

IMPLEMENTING ELECTION REFORM IN THE CONTEXT OF AMERICAN
FEDERALISM: THE CASE OF THE HELP AMERICA

VOTE ACT (HAVA) OF 2002

By

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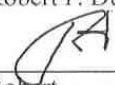
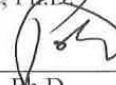
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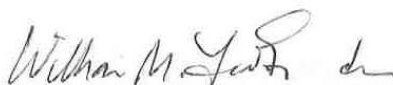
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DEDICATION

To Mom, Dad, Grandma and Taso.

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ABSTRACT

The Help America Vote Act (HAVA) of 2002 marked the first time in U.S. history when federal funds were allocated for the administration of elections. This legislation put forth several minimum standards to be implemented across the states and was one of the rare federal interventions in election administration, which the state and local level governments had been traditionally responsible for managing.

HAVA had a different reception across the states, which were responsible for developing HAVA implementation plans. Some states were able to meet the deadlines mandated by HAVA, while others found themselves in noncompliance in 2006—the final deadline for becoming HAVA-compliant. This variation in implementation prompted the research conducted by this dissertation. This dissertation thus looked into what factors account for the variation in the implementation of HAVA election reforms across the states?

This research question was analyzed through the theoretical lenses of intergovernmental relations and federalism as well as policy implementation using the following research methods: literature review, case studies (of Maryland and New York), and a multivariate regression analysis conducted for all 50 states

I hypothesize that states with: 1) stronger power vis-à-vis localities, 2) nonpartisan election administration, 3) unified party control of the legislature, 4) government ideologies at the middle of the liberal-conservative continuum, and 5) lower median household levels are more likely to have higher levels of HAVA implementation.

The results of the multivariate analysis revealed that partisanship was a statistically significant variable explaining the implementation of Section 101. This finding confirmed the hypothesized relationship that nonpartisan election administration is likely to be associated with higher levels of HAVA implementation. Also, the results reveal that state election administration control is a statistically significant variable, but not in the expected direction, suggesting that less state control, i.e. devolution to lower tiers of government, is more propitious for the implementation of Section 102. Additionally, state government ideology was also found to be a statistically significant variable, with scores closer to the most conservative value along the liberal-conservative continuum leading to higher levels of implementation of Section 251.

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CHAPTER 1

WHY ELECTION ADMINISTRATION MATTERS

Elections are a critical, though not the only, component of democracies. Reports of problems encountered in the close 2000 U.S. presidential election with respect to voter registration lists, absentee ballots, ballot counting, and outdated voting systems raised concerns about the accuracy and fairness of the election system. The Help America Vote Act of 2002 (HAVA) was enacted, which requires the implementation of major reforms in these areas in the highly decentralized US electoral system.

In this decentralized system of American federalism, HAVA changed the electoral administration landscape through a redistribution of authority over election administration (Shambon 2004; Alvarez and Hall 2005; Liebschutz and Palazzolo 2005). It gave states a stronger role in the management of elections and generated an expanded federal role. It did so primarily through the creation of the Electoral Assistance Commission (EAC) and through its Title III requirements, which give states a set of uniform administrative requirements. The stronger role that states have lies in the *broad discretion awarded to them in the implementation of the HAVA*. Hence, although under HAVA federal, state, and local governments each are affected by the statute's requirements, *states are ultimately responsible for its implementation*. They must institute compliant voting systems, statewide voter registration databases, provisional voting, and other requirements. Moreover, they are ultimately responsible regardless of the

participation level or decisions made by local governments. HAVA also marked the first time that federal funds were given to the states for election administration, albeit only once. All these changes, however, are not firm as intergovernmental relations are in a state of flux.

With the passing of the January 1, 2006 deadline for implementation of critical HAVA requirements, there were mixed results. A variety of descriptive reports were issued to track *what changed and what didn't* since 2000 and since the enactment of HAVA.¹ For the most part, however, they did not attempt to explain variation. The lack of literature on this topic is symptomatic of a larger gap when it comes to the study of election administration. Needless to say, the lack of literature on election administration from a public administration perspective is even more acute, with a few exceptions, such as a symposium volume of the *Public Administration Review* in 2008 dedicated to election administration.

Political scientist Joseph Harris (1934) has been credited as the only scholar who has engaged in a systematic treatment of the field of election administration (Hayduk 2005) and who has devoted a book to the topic of election administration in the United States in the past 100 years (Hall 2006). However, Judith Jamison's 1952 book on local

¹Some examples of such reports are: Electionline.org's annual reports of the state of implementation of HAVA; The Century Foundation's *Playing Games with Democracy*; Government Accountability Office's (GAO) reports *The Nation's Evolving Election System as Reflected in the November 2004 General Election* and *Additional Data Could Help State and Local Election Officials Maintain Accurate Voter Registration Lists*; Demos' *HAVA Implementation in the 50 States: A Summary of State Implementation Plans*; The Election Center's *Election 2004: Review and Recommendations by the Nation's Election Administrators*.

election administration in California also deals with this topic.² Nonetheless, her book focuses only on election practices in California, while Harris looks at all 50 states. Furthermore, Jamison's work is pronouncedly descriptive, focusing only the various stages of the election management process.

There have also been several other publications that have focused on election administration, which, like Jamison's book, have been overlooked. In 1971, Richard Smolka began issuing the *Election Administration Reports*, a biweekly newsletter for election officials. Smolka's newsletter focuses on policy changes and data on election administration throughout the US. In addition, the U.S. Federal Elections Commission (FEC) had issued its *Journal of Election Administration*, a periodical containing articles that addressed laws and policies impacting the administration of elections and describing specific election related procedures and structures. The FEC also issued *Innovations in Election Administration*, a series intended to acquaint state and local election officials with innovative election procedures and technologies that had been successfully implemented by their colleagues around the country at that time.

There has been a plethora of political science scholarship on the impact of election administration practices on voter turnout. These studies have looked at voter registration requirements (e.g.: Wolfinger and Rosenstone 1980; Erikson 1981; Powell

2 J. Harris has been the only person credited with having done any systematic study on election administration by several authors (Hayduk 2005; Hall 2006). Searches of the Library of Congress yielded his book as the earliest one dealing with this topic. A substantially thorough search of library databases led me to discover Jamison's book on election administration in California, which has been overlooked by other authors.

1986; Squire, Wolfinger, and Glass 1987; Nagler 1991; Teixeira 1992; Knack 1995), absentee and early voting (e.g.: Patterson and Caldeira 1985; Dubin and Kaslow 1996; Oliver 1996; Stein and Garcia-Monet 1997; Fitzgerald 2005), postal voting (e.g.: Sparrow 1985; Magleby 1986; Hamilton 1988; Parker and Przybylski 1993; Rosenfeld 1995; Southwell and Burchett 1997, 2000a, 2000b; Berinsky, Burns, and Traugott, 2001), voting technologies (Card and Moretti 2005; Roseman and Stephenson 2005) and their effect on voter behavior. Some of the studies have specifically focused on voting technologies (e.g.: Alvarez, Ansolabehere, and Stewart 2005; Ansolabehere and Stewart 2005; Sinclair and Alvarez 2004; Stewart 2006; Tomz and Van Houweling 2003) and are primarily the result of the voting machine controversies in the aftermath of the 2000 presidential elections. These studies date back to the 1980s and demonstrate that the line of inquiry of how certain election practices influence turnout is quite well developed. However, they do not fill the general gap in the literature on election administration in terms of what explains state-level variation in the implementation of election reform.

Very little literature looks at *why* some states were more successful in implementing HAVA election reforms while others lagged behind, and fewer still examined this from the perspectives of federalism, intergovernmental relations and policy implementation. Most of the studies that focus on election reform, and its variation across the states, look at the period from 2000 till the enactment of HAVA (Bali and Silver 2006; Greco 2002; Liebschutz 2005; Palazzolo and Liefer 2004; Palazzolo and Ceaser 2005). In addition, many of the studies that focus on election reform (both pre- and post-HAVA) are

case studies (Krutz 2005; Liebschutz 2005; MacManus 2005; Palazzolo and Liefer 2004). Case studies can provide considerable insight, but they face the problems inherent to this method—difficulty in introducing the element of control of exogenous independent variables and generalizability.

There are only two studies, both empirical, that address variation in state adoption of HAVA reforms (McLean 2005; Bali and Silver 2006). While empirical, they miss several important variables that should also influence variation in state election reforms as well as have a different approach in their operationalization of their dependent variables, which might also be affecting their results. Considering the scarcity of research on implementation of election reforms and our understanding of its variation, the implications of election reform for the integrity and reliability of the elections process, and potential for future predication of policy adoption, the goal of this dissertation is to address the following research question:

What factors account for the variation in the implementation of HAVA election reforms across the states?

To address this research question, my dissertation will consist of a methodology that utilizes pertinent literature, case studies, and a multivariate analysis. The case study analysis focuses on two states—Maryland (an early adopter of HAVA) and New York (a late adopter)—with multivariate regression analysis conducted for all 50 states. The two selected states—New York and Maryland—represent two extreme cases along a

continuum of state experiences with implementing HAVA. The comparative case study analysis is informed by archival research, as well as semi-structured interviews with key actors involved in or familiar with the implementation of HAVA in these states.

Interviews were completed with local, state and federal election administration professionals as well as representatives of professional associations and of community action groups. These individuals were selected based on their professional qualifications, position and representation of level of government. The community action group representative that was interviewed was recommended by one of the interviewed election professionals. During the interviews, both open-ended standardized as well as customized questions were used to collect information specific to the state's history of election administration and experience with HAVA implementation. The individuals who were interviewed are cited as part of the bibliography. My objective in the interviews was to gain more information about the administrative, technical and intergovernmental challenges of implementing HAVA in Maryland and New York and the nature of state-local relations in those states pre- and post-HAVA.

For the multivariate statistical analysis, I use four dependent variables in order to assess both overall implementation as well as implementation of HAVA by sections. The analysis of the implementation of HAVA by sections probes to establish whether the examined independent variables have a differential effect on the implementation of some

HAVA section in contrast to others as some aspects of the law may be more challenging than others to implement.

These variables are:

- 1) Overall HAVA implementation
- 2) Implementation of HAVA Section 101 (implementation of uniform and nondiscriminatory election technology and administration requirements; improve the administration of elections; educate voters about voting procedures, voting rights and voting technology; train election officials, poll workers and election volunteers; develop a state plan for managing requirements payments under Section 251 of HAVA; improve or replace voting systems for casting and counting votes; improve the accessibility and quantity of polling stations; establish toll-free hotlines for voters)
- 3) Implementation of HAVA Section 102 (to replace punch card and lever voting equipment)
- 4) Implementation of HAVA Section 251 (to implement provisional voting; provide information to voters in the polling place; develop and implement a statewide voter registration list; implement identification requirements for first time voters who register to vote by mail; and improve the administration of elections for federal office)

Looking at the level of implementation of HAVA is important because the reforms it envisions are designed to improve the accessibility and integrity of U.S. elections. An overall look at HAVA's implementation, as well as a more disaggregated one by sections of the law, gives a clearer picture of which provisions have been less difficult/controversial to implement.

