a hoot" about campaign finance reform, the League initiated public forums across upstate New York to highlight the concern of citizens for this necessary reform. These public forums were held in Syracuse, Rochester, and Schenectady and were held to put legislators of both political parties on the record about their position on campaign reform. These forums were well attended by the public, but not by most legislators.

For the last two months leading up to the end of the regular session, it became apparent that campaign finance reform was to be held "hostage" to other issues primary among them a judicial and legislative pay raise. Governor Spitzer also began to aggressively go into Senate Republican districts to highlight the Senate's inaction on this issue. A war of words began in the final days of the session and it became apparent that until campaign finance was addressed by the Senate, no other issue would be addressed. The 2007 legislative session ended without campaign finance reform and with many issues left undone. It is anticipated that before the end of the year 2007, the Governor will call a special session to address campaign finance reform.

The League intends to continue our grassroots advocacy on this issue.

Computerization of Campaign Finance Records

Following vigorous lobbying during 1996 and 1997, including much media work, the Take Back Democracy Coalition was finally successful in securing an appropriation through the 1997-98 state budget to computerize campaign finance reports filed with the State Board of Elections.

Computerization would begin in July of 1999. The implementing legislation would require candidates planning to spend more than \$1,000 on their state campaigns file their required financial reports on computer disk with the State Board of Elections.

On July 1, 1999, the State Board of Elections began computerizing and putting out on the internet all campaign finance records of candidates who spend more than \$1,000 on their campaigns. This now enables anyone with access to the Internet the ability to follow campaign contributions to candidates for statewide and legislative offices. The League will continue to lobby to extend computerization to local boards of election.

During the 2002-2003 session the League worked to pass local computerization of campaign finance records. The legislation had majority Senate and Assembly sponsorship. Although the League lobbied vigorously to pass local computerization of campaign finance records and the Assembly did pass the bill, the 2003 session closed without the Senate taking any action.

Late in the 2005 session, after extensive lobbying by the Reform New York Coalition, the Senate and Assembly agreed to computerization legislation which would require candidates for local government to report their contributions in electronic format and then post those filings on the Internet. The new law went into effect January 2006. This was a major success for the reform coalition.

As part of the League's transition with Governor Elect Eliot Spitzer, the issue of adequate funding for the state Board of Elections, Campaign Finance Enforcement Unit was addressed. As a result, the executive budget allocated \$1.5 million dollars for increased staffing for this enforcement unit. The legislature agreed to this appropriation and with passage of the budget on April 1, 2007, several new staff positions were created. The League continues to monitor the composition and effectiveness of the new Campaign Finance Enforcement Unit.

Fair Campaign Practices

In 1973 the first Fair Campaign Practices Committee (FCPC) was established in Monroe County by the Rochester League. This committee, composed of selected community leaders, establishes guidelines for the conduct of ethical political campaigns and has the influence to produce a positive effect on the tenor of campaigning. The committee hears complaints made by opposing candidates and releases findings to the media. The negative campaigning of the 1988 elections was a major impetus to citizen concern about the election process and stimulated renewed interest in the establishment of FCPCs. Several FCPCs now function in various parts of the state; local Leagues were the impetus for their creation.

The League is concerned about the ethical conduct of candidates for political office. The practice of self-monitoring by candidates, campaign committees, their media advisors and political party committees may be commendable, but it is not always successful. In an attempt to improve the conduct of individuals and groups involved in the electoral process, the Fair Campaign Code was written into

the Election Law; however, it has never been implemented because a section has been found unconstitutional. Since 1983 a Fair Campaign Code bill has been introduced regularly whose purpose is to remove the section, which had invalidated the Code. The League has lobbied for its passage

TERM LIMITS

The LWWUS position opposes term limits for Congress and supports the current two-term limit for president of the United States. The League's opposition to term limits for Congress was arrived at by the National Board in July 1991 by applying LWWUS positions on Congress, the Presidency, Citizens Rights and Voting Rights. (LWWUS *Impact on Issues, 2006-2008, p. 24*)

The 1992 LWWUS Convention authorized state and local Leagues to use national positions and principles to take action against term limits for state or local office holders. The language adopted by the convention is permissive only; that is, it allows state and local Leagues to apply the national position in opposition to term limits at other levels, but it does not require opposition to term limits at other levels. It does not supersede positions arrived at by study and consensus at the state or local League level that may support term limits for state or local office.

“State and local boards may, at their own discretion, apply the national position to their own jurisdictions and thus oppose term limits for state or local elective offices. However, state or local Leagues with positions in support of term limits for their jurisdictions may keep those positions and may act on them. State and local Leagues may also study and reach consensus to determine support or opposition to term limits for their jurisdictions. State and local Leagues may not, however, take a position in support of term limits for federal legislative office (the U.S. Senate and House of Representatives).” (Post Board Summary Following the October 1992 Meeting of the LWWUS Board of Directors and the LWVEF Board of Trustees)

In 1996 the LWWNYS Board decided it was time for the state to take a position as several local Leagues had already done so. Although the state board had the authority to adopt such a position without referring this matter to the membership, delegates to Council 1996 voted to concur with the following statements.

**TERM LIMITS--Statement of Position
As Approved by the 1996 State Council**

The League of Women Voters of New York State opposes term limits for members of the New York State Legislature.

The League of Women Voters of New York State opposes term limits for New York State statewide elected officials.