The independent variables informing the analysis will be culled from the case study analysis and a multi-disciplinary review of literatures related to election administration.

My research addressing this question is significant in several ways. First, the research will shed light on why there has been variation (or delays) in the implementation of HAVA across the states. Answering this question has substantial importance: it clarifies the conditions that facilitate (or obstruct) policy implementation in a highly decentralized environment where implementation depends on multiple levels of government and actors, as it does in the case of election administration in the U.S.. In such scenarios, the opportunity arises for resistance to change, delays, and turf issues. Second, it is important to note that the study of successful and timely implementation of better election administration practices is important not only for democracy in the U.S., but also for democracy abroad, particularly in countries where election administration is problematic or often interpreted as deliberate manipulation of the election results. The reason why election administration is a critical variable in the development of democracy is that the technical problems converge into the political ones, with the potential of

threatening the entire process (Pastor 1999). Technical problems are inevitable, and in a highly polarized environment, such as for example in transitional elections, technical ‘irregularities’ can be seen by some groups as political manipulations by another group (Pastor 1999). The democratic practices in the U.S. have long been a beacon for other countries throughout the world. As a country that promotes democracy abroad, the U.S. is closely watched from the world over. Any failure of democracy in the U.S. has the potential to translate into a failure in democracies abroad for two reasons: the U.S. would lose the high ground it currently has in promoting the ideals of democracy and how to conduct free and fair elections and the loss of that high ground would translate into a resurfacing of pockets of resistance to democracy abroad. Finally, my study looks at variables previously unexamined in the research literature.

The remainder of this chapter provides an overview of the election administration process in the United States. Stressed and examined, first, are its establishment within the confines and constraints of the Madisonian system of checks and balances, separation of powers, and the structure of federalism. Next, the chapter affords a review of the key components of the election administration process, the mosaic of approaches to each step in this process that exists across the states, as well as the division of responsibilities amongst the tiers of government. Emphasized, too, is how HAVA has influenced existing arrangements variously across the states. The chapter then concludes by reviewing the substance of the remaining chapters in the dissertation.

The Messy Mosaic of Election Administration in a Federal System

Whether we participate in them or not, elections are a component of our civic life. We hear about them on the TV, on the radio, in the newspapers, and online. Elections, it can be argued, have seen a geographic, a demographic, and a functional popularization. Since 1989, the number of electoral democracies in the world has dramatically increased, mainly due to the disintegration of the Soviet Union. Electoral participation, though it can be arguable if fully consistent with democratic standards, has also been adopted in regions such as the Middle East, where there has been an increasing pressure to democratize (through the introduction of popular political participation) and where monarchies, such as Qatar and Oman, have, respectively, introduced local and consultative assembly elections. The demographic popularization of elections, in turn, has been expressed through the enfranchisement of certain groups of individuals, such as women (particularly in the aftermath of World War I, when the enfranchisement of women in Europe and elsewhere was speeded up) and cultural or ethnic minorities, and has had the effect of barring discriminatory practices and increasing the eligible citizen population that can participate in political life. The functional popularization of elections takes the form of a diffusion of the voting process into pop culture for the purpose of amusement and engagement of the audience. This functional popularization is most apparent in very popular TV shows such as Survivor, American Idol and Big Brother, which all have in common the fact that they incorporate, in some form or another, a voting process where there is participant elimination by voting off the weakest or the

wickedest. In these programs, the franchise is either restricted to just the participants in the program or encompasses anyone with a phone line and the desire to call or text the vote.

But while most of us are not concerned for or impacted by the fairness or integrity or even the results of American Idol voting, we certainly are impacted by, and should be concerned about, the conduct and results of political elections that shape the economic, social, and political priorities of nations. Since election administration is a fairly new field of inquiry, its categorization within a social science discipline has not quite been pursued. There have been several political science and public administration theories that have been applied to the study of election administration, hence opening up the potential for a debate about where election administration would fit. Yet neither fields—nor their subfields of federalism and policy implementation that are so applicable to the implementation of election administration reforms like those pursued in HAVA-- have been sufficiently tapped and integrated to boost the heft of the explanatory models offered to date. To see how and why each of these is applicable, we turn next to a review of the election administration process in the U.S., and to how variations across states in each step of this process exist to challenge implementation of HAVA.

Voting, Election Administration, and American Federalism

One way to think of election administration is to look at the main activities it consists of and their role and importance. Elections traditionally encompass the following

main activities: voter registration and voter list maintenance, precinct definition, ballot design, selection and purchase of voting equipment, recruitment and training of poll workers, voting, counting and tabulation of results. However it is conceptualized, the process cannot be characterized without noting the substantial variation cross the states in terms of each of these activities. And the roots of that variation lie in the enduring value of federalism in the American political system, which is always surrounded by political controversy and lack of a single definition about what it means.

Thomas Jefferson once said that the government that governs best is the one closest to the people. In the case of election administration, state and local election officials are the ones closest to the voting process and who, according to the principles of federalism, are in the best position to understand what needs to be done to improve the functioning of elections in their respective communities. American federalism divides authority between states and the federal government and the lines of that authority are to a significant extent defined by the Constitution and relevant case law.

The Constitution foresees a federal-state partnership in the administration of federal elections and delegates to the states a substantial role in the conduct of those elections (National Commission on Federal Election Reform 2001). However, as Alexander Hamilton argues in Federalist No. 59, the Constitutional Convention deliberately chose to submit “the regulation of elections for the federal government” to local governments that, ordinarily, “may be both more convenient and more satisfactory.” But the Constitution “reserved to the national authority a right to interpose, whenever

extraordinary circumstances might render that interposition necessary to its safety” (Hamilton 1788). Therefore, the federal government has broad authority to regulate elections where candidates for federal posts are on the ballot, either in a primary or a general election.

States may generally legislate on all matters within their territorial jurisdiction and this retention of powers acts as a safeguard against a concentration of government authority at the national level. In the process, federalism protects the rights of citizens, but that may not always be the case. Federalism also allows states to act as laboratories for policy innovation, to not wait for the federal government to formulate and implement policy, and to formulate policy that can be tailored to the particular needs of the constituency. On the other hand, the existence of concurrent powers can lead to conflicts between and among the different tiers of government, a lack of uniformity and wide variation in laws and regulations, and parochialism.

Both disadvantages and advantages of federalism can be observed in the way elections are managed in the U.S., as will be discussed in greater depth in following chapters. The electoral process has not remained immune to the realities of federalism nor to the question of what role should the different tiers of government play in the electoral process. That particular question has emerged on several occasions. For the most part, Congress has chosen not to exercise its constitutional authority to regulate the electoral process, provided through Article I, Section 4 of the federal Constitution. It has largely left the management of elections under state and local control, although there have been

notable exceptions when it has done so. One of these notable exceptions is the Voting Rights Act (VRA) of 1965, which abolished literacy tests and poll taxes used to deny African Americans and other minorities the right to vote. It also prohibited the so called “covered jurisdictions” (now nine states and portions of seven others) from implementing new voting practices without first pre-clearing them with federal officials. In 1975, the Act was expanded to include protections for language minorities. Thus, key provisions of the VRA infringe on state powers to regulate the electoral process, making the VRA a significant departure from traditional concepts of dual federalism (Rivers 2006), where fields of state and federal regulation are separate and mutually exclusive.

Another notable exception when the federal government has chosen to intervene in the way elections are managed is the subject of this dissertation—HAVA. The Florida debacle in 2000 essentially raised the key intergovernmental question of whether the federal government should again intervene in the state and local control of elections, and what that intervention should be in order to restore public confidence in the electoral process and ensure its integrity. These issues will be explored in more depth in subsequent chapters, but it is important to note here that HAVA challenged the status quo that existed in the way elections were managed, put states in a position to claim more authority in relation to localities, and generated an expanded federal role.

Elections, Elections, Elections! The Process in Analytical Perspective

The election process traditionally encompasses the following main activities: voter registration and voter list maintenance, precinct definition, ballot design, selection

and purchase of voting equipment, recruitment and training of poll workers, voting, counting and tabulation of results, and election observation/monitoring.

Voter Registration and Voting List Maintenance. Voter registration is a critical component for democratic participation. The primary purpose of voter registration is to create and maintain an accurate list of all those who are eligible to vote. Voter registration data is also used to facilitate administrative tasks ranging from provision of polling places to ensuring that there are enough ballots across precincts on election day. In the U.S., the responsibility for registering to vote falls upon citizens. In other words, voter registration is not automatic, as it is in some other democracies.

All U.S. states and the District of Columbia, with the exception of North Dakota, require voters to be registered in order to be able to vote. North Dakota abolished voter registration in 1951, but North Dakota law still provides cities with the ability to register voters for city elections. Yet, precincts in North Dakota do maintain a list of voters who have voted in previous elections as the basis for allowing voters to cast ballots. Several pieces of federal legislation affect or regulate the process of registering voters. The Voting Rights Act of 1965 prohibits voting practices and procedures, including voter registration procedures, which discriminate on the basis of race, color, or membership in a language minority or have a racially discriminatory impact. The Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA) requires states and territories to allow certain groups of citizens to register to vote absentee in elections for federal offices. The National Voter Registration Act of 1994 (NVRA, also called the Motor Voter

Act) requires that states provide individuals the opportunity to register to vote when they apply for or renew their driver's license and at all offices that provide public assistance to individuals with disabilities. Finally, the Help America Vote Act of 2002 (HAVA) requires all states to build centralized voter registration databases.

Voter list maintenance is an important task. Depending on the state, the responsibility for voter registration list maintenance falls on local officials, state officials, or both, but it has been an activity mainly controlled by local governments (usually counties). State and local officials regularly remove citizens from voter registration lists as a way to ensure they are accurate and up-to-date. Voters are generally purged based on one of the following grounds: (1) changes of address, (2) death, (3) disenfranchising criminal conviction, (4) duplication of other records, (5) inactivity or failure to vote, and (6) mental incapacitation (Pérez 2008).

More often than one might expect, voter list maintenance results in the removal of eligible voters, effectively disenfranchising them. One of the contentious issues surrounding the controversial 2000 U.S. presidential elections was precisely the fact that Florida state officials wrongly purged voter rolls of close to 12,000 people due in part to bad matching criteria: registrants were purged from the rolls in part if 80 percent of the letters of their last names were the same as those of persons with criminal convictions (Pérez 2008). However, one of the biggest problems that the 2000 election also revealed was that, actually, states also failed to remove deceased voters from the voter rolls. Studies that have looked at the voter list maintenance process across the states have

identified several critical problems in the process: states use lists that are often riddled with errors; voters are purged secretly and without notice; purging techniques are problematic and state statutes rely on the discretion of election officials to identify registrants for removal without providing specific guidelines or limitations on the authority of election officials; and purges are not under sufficient oversight (Pérez 2008).

However, voter registration list maintenance has also *helped* identify duplicate registrations, an occurrence most probably attributable to the high mobility of the U.S. population. When a registered voter moves from one county to another within a single state, if the voter does not take the initiative to update his/her voter registration status, there is no simple and efficient way for both counties to simultaneously update their voter registration database for that voter (Alvarez 2005). This can lead to inaccurate voter registration lists and open up the potential for voter fraud.

The same rationale applies to when voters move from one state to another, but few have made interoperability or exchanging data with other states to cross-check for multiple registrations a priority (Center for Democracy and Election Management 2008). There are, of course, a few exceptions. The Midwest has established an ongoing model for data exchanges, the first of which began among Iowa, Nebraska, Missouri, and Kansas in 2006 (Center for Democracy and Election Management 2008). Minnesota and South Dakota were added to this data exchange group by 2007 and a second cross-check was run that same year. Consequently, Kansas removed 27,629 registrations from the rolls in 2006, 66,483 in 2007, while the other states removed somewhat smaller numbers

of individuals (Greene 2007). Also in 2007, a new group was created, led and hosted by Kansas, including Arizona, Arkansas, Colorado, New Mexico, Oklahoma and Texas, that would exchange voter registration data in 2008. In 2007, Louisiana undertook its own effort to crosscheck voter registrations, using data from San Diego (CA), Colorado, Florida, Georgia, Las Vegas (NV), New York (NY), Tennessee, and Texas (Greene 2007). This crosscheck resulted in nearly 20,000 voters being purged from the rolls. This data attests to the importance of data exchanges among states; the high population mobility in the U.S. enhances the need to keep voter registration rolls accurate.

District and Precinct Definition. District and precinct definition are the next steps in election administration. Redistricting, in the United States, is a particularly contentious issue. It aims to ensure that about the same number of people live in each district and, consequently, that each person is equally represented by the government. Redistricting occurs at the federal, state, and local levels every ten years on the basis of information from the decennial population census.

Redistricting is a central task in a district-based election system because the nature of districts often affects the electability of candidates and, possibly, the results of elections. It is a process conducted by states through a patchwork of state laws, constitutional provisions, and federal guidelines that apply to drawing all electoral districts (McDonald 2004). Each state decides for itself who will draw district lines for its Congress members and for its state legislators (Levitt 2010), but two basic principals govern all redistricting the United States: all parts of a district must be contiguous and a

district must be reasonably compact in shape. These principles are followed to deter the conscious process of manipulating district lines to increase the likelihood of a particular electoral result, or gerrymandering. Gerrymandering has been deemed unconstitutional by the Supreme Court of the United States in certain circumstances: when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole (Davis v. Bandemer 1986).

Precinct definition is a process of defining the boundaries of a precinct by election officials based on factors such as the number of voters that a polling place can be expected to serve on election day (National Research Council 2006: p. 19). Consequently, precinct boundaries can change from election to election due to voter migration in and out of the precinct (National Research Council 2006: p. 19). All voters in the same precinct vote on the same races and have the same ballots, so voter registration lists are closely associated with precincts (National Research Council 2006: p. 19). Voters who want to cast their ballots on the day of the election need to do so at their respective precinct.

However, since 2003, experiments have been made with vote centers—non-precinct based locations for voting on election day—as an alternative to precinct voting. Vote centers essentially are polling places where any voter in the county may go to vote on election day. Voters are provided ballots appropriate to their voter registration address. In 2003, Colorado's Larimer County was the first place in the country to replace precinct-based polling places with Election Day Voting Centers (EDVC). EDVC are fewer in

number than precinct-voting stations, centrally located to major population centers (rather than distributed among many residential locations), and rely on county-wide voter registration databases accessed electronically (Stein and Vonnahme 2006). The advantages of vote centers include improved and more streamlined election management, cost savings, and greater convenience to voters (Indiana Secretary of State Office 2005). The use of vote centers is still being studied and explored for its potential benefits, but some research has demonstrated that the use of vote centers had lead to an increase in turnout and the effect has been greatest among those least likely to vote (Stein and Vonnahme 2008).

Ballot Design. Ballot design is the next step in the election administration process. Here, the list of races is laid out on ballots. Ballot design impacts two important aspects of the election process: a) the ability of voters to understand the choices of candidates running in the election and b) the ability of voters to accurately record their votes, since poorly designed ballots can lead to mistakes in marking the voter's choice. Poor ballot design was another major problem that marred the 2000 presidential elections. The poor design of the infamous "butterfly ballot" in Florida led to thousands of people mistakenly voting for the Reform Party candidate, Pat Buchanan, when they meant to vote for Democrat Al Gore, or spoiling the paper as they tried to correct their mistake.

The responsibility for ballot design varies from state to state. In some states, such as Oklahoma, ballot design is primarily done at the state level for state and federal offices

(General Accounting Office 2001). In other states, such as Virginia, ballots are designed by local election officials but the design needs to be approved by the State Board of Elections (General Accounting Office 2001). Frequently, counties within the same state have created different ballot designs for the same federal and statewide races. Ballot design considers state laws on structure and ballot access rules, minority language requirements for jurisdictions covered by the Voting Rights Act, the type of voting equipment used, and the combination of offices and issues for which people can vote for (Montjoy 2008).

Selection and Purchase of Equipment. Another critical aspect of the election administration process is the selection and purchase of voting equipment. The choice of voting technology is decentralized. The federal role is minimal and the choice of voting equipment rests with either the state or counties. Voting equipment is used to record the voter's choices on races as well as to facilitate the counting of those votes. Today in the U.S., there is a wide variety of voting systems in use: paper ballots, punch cards, mechanical lever machines, optical scanning devices, direct recording electronic (DRE) systems, and mixed systems. As Table 1.1. illustrates, optical scan machines and DREs are the most common. Until the enactment of HAVA, no federal funds were available to states and counties for the purchase of voting equipment. HAVA provided funding for states (about \$325 million) to replace the outdated punch card and lever voting machines by 2006, and as a result, they are used less.

Table 1.1: Type of voting equipment used across counties during the 2000 and 2008 elections (in percentages)

Voting equipment	2000	2008
Optical Scan	41%	59%
DRE	10%	34%
Punch card machines	18%	0.3%
Lever machines	14%	2%
Paper ballots	12%	2%
Mixed (multiple types)	5%	3%
Total	100%	100%

Source: Election Data Services. Available at: www.electiondataservices.com

HAVA also set several requirements for voting machines used in an election for federal office: 1) each polling place must have at least one voting machine that allows disabled voters, including visually impaired voters, to cast their vote without assistance; 2) must permit the voter to verify and change or correct his/her votes before the ballot is cast and counted; and 3) must notify the voter of overvotes (when the voter selects votes for more than one candidate for a single office).

Immediately after the events following the 2000 presidential election, electronic voting machines seemed like the best solution to voting technology problems. However, since then, significant concerns have been raised about the security and reliability of electronic voting systems. Critics base their concerns on instances of weak security controls, system design flaws, inadequate system version control, inadequate security testing, incorrect system configuration, poor security management, and vague or incomplete standards (Government Accountability Office 2005; Carrier 2005). In one

recent case, voting machine manufacturer Premier Election Solutions acknowledged that software used in 34 states could cause votes to not be counted (Flaherty 2008).

Concerns for the security and accuracy of election results prompted California Secretary of State Debra Bowen to commission in 2007 an independent, top-to-bottom review of voting technology. Following the review, Bowen strictly limited the use of DRE voting machines, and imposed significant security and auditing requirements on systems used in California. Additionally, after top-ranking state officials – the governor or secretary of state – raised concerns about the security and accuracy of DRE systems in five states (California, Colorado, Florida, New Mexico, and Ohio), decisions were taken to scrap this voting equipment and turn back to paper-based balloting (electionline.org 2008).

A contentious issue surrounding the use of voting equipment is whether or not to incorporate a voter verifiable paper audit trail (VVPAT). A VVPAT consists of a physical paper record of ballots cast as voters have cast them on the electronic voting system (National Research Council 2006:42). Proponents of VVPAT have argued that vote records stored electronically have an inherently uncertain lineage (since a record written fraudulently is undistinguishable from a record written legitimately). Hence if voting machines had the possibility of producing a VVPAT, it would provide a paper trail in the event of an election recount or audit (National Research Council 2006:42). In turn, critics of VVPAT argue that having a paper trail as an authoritative record brings back all the problems associated with paper-based elections. No federal legislation has been passed

on the subject thus far.

Recruitment, Training, and Retention of Poll Workers. Yet another critical aspect of successful election administration is the recruitment and retention of competent, non-partisan or impartial, poll workers. They are the “street-level bureaucrats” of elections (Alvarez and Hall 2006) and are another critical component for well run elections. They are the largest one-day workforce in the U.S., and it is estimated that about 2 million Americans serve as poll workers every federal election (electionline.org 2007). Poll workers are responsible for setting up the polling place on election day; determining where and how voter information is displayed; assessing whether a voter is eligible to vote and, if not, whether the voter is given a provisional ballot or told to go to a different precinct (Claassen et al. 2008). In many jurisdictions, poll workers have “the final authority on interpreting guidance in areas such as deciding who can vote and determining voter intent” (General Accounting Office 2001: 160). Consequently, poll worker recruitment, training, and behavior on election day matter for the quality of service rendered at a polling station--much like the quality of service rendered at any public service agency.

Problems revolving around poll workers include difficulties in enlisting enough of them to serve on election day, ensuring they receive adequate training, and preventing absenteeism. One study found that 51% of jurisdictions nationwide had significant problems recruiting enough poll workers (General Accounting Office 2001: 158-160). Having a small pool of poll worker applicants makes it difficult for local election officials

to screen them adequately, because they cannot afford to turn many applicants away. Recruiting poll workers is also difficult because election administrators do not have the financial resources to provide significant monetary incentives. Daily wages are left at the discretion of local jurisdictions (electionline.org 2007). Depending on the state, some poll workers are paid by the day, others by the hour: Alaska poll workers are paid \$9.50 per hour, while in New York compensation ranges from \$75 to \$325 per day based on rates set by the county boards of elections (electionline.org 2007). Recruitment is also difficult because poll workers are typically required to work the entire election day (which can be as long as 16 hours).

Neither is there national uniformity in poll-worker training: 18 states leave poll-worker training and curriculum to local jurisdictions; 22 develop training materials for every jurisdiction; and 10 states have training programs that use elements of state-mandated curriculum in locally designed training programs (electionline.org 2007). Election administrators also report that a disturbingly high number of recruited poll workers fail to show up on Election Day (Alvarez and Hall 2006). Absenteeism of poll workers on election day can lead to long lines at the polls, confusion, and the need for other poll workers to take on additional responsibilities that they might not have been trained to do in order to fill in for no-shows (electionline.org 2007). Studies also have revealed that poll workers play a major role in the way voters feel about their voting experience. Using exit poll data, it was found that when voters feel good about their interactions with poll workers, they feel better about their voting experience and more

confident about the electoral system (Claassen et al. 2008). Most significantly, it was found that poll worker evaluations were positively related to poll worker training and special recruiting efforts.

The work that pollworkers do has been impacted by the changes in the voting technology. The technology used at polls can sometimes be a little challenging to understand not only by voters, but also by poll workers. Systematic studies of poll workers in Iowa, Ohio, New Mexico, Utah, as well as national survey data have found that poll workers have a median age ranging between 55 and 67 (Atkeson, Alvarez, & Hall 2007; Center for the Study of Elections and Democracy 2008; Hall 2009). The use of voting technology for that age group has sometimes proved challenging and the EAC has addressed this by encouraging states to recruit college students to serve at the polls. College students tend to be more comfortable with the voting technology and may have skills that can solve the technology-related problems, with proper training.

Vote Casting, Counting, and Tabulation. Yet another key aspect of election administration is determining how votes are cast. Once again, the process of casting ballots in the U.S. takes many forms. All states offer voters the option of voting on or prior to election day. In some states, the ballots are returned by mail—which is generally referred to as absentee voting—while in other states voters are allowed to vote in person at the offices of county clerks or at other satellite voting locations. The latter is referred to as early voting or in-person absentee voting (National Conference of State Legislatures 2008). Early and absentee voting are seen as providing more flexibility to voters and

possibly reducing election day lines and polling place problems. Early voting is offered in 31 states and is generally conducted on the same voting equipment used in the regular election, while absentee voting is conducted on mail-in paper ballots. The state of Oregon conducts all of its election entirely by mail.

It is also important to note for the purposes of this dissertation that the enactment of HAVA led to new rules for election day voting. One of the most important rules was the requirement that citizens be permitted to cast provisional ballots, which are conditional ballots that allow voters whose names do not appear on the roll to vote if they believe that they are eligible to do so due to an administrative error or for some other reason. This new rule came about because one of the problems during the controversial 2000 elections was eligible voters being turned away from the polls after their names were wrongly omitted from the voter registration lists. Before HAVA, at least eighteen states had no provisional voting procedures (Weiser 2006).

A contentious issue across the states is how best to prevent voter fraud. Should states require voters to show ID in order to vote and, if so, what should an acceptable ID be? States have different voter ID requirements. Concerns about voter fraud (voter impersonation or voting by ineligible individuals) has led to calls for stricter ID requirements in some states, but these have been countered by arguments that individual voter fraud is rare and that more stringent ID requirements may prevent some eligible citizens—such as the poor, minorities, or the elderly—from voting. While HAVA established the first national minimum identification requirements for first-time voters

who registered by mail, several states decided to go beyond the minimum. As of 2012, a total of 31 states have gone beyond the standards set by HAVA and require all voters to show ID before voting at the polls (National Conference of State Legislatures 2012). Of these, 8 have strict photo ID requirements (Georgia, Indiana, Kansas, Mississippi, South Carolina, Tennessee, Texas, and Wisconsin) and voters must show a *photo* ID in order to vote; 7 have photo ID requirements (Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, and South Dakota) and voters are asked to show a photo ID in order to vote; and 16 states that require ID and the list of acceptable IDs varies (Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, North Dakota, Ohio, Oklahoma, Rhode Island, Utah, Virginia, and Washington).

The process of counting and tabulating results is perhaps the most anticipated moment of the election day. This process initially begins with the sealing of voting machines to ensure that no more votes are cast after the polls close. Votes from precincts can be counted either there or taken and counted at a central location for an initial tabulation. The final tabulation is available a couple of days after election day and includes all valid votes cast in precincts on election day, cast provisionally, and cast early or absentee. In the event of a contested election when the results are disputed due to technical problems or allegations of fraud or misconduct by voters, election administrators, or the candidates themselves, a recount (a re-tabulation of the election results) ensues. Each state has its own laws regarding what may trigger a recount, and they usually fall within one of the following general categories: candidate initiated, voter

initiated, closeness of an election (required when the margin of victory is small), and automatic (required by law regardless of vote margin) (Election Assistance Commission). States define “small margin of victory” different, so while some have legislation triggering an automatic recount when the margin is 0.2% or less, others set that level at 0.5% (National Conference of State Legislatures 2004).

Election observation/monitoring. A cornerstone of U.S. international development assistance is the promotion of free and fair elections abroad. A significant component of this assistance consists of ensuring that international observers have access to observe the entire electoral process as part of a package of other transparency promotion measures. These are designed to ascertain that elections are conducted according to international standards.

In 2005, however, the Carter-Baker Commission noted that while the U.S. insists on full access by its election observers to the elections of other countries, international observers are denied or granted only selective access to U.S. elections (Commission on Federal Election Reform 2005). A resolution passed that year by the National Association of Secretaries of States (NASS) welcoming OSCE observers was a step forward to address this problem, but the resolution was valid for 5 years. At the time, just Missouri allowed international observers to access polling stations. As of January 2010, only South Dakota, North Dakota, New Mexico, Missouri, and the District of Columbia, explicitly permit international observers. In terms of domestic observers, 49 states (Connecticut is the exception) permit partisan election observers and 43 states allow non-partisan

observers.

The Dogs That Haven't Barked Enough

Election administration has been of limited concern to both public administration scholars and practitioners. Yet, the conduct of elections is a service provided directly by the government (with involvement of federal, state, and local government entities) and hence—a public service. Also, the most important values of election administration match those of public administration: equality and fairness in administrative procedures, accountability, transparency, protection of citizen's rights, and legality. In addition, because of the very type of process it is—one of administration—it is a topic that most logically falls within public administration.

Elections are both a supreme political act and a routine administrative exercise (Pastor 1999). It is that nature that makes them quite unique for their ability to focus public attention, both national and international, and it is that nature which also makes them potentially explosive in terms of the consequences of errors or manipulation of the electoral exercise. The 2000 U.S. election focused the nation's attention, as well as international attention. Much like the 2004 Ukrainian presidential election and following Orange revolution did internationally, on the process of conducting elections and its importance for the legitimacy of the results.

As a public service that directly impacts the lives of everyone, it would be an extreme oversight if public administration scholars and practitioners were not concerned with the management of elections or its study. It would be inconceivable to think and believe that the process through which one elects the leaders and policy-makers of nations should be immune to rigorous inquiry and analysis, given the tremendous impact the results of an election have over the course of development of nations.

By the same token, the intergovernmental nature of the process generates the need for examination of election administration through the conceptual lenses of federalism and intergovernmental relations, as states and counties play different roles in the process, and policy implementation. As discussed, the issues involved in election administration—and HAVA's relevance to it—are imbued with conventional questions regarding the appropriate level of government for performing various tasks. Historically, and for better and for worse, election administration has been seen as lying squarely within the responsibilities of state and local governments. Yet the focusing event of the 2000 presidential election fiasco in Florida (and in other states) propelled classic issues of capacity, consistency of application, and equity to the forefront of institutional policy agendas across the country.

The consistency of response and implementation of HAVA has been anything but uniform across the states. As students of American political development might suggest, the path dependency of federalism has proven a formidable barrier to uniform change. In essence, the virtues of federalism—local control, flexibility, and tailoring of policy and

programs to local circumstances in an effort to best meet the needs of local constituencies—have run into the downsides of federalism when consistency, national interests in fair elections, and uniformity of implementation are needed to restore legitimacy in the minds of Americans generally, and the world's confidence in America's democratic institutions. As such, a key implementation question addressed by this dissertation begs application of insights from the policy implementation literature as well: *What factors account for the variation in the implementation of HAVA election reforms across the states?*

HAVA: a solution or a problem?

As states began to develop plans to implement HAVA, election officials complained about unrealistic timetables for compliance with HAVA and Congress' failure to appropriate funds authorized by the law. Of the \$4 billion dollars appropriated to implement the HAVA, only a little over \$650 million dollars were actually released in 2003, the first year of implementation of the Act. The remainder was held up by delays in appointing the four members of the EAC (Chapin 2004). The EAC Commissioners were only appointed and confirmed in late 2003 and did not begin work until January 2004. Consequently, the remaining \$2.3 billion dollars appropriated under HAVA were delayed until the EAC could arrange for printing state election reform plans in the Federal Register and states could self-certify their compliance with the Act's various mandates

(Chapin 2004). This delayed the implementation of the Act across the states. Implementation of HAVA across the states, and in particular in Maryland and New York, will be the topic of Chapter 3, but before that, it is important to point out some of the most important criticisms of HAVA.

Some of the major criticisms and problems relating to HAVA have had to do with the EAC, mainly with its (lack of) powers and its structure. The EAC, as stipulated by HAVA, has a very limited role and no regulatory powers. Bills were subsequently introduced to give the EAC regulatory powers, but this remains a sensitive issue (Montjoy and Chapin 2005). Another problem with the EAC relates to its structure (Pastor 2004). Like the FEC, the EAC is a bipartisan body with equal representation of Democrats and Republicans as its members. The bipartisan nature of the commission is intended to prevent either party from using the EAC for partisan advantage (Montjoy and Chapin 2005). Although there have been numerous bipartisan investigatory commissions, exact parity between the parties is not the norm for permanent bodies (Montjoy and Chapin 2005) and this type of structure, as shown by the FEC, can lead to impasse along partisan lines (Pastor 2004; Simon 2004).

Employee satisfaction surveys have shown another set of problems with the agency: although a large majority of EAC staff believe their work is important (87%) and believe their talents are used well in the work environment (74%), just 65% agree that they know how their work relates to the agency's goals and priorities. Furthermore, just 48% are satisfied with the training they have received for their present jobs (Election

Assistance Commission 2008). HAVA has also been called a “barrier to change” when it comes to voting equipment (Fail 2006). Since the funds for upgrading voting machines were available only once and had to be spent before the January 2006 deadline, states could not save money for gradual upgrades (Fail 2006). Thus, HAVA incentivized states to spend large amounts of money in long-lasting ways, which might ensure that future upgrades occur only infrequently and at great cost to state and local election agencies (Fail 2006). Furthermore, while HAVA authorized \$650 million to replace outdated voting equipment, it did not indicate which machines should be selected to replace that equipment, but instead just mandated a series of standards that no existing machine could meet and established the EAC to draft guidelines for choosing the best machines (Pastor 2004).

In sum, and in the context of the decentralized electoral system in the U.S., HAVA changed the electoral administration landscape through a redistribution of authority over election administration (Shambon 2004; Alvarez and Hall 2005; Liebschutz and Palazzolo 2005) where local control and loose state and limited federal oversight were replaced by stronger state control vis-à-vis localities and loose federal oversight (Shambon 2004). Ultimately, though, the relationship between the state *vs.* its counties, depended on and varied from state to state.

HAVA also generated an expanded federal role, primarily through the creation of the EAC and through its Title III requirements, which gives states a set of uniform administrative requirements (hence it introduced some centralization in election

administration). HAVA also assigns responsibilities to a series of federal agencies, testifying to the movement from limited to an extended, loose, federal role. The EAC administers the HAVA funds and other provisions; the National Institute of Standards and Technology (NIST) provides assistance in the areas of voting technology and standards. The Department of Health and Human Services provides grants to states and local governments to address the problem of voters with disabilities. The Social Security Administration shares voter registration files with driver's licensing agencies. The Department of Justice enforces requirements on states by civil actions in federal courts and the Department of Defense administers new requirements to facilitate registration and absentee voting by members of the armed forces (Palazzolo and Ceaser 2005: 19-20). HAVA also represents the first time in American history that the federal government agreed to provide federal funds to states to help offset the costs of administering federal elections. It authorized \$3.86 billion, which are intended for the replacement of outdated voting equipment, the improvement of election administration and accessibility, poll worker recruitment, and research and pilot studies.

The stronger role that HAVA permitted for states is both in relation to the federal government as well as in relation to localities. In relation to the federal government, the strong role lies in the broad discretion awarded to states in the implementation of HAVA. Section 254 puts the state in a dominant position for implementing the Act and Section 255 affects the control each state has over the planning process based on its power to determine the composition of its state planning committee (Alvarez and Hall 2005). Thus,

while Title I unambiguously conveys the message that punch card voting machines should be replaced, it does not specify with what kind of machines. It just specifies the requirements that the new machines must meet (permit voters to verify their vote before the ballot is cast, allow for corrections prior to casting the ballot, notify the voter if he/she overvoted, etc.). The same discretionary power applies to the states' selection of type of statewide voter registration databases—top-down, bottom-up or hybrid.³ While the EAC has expressed a preference for top-down systems, it has not ruled out bottom-up systems and has left it for the states to decide the type of system. In addition to the discretionary power awarded to states, the increased role of state over local election administrators is evidenced by the fact that eleven states, as a response to HAVA, increased the authority of the Chief Elections Officer (CEO) in the state in one way or another (Palazzolo and Ceaser 2005: 31). The increased state role in relation to localities is also apparent in the type of infrastructure selected for the statewide voter registration database. HAVA allowed for a centralization of control over voter registration data as it required states to shift to centralized voter registration lists at the state level and away from the estimated 3,000, and mostly locally administered, voter registration lists.

Literature Gaps in the Study of the Implementation of Election Reforms

³"Top-down" voter registration systems are those in which local election authorities supply information to a unified database maintained by the state (Commission on Federal Election Reform (2005). "Bottom-up" system are those in which counties and municipalities retain their own registration lists and submit information to a state compilation of local databases at regular intervals (Commission on Federal Election Reform (2005).

As this dissertation will demonstrate in subsequent chapters, researchers have begun to try to explain variation across the states in the implementation of HAVA. Still, several gaps arise in the literature. While useful for understanding the adoption and implementation of election reform, research to date largely ignores the role of federalism and intergovernmental relations.

Federalism is an essential part of the American political culture, though the concept of federalism is constantly changing (Radin et al. 1996). However, the debate about what the division of power and authority between the national government and states should be has remained a constant as old as the United States. Federalism studies, as this one will be, have thus focused on analyzing how power and responsibilities shift between the federal and state governments across time and across different policy fields. Election administration has not remained immune to the forces of federalism. The administrative decentralization that federalism creates is a critical, yet largely unexplored aspect of election administration, with a few exceptions (Ewald 2009; Creek and Karnes 2009). But those exceptions have been limited in their scope of inquiry and hence in the generalizability of their conclusions because they were either case studies with a simplistic conceptualization of a cause and effect relationship (Creek and Karnes 2009) or because the study (Ewald 2009) emphasized a single aspect—the Act’s effect on felony disenfranchisement—and not nearly amongst the most important ones, of HAVA.

Intergovernmental relations focuses on the study of relationships and interactions between governmental units of all types and levels within the U.S. (Wright 1988) although this term also is characterized by conceptual messiness (Radin et al. 1996: 13). HAVA affects the roles that the federal, state and local governments came to play in the years after its passage. With HAVA, as previously discussed, the distribution of power in the administration of elections amongst local, state and federal levels changed and there was a shift toward the standardization of certain features of election management across the states. For example, pre-HAVA, only 18 states administered provisional balloting, but HAVA asked all states to provide provisional ballots (although how and when those provisional ballots are counted now has become another area of variation from state to state and from county to county). Also, pre-HAVA not all states had a statewide voter registration list, while HAVA required them to have one. Yet, on both provisional ballots and voting machines, the federal government largely left it to the states to decide how they were going to implement these requirements and further variation resulted from that devolution.

Such changes have not happened in a vacuum as “[d]uring the period of the Bush Presidency, the federal government proceeded to centralize and nationalize policy in major areas formerly controlled by states and localities. The extension of federal goals and standards to such areas as education testing, sales tax collection, emergency management, infrastructure, and elections administration were among the areas of significant mandates and preemptions” (Posner 2007). Considering all this, it is necessary

to ask: what are the factors that affect the adoption of the election reforms proposed by HAVA in the context of federalism?

Other issues also remain untouched in the current literature that relate to intergovernmental relations and federalism but that are studied through the lens of policy implementation. Some authors have used the policy implementation literature as a framework for analysis. However, an unexplored aspect is to look at HAVA from the perspective of backward (also called a bottom-up perspective) and forward (also called a top-down perspective) mapping. These two conceptual frameworks can generate different policy solutions, with differing emphasis on what policy implementation tools to employ. The predominantly used conceptual framework has been that of forward mapping, which argues that policy implementation begins at the top of the policy process, with a clear statement of the policy maker's intent, and proceeds downward through an organization or system of implementation to define what must occur at each level of government and to allocate responsibilities to the implementing units. All this raises an important question: Does HAVA assume such an approach as well, being a federal law drafted in the midst of a coercive federalism era (Posner 2007)?

Interestingly, administrative capacity and performance has never been an issue of concern in the literature—despite its centrality to the implementation literature more broadly. Administrative capacity is difficult to define and measure, but studies have suggested that administrative capacity runs higher in richer and more urban states (Barrilleaux, Feiock, & Crew, 1992; Sigelman, 1976). Barrilleaux, Feiock, and Crew

(1992) have noted that administrative *professionalism, political neutrality and representativeness are generally viewed as hallmarks of good administration*. HAVA provides federal funding to the states and vests the *chief election officials* in the state with responsibility for implementing the provisions of HAVA. In addition, Section 303(a) of HAVA also stipulates that the *chief state election official* shall implement a statewide voter registration database. Chief election officials, however, vary in terms of whether they are partisan, nonpartisan, or bipartisan. Hence, a proxy for administrative capacity could be the status of their positions—partisan, nonpartisan, or bipartisan—with nonpartisan representing the hallmark of administrative capacity. The question then is: which one of these three types of chief election officials will affect more their state’s process of coming into compliance with HAVA?

There also is a gap in the literature as it relates to accurate measurement of outcomes. Previous studies have created indexes (measuring the *number* and *types* of reform enacted by states) that lump many areas of HAVA-related election reforms together (see Greco 2002; Palazzolo and Liefer 2004). While this approach also sheds insight into factors affecting HAVA implementation, it is limited since it merely focuses on the *outputs* (*number* and *types* of election reforms enacted by states) of the implementation process instead of the *outcomes* (the actual setting up of the voter registration databases and the actual implementation of overall HAVA provisions as a result of the enacted reforms). The policy process is ultimately interested in the end result—the outcomes—which in this case are able to be translated into (aggregated and

disaggregated) measurable variables and thus able to be incorporated into an empirical model. In addition, lumping reforms into a single index disregards state sensitivities to some policy areas.

Importantly, HAVA has not remained the final judgment about the federal role in election administration as Congress has sought to amend the Act, in some cases by imposing new federal requirements on state election systems (Palazzolo et al. 2008). The role of the federal government in election administration might still be subject to change, particularly in certain targeted areas, such as voting technology. Federalism and intergovernmental relations look at precisely such change and moving targets that. What must next be analyzed, however, is how HAVA is being implemented and what has hampered or helped that implementation as well as how federalism, intergovernmental relations and policy implementation may explain that.

What Follows?

With the preceding as background, the remainder of this dissertation is organized as follows. Chapter 2 examines the 2000 election and the problems it revealed (administrative and otherwise), the management of elections before HAVA, the bipartisan compromise resulting in HAVA as well as the Act's main provisions. Chapter 3 examines the dynamics animating two very different responses to HAVA in New York and Maryland: while Maryland was the first state to come into compliance with HAVA, New

York State was sued for its failure to comply with the Act. Chapter 4 reviews the theoretical frameworks that can help explain the dynamics of implementing federally mandated election reforms across 50 states with diverse legal, political, and socioeconomic conditions that can modulate the implementation of federal mandates. These frameworks are policy implementation, federalism and intergovernmental relations. The chapter derives a series of propositions from each theoretical perspective that has analyzed election reform and then provides a theoretical framework for understanding variation in successful implementation of HAVA across the 50 states. This chapter also lays out the data and methods used in this dissertation. Chapter 5 then offers and tests an empirically grounded theoretical framework and model for explaining cross-state variations in the implementation of HAVA using variables culled from the case studies and the reviewed literature. Chapter 7 concludes the study by assessing the implications of the findings for practice and future research on election administration in the United States.

CHAPTER 2

THE HELP AMERICA VOTE ACT (HAVA): MAJOR PROVISIONS AND EFFECT ON ELECTION ADMINISTRATION IN THE United States.

Although the election administration problems in Florida were the major focus of public attention during the 2000 election, Florida was not the only state that experienced problems during that election. It is possible that the problems experienced during that election were not confined to 2000, but had been there for a while and it took a focusing event to call public attention to them. The problems were emblematic of overall system failures that challenged its integrity: voting technology problems, voting problems and irregularities; problems with ballots from military and overseas voters; partisanship of chief election officers; the Electoral College; and media projections of state outcomes before polls had closed. Deeply divisive and controversial were also the manner and rationale by which the election results were settled by the U.S. Supreme Court under *Bush v. Gore*. This chapter will examine the 2000 election and the problems it revealed (administrative and otherwise) as well as look at the legislative efforts that subsequently ensued to attempt to deal with these problems. The chapter will also look at the management of elections before HAVA, the bipartisan compromise resulting in HAVA, and the Act's main provisions.

Problems Plaguing the November 2000 Election

The problems with the election system, which became apparent in 2000, spanned an array of issues that ranged from technical malfunctions to faulty media projections, which in a close election can become critical. Practically every aspect of the election, including the Supreme Court's *Bush v Gore* (2000) decision that resolved its outcome, came under close scrutiny and criticism. These problems are analyzed below.

Voting machine and ballot design problems

In November 2000, precincts across the U.S. used five different voting methods: hand-counted paper ballots (2%), lever machines (18%), punch card (33%), optical scan (30%), DRE equipment (11%), or a mixture of methods (6%) (General Accounting Office 2001a). The lever machines are large mechanical devices that allow voters to mark their preferences by throwing levers that record votes mechanically. Punch card machines, developed in the 1960s to provide a fast and accurate method of tabulating ballots at a central location, allow voters to indicate their preferences by punching out “chads” in computer-readable cards. Optical scan machines allow voters to connect broken lines or fill in ovals to indicate their vote. Finally, DRE, or touchscreen, equipment functions the same way an ATM screen does. Any of these voting methods can produce complete and accurate counts as long as the technology used is properly maintained *and* voters and election workers are properly informed and trained on how to use it (General Accounting Office 2001a).

This diversity in voting equipment stems from the fact that elections are administered at the state and local levels, and at the time, the federal government did not provide funding to state and local jurisdictions for the administration of elections. Traditionally, counties (and often lower jurisdictions such as cities, towns and villages) individually selected, owned, paid for and administered the voting machines used locally while the role of the state was to regulate the voting machines purchased by counties (Jones 2001). This essentially meant that counties within the same state could use different voting equipment for the same election and this was in fact the case in many states, including Florida, where each county was authorized to select its voting method from a list of systems certified by the secretary of state and the state Division of Elections. Furthermore, some counties did not have uniform voting technologies either as it was possible for municipalities and sometimes individual precincts in the same county to use different voting systems (Alvarez et al 2001). Such counties with mixed voting systems represented 6% of all precincts in the 2000 election. They were located mostly in Massachusetts, Michigan, Maine, New Hampshire, and Vermont, where town governments were traditionally in charge of managing elections (Alvarez et al 2001).

Who paid for the voting equipment and other election costs? By 2002, just before HAVA was passed, a survey found that: in 19 states, localities entirely bore the cost of running elections; in 22 states, localities received reimbursement for specific costs or for a share of the costs from the state; and in 9 states, the state government paid for the majority of election costs or provided funding for voting equipment (electionline.org)

2002).⁴ This variation makes it difficult to derive a single pattern and each of these approaches was most likely the result of different political cultures and history.

Pre-HAVA, as well as post-HAVA, the federal government did not set mandatory standards for voting systems. No federal agency had been assigned explicit statutory responsibility for developing voting equipment standards, but the Federal Election Commission (FEC) assumed this role by developing voluntary standards in 1990, and Congress provided funding for this effort (General Accounting Office 2001b). Additionally, no federal agency was responsible for testing voting equipment against the voluntary federal standards. Instead, the National Association of State Election Directors accredited independent test authorities to test voting equipment against the standards. Just before HAVA was passed, a survey showed that 35 states required localities to purchase machines that have been tested and approved by the state election authority; 6 states had no rules regarding voting systems or required only that systems meet federal – and not state – standards; and 9 states purchased machines for localities or provided the funding for that (electionline.org 2002).

The voting equipment that drew the most attention during the 2000 election was the punch-card machine. During the November 2000 election, more ballots were cast

⁴States where localities entirely paid for the cost of running elections: Connecticut, Indiana, Iowa, Kansas, Maine, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming. States that reimbursed localities were: Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Kentucky, Massachusetts, Michigan, Missouri, Nevada, New Mexico, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington. States that paid for the majority of the election costs were: Alaska, Delaware, Florida, Georgia, Hawaii, Louisiana, Maryland, Minnesota, and Rhode Island.

nationwide on punch card systems than any other system (approximately 33% of the 105 million ballots cast). Most large election jurisdictions used punch cards including Los Angeles County, Los Angeles City, San Diego County, Chicago and Cook County (Illinois), Harris County (Texas), and of course, Miami-Dade County (Florida).

The day after the election, Florida reported that George W. Bush had defeated Al Gore by a margin of 1,784 votes of almost six million cast (*Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70, 73 2000). Because the margin of victory was equal to or less than one-half of one percent of the votes cast, an automatic machine recount was initiated. Since the automatic recount resulted in an even smaller margin of victory, Vice President Gore then exercised his statutory right to submit requests for manual recounts (*Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70, 73 2000), which he requested in four counties: Volusia, Palm Beach, Broward and Miami-Dade. These counties were heavily Democratic and jurisdictions which Gore claimed had a high incidence of undervotes (votes that failed to record a preference in the Presidential contest), overvotes (ballots that registered multiple presidential votes) and allegations of voting irregularities. Gore challenged the undervotes recorded on punch-card machines, arguing that some should be recounted by hand to determine if they were intended as votes for Gore, but had not been properly recorded by the tabulating machines.

When the recounts began, two major issues became evident when it comes to punch-card voting machines. First, there had not been proper maintenance of these machines, which amounts to keeping their chambers clear of punched-out chads. Second,

it became clear that counties were not prepared for the recounts either legally or logistically. Florida's law did not contain provisions that defined what constituted a valid vote (a "legal vote") (*Bush v. Palm Beach County Canvassing Bd.*, 531 U.S. 70, 73 2000) and, like many other states, had a clause that stipulated that election officials were responsible for determining "voter intent."⁵ Determining voter intent became a challenging and contentious issue, given the variety of undervotes. Some of the undervotes were completely unmarked, while others had partially dislodged chads: some with one, two, or three, corners detached (a "hanging chad"); some chad were indented but with no corner detached (a "dimple" or "pregnant chad"); and yet other chads were punched through, but the chad was not detached (a "pin- prick"). In addition, some ballots contained chads that were punched in locations which did not correspond to any Presidential candidate. The problems that the "voter intent" stipulation brought about stemmed from the discretion awarded to election officials to determine what voter intent was without further guidance from the law, which led to disparate standards of what constituted a valid vote and allegations of partisanship in the way those standards were set and applied. In addition, the standards for voter intent varied not only from county to county but within the same county as well (Florida Senate Committee on Ethics and

5 In the aftermath of the 2000 election, Florida changed its manual recount election legislation and replaced the "intent clause" to a test of whether "there is a clear indication on the ballot that the voter has made a definite choice." Florida's law further stipulates that "[t]he Department of State shall adopt specific rules for each certified voting system prescribing what constitutes a "clear indication on the ballot that the voter has made a definite choice" (Florida Electors and Elections Statutes 2008). Detailed rules from the Secretary of State now attempt to anticipate when a voter mismarks and extraneous comments count.

Elections 2001:18). Furthermore, testimony at trial also revealed that at least one county in Florida changed its evaluative standards in defining a legal vote during the counting process itself.

But the undervotes problem was not confined to Florida. For example, Georgia, like Florida, had thousands of undervotes (ballots that registered no vote in the presidential race); about 94,000 votes for president in Georgia were not counted, either because people chose not to vote for president, or because they made a mistake that voided their ballot, or did not have their vote counted by the voting machines (Cox 2001). In Georgia, this translated into an undervote or error rate of 3.5%, which compares unfavorably to the Florida rate of 2.9%, and to a reported national average rate of 1.9% (Cox 2001).

A closely related problem to the equipment issue is ballot design and its effect on accurately recording votes (U.S. Commission on Civil Rights 2001). In Florida's general election, 12 candidates were listed on the ballot for President, compared with only three or four in previous years and election officials across the states had to position their names into the available space on the ballot. In addition, while previously all ballots had to be certified by the state elections division, local election officials now had to deal with ballot design on their own (U.S. Commission on Civil Rights 2001). On a larger scale, there were no national standards for how candidates' names should be separated on the page when counties used punch card machines (Fessenden 2000).

It was in this context, and considering that tens of thousands of her voters were elderly and might have problems reading a small typeface, that Theresa LePore, supervisor of elections for Palm Beach County, decided to place the names of the presidential candidates on two facing pages, with punch holes running down the center, and arrows pointing from the names to the holes. This ballot came to be known as the butterfly ballot. Before the election, the butterfly ballot was shown to the major party county chairs and to campaign officials for every candidate, none of whom objected to the ballot's design (U.S. Commission on Civil Rights 2001).

However, on election day, when the ballot cards were fed into the voting machines, some voters complained that the holes did not line up with the arrows and there was confusion because the hole for Reform Party candidate Patrick Buchanan was the second hole down the center of the ballot, between the holes for George W. Bush and Al Gore despite the fact that Bush and Gore were listed first and second on the left-hand side of the ballot (U.S. Commission on Civil Rights 2001). Consequently, Buchanan received 3,407 votes in Palm Beach County (where there were just 337 registered Reform Party members) (U.S. Commission on Civil Rights 2001). Even Buchanan acknowledged that he could not have won so many votes in this heavily Democratic county. In addition, more than 19,000 Palm Beach county voters, or 63% of all spoiled ballots in the county, punched two separate holes when voting for President, thus invalidating their ballots with an overvote (U.S. Commission on Civil Rights 2001). This high percentage contrasted with the average of 5% or less of the spoiled ballots, which in turn indicates confusion on

the part of voters (U.S. Commission on Civil Rights 2001). Similar ballot design problems and unusual percentages of overvotes also occurred in Florida's Duval county (U.S. Commission on Civil Rights 2001). Data also showed that Florida counties where candidates were listed in one column had a 2.1% of unrecorded votes, while counties with candidates listed in 2 columns had a 7.6% of unrecorded votes (Kimball, Owens and Keeney 2004:147). These examples underscore the importance of ballot design, which might seem a mundane decision, and its impact on voters' abilities to correctly record their votes. Unfortunately, even after 2000, poor ballot design continues to plague the conduct of elections and has led to lost votes in the 2002, 2006 and 2008 elections in Wisconsin, Florida and California (Norden et al. 2008).

Voter registration list maintenance

A major problem uncovered during the 2000 election concerned how voter registration lists were maintained. In Florida, the supervisors of elections in each county were responsible for the maintenance of the voter registration books. Their tasks were to identify voters that changed address and to receive information from state and federal agencies about deaths, felony convictions and adjudications of mental incompetence (Florida Senate Committee on Ethics and Elections 2001: 4). The state Division of Elections maintained a central voter file with information from all the counties.

In 2000, Florida had a statutory requirement to hire a private agency to assist in purging the voter files. This requirement was enacted after incidents of voter fraud in the 1997 Miami mayoral election that included votes cast in the names of deceased persons,

votes cast by convicted felons (who had lost their right to vote under the Florida Constitution), and votes cast by people who were also registered in another municipality or another county (U.S. Commission on Civil Rights 2001). The Division of Elections contracted with a private entity to compare the information from the central voter file with information from other databases. In May 2000, each county was sent a list of voters who were potential matches to people in the central voter file who were ineligible to vote (Florida Senate Committee on Ethics and Elections 2001: 4). Subsequently, the county supervisors were informed that about 8,000 people on this list identified as felons were actually misdemeanants and a corrected list was sent to them. What then followed was a mixed response where some county supervisors of elections decided not to use the list at all, while other used the corrected list (Florida Senate Committee on Ethics and Elections 2001: 4).

The Division of Elections of Florida, and the contractor hired by the state, used a matching logic that only required a 90 percent name match, which produced “false positives” or partial matches of the data. This was done even though, in early 1999, the county supervisors of elections in Florida had expressed a preference for exact matches on the exclusion list (U.S. Commission on Civil Rights 2001). In addition, the evidence showed that some election officials decided that it further served the state’s interests to capture as many names as possible on these exclusion lists and the process used by each county to verify its exclusion list varied. Some election supervisors sent letters to the alleged felons and allowed them to produce evidence of their clemency status or establish

they were on the list in error, while other supervisors chose not to use the exclusion list at all. As a result, in Miami-Dade county for example, at least 14.1% of the persons whose names appeared on the list of convicted felons were there in error (U.S. Commission on Civil Rights 2001). The Florida legislature's decision to privatize its list maintenance procedures without effective clear guidance for these efforts from the highest levels, coupled with the absence of uniform and reliable verification procedures, led to many eligible voters being excluded from the voter rolls and deprived of their right to vote (U.S. Commission on Civil Rights 2001).

Partisanship and powers of the Secretary of State

One of the most controversial issues during the Florida recount process concerned the role played by Secretary of State Katherine Harris. Harris made a number of decisions during her state's controversial vote recount while also acting as the honorary chair of the George Bush campaign in Florida. Her decision not to extend the deadline for certification of the results was perceived as a salient sign of partisan activity, given that there was a strong sentiment for an extension considering the incredibly narrow margin between the two candidates and the evidence in some counties that votes had not been counted due to irregularities in the voting process.

Concerns over the partisanship of chief state election officials have since remained a concern and it has not been unusual for Secretaries of State, often also serving as the Chief Election Officials for their state, to openly endorse candidates, which essentially raises concerns about the impartiality of their actions. In 2008, the Secretaries

of State of Indiana, Arizona and Rhode Island (who are also chief election officials in these states) openly endorsed their preferred presidential candidates. Utah's Lt. Governor (Utah does not have a Secretary of State position), did so as well. Yet, there are cases of the opposite trend: secretaries of state voluntarily refusing to serve on political campaign committees or to publicly endorse candidates for office. This is what the Secretaries of State of Connecticut, Minnesota, Nevada, New Hampshire, North Dakota, Oregon, Pennsylvania, South Dakota and Vermont did prior to the 2008 election.

In addition to investigations of partisanship and conflicts of interest while in office, another issue investigated in the aftermath of the 2000 election concerned the role of the secretary of state of Florida in relation to counties. Katherine Harris testified that the Florida Constitution created an election system founded upon local control and characterized her authority over the administration of elections as simply "ministerial." She argued that the Secretary of State's office attempts to achieve uniformity in the interpretation of the election code, but is without authority to direct the conduct of county supervisors of elections (U.S. Commission on Civil Rights 2001). However, the U.S. Commission on Civil Rights disagreed with her statement and argued that, based on Florida's Election Code, "the county supervisors do not have unilateral authority over the administration of elections" and that "the secretary of state has substantial authority over the process" (U.S. Commission on Civil Rights 2001).

The Commission also emphasized that in *Bush v. Gore*, the Secretary of State, in arguing against further manual recounts, did not downplay her authority over election

matters as being ministerial, but in fact asserted that her office's interpretations of the Florida election law should be given deference (U.S. Commission on Civil Rights 2001). The Supreme Court also repeatedly emphasized in *Bush v. Gore* that the Secretary of State has tremendous authority over Florida election matters (U.S. Commission on Civil Rights 2001). The U.S. Commission on Civil Rights concluded that "[i]n practice, this authority can be either delegated to the point of constructive nonexistence or exercised on such a discretionary basis as to be arbitrary." The court continued that the end result was "a system that delegates to the county supervisors of elections, who are subject to the budgetary and political constraints placed upon them by 67 separate county governments, the duty to ensure statewide uniformity in election matters—a system that was so devoid of effective checks and balances that it failed many voters in the 2000 presidential election" (U.S. Commission on Civil Rights 2001).

Other problems

The disenfranchisement of voters during the 2000 election took many forms. In addition to the problems described above with the way voter registration lists were maintained and with the voting machine and ballot design problems, testimony before the U.S. Commission on Civil Rights detailed a variety of other issues. These included cases when polling places closed early or were moved without notice to the voters; when the Motor Voter Act was not implemented (people who registered to vote at Departments of Motor Vehicles did not have their registration transmitted to the Supervisor of Elections

office); when voters complained that they had requested absentee ballots, but never received them; and when Florida Highway Patrol (FHP) troopers conducted an unauthorized vehicle checkpoint within a few miles of a polling place in a predominantly African American neighborhood (U.S. Commission on Civil Rights 2001).

The Commission also found that African-American, Spanish-speaking voters, and poor counties were impacted by the 2000 election. African-American voting districts were found to be disproportionately hindered by antiquated and error-prone equipment like the punch card ballot system (U.S. Commission on Civil Rights 2001). Also, despite requirements that non-English proficient voters be provided with some form of language assistance, Spanish-speaking voters in central Florida counties did not receive bilingual assistance and some of these counties were subject to Section 203 of the Voting Rights Act. Similarly, poorer counties, particularly those with significant people of color populations, were found to be more likely to use voting systems with higher spoilage rates than more affluent counties with significant white populations (U.S. Commission on Civil Rights 2001).

The Supreme Court Decision

An important lesson drawn from the 2000 election was that administrative neglect in critical public services, such as election administration, leads to the courts (Wise 2001). In *Bush v. Gore*, the court ruled that the manual recount ordered by the Florida Supreme Court violated the federal Constitution's equal protection clause. This was the case because the state high court had failed to ensure equal treatment of all ballots by not

setting up uniform and objective standards for counting disputed ballots and by not recounting ballots challenged in Broward and Miami-Dade counties. The Supreme Court's decision in *Bush v. Gore* sparked considerable criticism. The Court, which otherwise had engaged in state-friendly federalism jurisprudence, was accused of hypocrisy for overruling a state supreme court's interpretation of its own state law (Kincaid 2001). Scholars argued that the Court's decision in this case was fundamentally incompatible with its previous federalism decisions (Strauss 2000) and that the per curiam opinion embraced a new application of the equal protection clause that interferes with the traditional state function of running elections. What was also intriguing in *Bush v. Gore* was that the Court tried to limit its holding "to the present circumstances," (Bush v. Gore 2000) which arguably meant that the ruling was not a precedent and it applied to that case only. In *Bush v. Gore*, the Supreme Court's use of a common technique (limiting a case to its facts) in an uncommon way (limiting the case being decided to its facts) has led to confusion, which to some scholars can only be clarified by the Court itself (Flanders 2007).

Lessons from the deadlock

The major lesson from the deadlock during the 2000 election was that the election system needed reforms to address a number of problems that ranged from administrative procedures to the quality of the voting equipment. Also, while Florida became the poster child for elections gone bad, the general sense was that this was not an isolated case and the scenario could be repeated again elsewhere in the event of a close election if nothing

was done. The “window of opportunity” for reform was wide open and proposals about how to proceed did not take long to emerge. Before discussing the reforms incorporated in HAVA, and in order to get a sense for the extent of behavioral change in existing systems that HAVA called for, it is useful to view the status quo pre-HAVA.

The management of elections pre-HAVA

How did the management of elections look before HAVA and who at the federal level had a say on the way elections are managed? The short answer to this question is that the management of elections was primarily a state and local affair where power-sharing arrangements differed from state to state (electionline.org 2002). A glimpse into the variety of power-sharing agreements is provided by the division of responsibilities in the training of election officials. In 2002, before the passage of HAVA, 21 states certified local election officials or made training mandatory; 17 states provided voluntary training for local election officials; and 12 states did not conduct any training for local election officials (electionline.org 2002). A further glimpse into who paid the bill for election administration expenses from that afforded in Chapter 1 also shows the diversity in the levels of cooperation between states and localities: 19 states provided no funding to localities for elections; 22 states reimbursed localities for some costs or for a percentage of costs incurred in a statewide election; and 9 states paid the majority of election costs or made substantial capital expenditures for localities (electionline.org 2002).

In 2001, the National Conference of State Legislatures mapped out traditional areas of responsibility for state and local election offices. Table 2.1. (see below) provides

that general overview of traditional state and local election responsibilities. What is conspicuously missing in that table is the federal role, which was at the time quite limited. The federal government was responsible for enforcement of federal legislation (to be discussed in more detail below) and did not provide any financial support for election administration activities.

While Table 2.1. shows the traditional state and local roles in election administration, it is important to note that these actually varied and continue to vary substantially from state to state. What also varies is how much power states delegate to counties and municipalities. For example, while in some states counties are entirely responsible for poll worker training, in other states that is either done with a combination of locally-crafted programs that employ some state-required materials or the state takes the lead in this endeavor. Also, states vary in how they provide for the selection and removal of local election administrators as well as how they fund local elections. The resulting diversity of election management systems “reflects, depending on one’s perspective, a thriving example of federalist experimentation or a horrifying mish- mash of self-serving behavior crying out for congressional intervention” (Harvard Law Review 2005).

Table 2.1: Traditional state and local roles in the administration of elections

State Role in Elections
<ul style="list-style-type: none"> • Approve voting equipment • Promulgate rules and regulations for the conduct of elections • Certify official election results

<ul style="list-style-type: none"> • Approve ballot design • Provide instruction and training to local officials • Investigate complaints and voting irregularities • Approve statewide ballot language • Assembling and maintaining voter registration information
Local Role in Elections
<ul style="list-style-type: none"> • Count and tabulate votes and report results to the state; • Recruit, hire and train election day workers; • Handle voter registration and maintain voter rolls; • Purchase equipment and supplies; and • Prepare ballots for the election

Source: National Conference of State Legislatures (2001). Voting in America: Final Report of the NCSL Elections Reform Task Force. Available at <http://www.ncsl.org/programs/press/2001/electref0801.htm>

But what exactly was the federal role in the management of elections pre-HAVA?

Congress, with the Federal Election Campaign Act of 1971 (FECA), created the Office of Federal Elections in the General Accounting Office (GAO) in an effort to deal with a specific problem: the country's election administrators were not easily exchanging information on election practices and procedures that would enable them to more efficiently administer elections. In 1975, the Federal Election Campaign Act Amendments of 1974 transferred this function to the Federal Election Commission (FEC). The Act, as revised, specifically calls upon the FEC to serve as "a national clearinghouse for the compilation of information and review of procedures with respect to the administration of Federal elections." The FEC established the National Clearinghouse on Election Administration, which later was renamed the Office of Election Administration (OEA) to serve that function. The primary responsibilities of FEC's Office of Election Administration were to share information on the laws,

procedures, guidelines, and technologies used in the administration of federal elections. Amongst the responsibilities of the OEA, under the NVRA, were for it to develop a national mail-in voter application form for elections for federal office, provide information and assistance to the states pursuant to the implementation of this Act, and report to Congress on the impact of the Act on the administration of elections for federal office. In addition, the Voting Accessibility for the Elderly and Handicapped Act of 1984, required the FEC, through the OEA, to report on the number of polling places that were accessible to disabled voters in each federal election through 1992. The OEA had no enforcement power.

In addition to the FEC, through the OEA, another federal agency with responsibility over election administration was (and still is) the U.S. Department of Justice, through its Civil Rights Division and its Criminal Division. The Criminal Division is responsible for the investigation and prosecution of election fraud. The Civil Rights Division is responsible for the enforcement of federal legislation that safeguards the accessibility of the electoral process for a variety of groups. Such legislation includes the Americans with Disabilities Act, the National Voter Registration Act, Uniformed and Overseas Citizens Absentee Voting Act, the Voting Accessibility for the Elderly and Handicapped Act, and the Voting Rights Act (VRA). The VRA, adopted initially in 1965 and extended in 1970, 1975, 1982, and 2006, codifies and effectuates the 15th Amendment's permanent guarantee that no person shall be denied the right to vote on account of race or color. The Act contains several special provisions that impose even

more stringent requirements by freezing election practices or procedures in certain states until the new procedures have been subjected to review, either after an administrative review by the United States Attorney General, or after a lawsuit before the United States District Court for the District of Columbia.

HAVA: The bipartisan solution

A flurry of legislative activity followed the aftermath of the 2000 election. Hundreds of bills were introduced at the federal, state and local level. States considered a total of 3,643 bills addressing elections during the 2001 and 2002 legislative sessions and passed 492 of them into law (National Council of State Legislatures 2004). In addition, by October 2001, 27 states had formed task forces, issued white papers, and/or drafted legislative plans pertaining to their respective state's elections process (Electionline.org 2001). The 2000 election also spurred a variety of non-governmental, bipartisan, or nonpartisan task forces that brought together politicians, academics, lawyers and election administrators and aimed to issue reports and recommendations on voting machines and election practices. There were more than 13 national task forces.

The highest profile panel of experts, the National Commission on Federal Election Reform, had former Presidents Gerald Ford and Jimmy Carter as chairmen. Other task force reports were produced by the Massachusetts Institute of Technology, the California Institute of Technology, the National Association of Counties (NACO), the National Association of County Recordors, Election Officials and Clerks (NACRC), and

the National Conference of State Legislatures (NCSL). However, the recommendations of the Carter-Ford Commission formed the basis of what became HAVA.⁶ The biggest debate tackled by the Commission concerned federalism and what role should be reserved to states and localities and what role should the federal government play in the management of elections. A majority of the Commission preferred that Congress enact legislation setting forth policy objectives and provide funding to implement them, but that states and localities remain responsible for the implementation process (Tokaji 2005). On the other hand, a minority wanted a more active role for the federal government (Tokaji 2005).

HAVA and the politics in the policy-making process

The election reform activity post-2000 “was driven mainly by Democrats who said the flaws had cost their presidential candidate, former Vice President Al Gore, the election. But Republicans vowed to work toward a better election system as well, knowing a system that seemed to disenfranchise millions of minority voters could never stand” (Nather 2002). Consequently, efforts to pass federal legislation abounded, but it took Congress considerable time to come up with a solution that would constitute a compromise between Democrats and Republicans as well as accommodate the interests of state and local election administrators and civil rights groups.⁷

⁶ The final report of the commission is available at National Commission on Federal Election Reform (2001). *To Assure Pride and Confidence in the Electoral Process*. Available at: <http://www.reformelections.org/ncfer.asp>.

⁷ For an overview of the bills introduced in the House and the Senate, please see Shambon, Leonard (2004). “Implementing the Help America Vote Act.” *Election Law Journal* 3(3): 424-443.

The debate between Republicans and Democrats revolved around several issues. One of these was the scope of responsibility of the federal government. Traditionally, Democrats have envisioned wider and deeper scopes of responsibility for the federal government, whereas Republicans have preferred to give states more discretion and responsibility to implement policy (Hero 1987). In the case of how to approach election reform, this issue was pivotal in the discussion of the National Commission on Federal Election Reform even before Congress discussed it. There were fundamental differences between the House (controlled by Republicans) and the Senate (controlled by Democrats) over the level of authority the federal government should have in election reform. The Republican controlled House leaned to the historical norm that elections are primarily state activities carried out by local governments, which had been the case for the past 200 years, while the Democrat controlled Senate leaned towards the idea that the federal government can establish rules and standards for all federal elections because they involve members of Congress (Alvarez and Hall 2005). In the midst of this partisan debate, state and local officials wanted as much authority as possible to decide how to meet federal standards and opposed the more specific requirements contained in the Senate bill.

The parties also differed over another dimension of election reform: voter access versus voter fraud. This meant that Democrats sought legislation to protect individual voting rights with the presumption that asking for IDs at the polls would disenfranchise

voters. Civil rights and voting rights groups also protested that the voter identification requirements in the Senate bill would, according to them, disenfranchise low-income and minority voters, essentially defeating the purpose of the bill (Nather 2002). On the other hand, Republicans sought legislation that would prevent voter fraud. Sen. Christopher S. Bond (R-MO) argued that Republicans lost the Senate and gubernatorial races in Missouri in 2000 because of fraud and wanted to see measures that would prevent this from occurring.

Disagreements over whether to require first-time voters to show identification when registering to vote and over whether to impose federal requirements on the states—an obvious federalism issue—led to delays in the passing of elections reform as a response to the events in 2000.⁸ Despite the disagreements, the final version of the bill, a bipartisan compromise, reflected the intersection of two political and policy dynamics (Alvarez and Hall 2005).

After months of talks that almost broke down several times, House and Senate negotiators announced on October 4, 2002 that they had struck a deal on an election overhaul measure (HR 3295) that would set nationwide election standards for the first time and authorize nearly \$3.9 billion in assistance to the states over the three years to help them meet those standards (Willis and Nather 2002). Democrats agreed to require

⁸For details about the role of state and local government organizations that lobbied Congress during the formation of the Help America Vote Act, see Palazzolo, Daniel and Fiona R. McCarthy (2005). “State and Local Government Organizations and the Formation of the Help America Vote Act.” *Publius* 35(4): 515-537.

first-time voters to show one of several forms of identification at the polls. Steny H. Hoyer (D-MD) acknowledged that his party lacked the votes to pass a bill that did not contain the anti-fraud provisions (Willis 2002). As a backup, voters in every state would be able to cast a provisional ballot if they had no identification. In addition, Democrats backed away from their insistence on giving individuals the right to sue over violations of the new election standards, which was a proposal strongly opposed by Republicans, state, and election officials (Willis and Nather 2002). Instead, individuals would go through alternative dispute resolution systems designed and run by the states and the Department of Justice would be able to file lawsuits if individuals did not get their problems resolved through those alternative dispute resolution systems (Willis and Nather 2002).

HAVA: The main provisions of the bipartisan compromise

HAVA was signed into law on October 29, 2002. It was a product of a bipartisan compromise, developed by Representatives Bob Ney and Steny Hoyer in the House and Senators Chris Dodd and Mitch McConnell in the Senate. It allocated \$3.86 billion to states and localities and marked the first time federal funds were assigned to help finance federal elections. States that opted to not accept federal funding were required to certify to the EAC that they had established state administrative complaint procedures. Alternatively, they could submit a plan to the Attorney General that explained how the state would comply with Title III requirements, which are described below.

Title I of HAVA mandated the establishment of a program to provide federal funds to states to replace punch card and lever voting machines (with \$325 million earmarked

by Congress for this activity) and to improve election administration (with \$325 million earmarked by Congress for this activity). States that qualified for funds to replace punch card and lever machines were required to scrap these by the November 2004 election. A waiver, however, was available if states could demonstrate that they were unable to meet this deadline, in which case the final deadline was the 2006 election. Out of the 30 states that sought money from HAVA to replace punch card and lever machines, 25 requested a waiver.

Title II of HAVA mandates the establishment of the Election Assistance Commission (EAC), an independent, bipartisan body. The bipartisan composition of the commission is intended to prevent either party from using the EAC for partisan advantage. The duties previously performed by a little staffed office at the FEC were redirected by HAVA into the hands of this new agency. HAVA tasked the EAC to develop guidance to meet HAVA requirements; to adopt voluntary voting system guidelines; to serve as a national clearinghouse of information about election administration; to accredit testing laboratories and certify voting systems; and to audit the use of HAVA funds. Other responsibilities include maintaining the national mail voter registration form developed in accordance with the National Voter Registration Act of 1993. Congress restricted the EAC to these roles and responsibilities and gave it no power to issue rules or regulations that are binding on the states and localities. Additionally, the EAC was not awarded any responsibility over the enforcement of HAVA. That authority was placed in the hands of the U.S. Department of Justice. Title II authorizes \$3 billion over three years to

implement the Act's requirements. Section 252 funds require a matching 5% state expenditure.

Title III contains, arguably, the most important provisions of HAVA, and it established new requirements for voting technology, voter registration databases, provisional voting and voter identification. Section 301 of Title III, requires that voting equipment allow voters to verify their choices and provide them with the opportunity to correct their choice before casting the vote. In addition, voting equipment must also notify voters of overvotes. However, jurisdictions using paper-based systems (such as punch cards) may meet this requirement through voter education programs that give information on how to correct mistakes and inform voters of the effect of overvoting, hence HAVA does not actually require that voting machines provide actual notice and the opportunity to correct mistakes (Tokaji 2005: 1215). All voting equipment is also required to produce a paper record with a manual audit capacity, be accessible for individuals with disabilities (provide the same opportunity for access and participation, including privacy and independence), and allow alternate language access. Each state is also to develop a uniform standard for what constitutes a valid vote for each category of voting system used in the state, as stipulated by Section 301(a)(6) of HAVA.

Regarding provisional voting, Title III mandates that if a voter shows up at the polls and believes s/he is registered to vote in that jurisdiction, but his or her name for whatever reason is not on the voter registration list, then that voter can vote provisionally (this requirement, of course, is not applicable to states with Election Day Registration).

Voters who cannot meet HAVA's identification requirements for first-time voters who register by mail are also entitled to cast provisional ballots. Provisional ballots are hence a fail-safe mechanism for any voter whose eligibility cannot be determined at the polling place. Although provisional ballots had been used in some states before the passing of HAVA, this was the first federal law to require that they be used nationwide (Tokaji 2005: 1217).

One major problem with HAVA's provisional voting requirement, however, is the fact that the definition of what constitutes a jurisdiction was left to the discretion of the states. Hence, there are no uniform procedures either within or between states on how to count provisional ballots; some states count only provisional ballots cast in the correct precinct while others count the provisional ballots' votes for all offices for which the voter was eligible in the jurisdiction in which she/he cast a ballot. This HAVA provision, as well as others, is an example that will be discussed at greater length below from the perspectives of policy implementation, federalism and intergovernmental relations.

HAVA's Title III, Section 303(a), requires that states create a single, uniform, official, centralized, interactive computerized statewide voter registration list, which should be defined, maintained and administered at the state level. Prior to HAVA, most states did not have statewide voter registration databases prior to HAVA. Additionally, voter registration lists were either done on a county-by-county basis or, as in the case of New England, on a town-by-town basis. The statewide list was to be coordinated with other state agency databases (such as the Social Security Administration records and State

Motor Vehicle Authority records) for accuracy of the data. This HAVA requirement is one of the most interesting to analyze from the perspectives of policy implementation and federalism. HAVA was silent as to what is the best infrastructure model for a statewide database and left that decision, like for provisional voting, at the discretion of the states. Consequently, some states created a bottom-up system, which generally uploads information retained at the local level and compiled at regular intervals to form the statewide voter registration list. Others built a top-down system, which is hosted on a single, central platform and is generally maintained by the state with information supplied by local jurisdictions. Yet other states adopted a hybrid system, which has elements from both systems.

Section 303(b) of Title III sets ID requirements for first time voters who register to vote by mail. HAVA mandates that all states require identification for first-time voters who register to vote by mail and did not provide verification of their identification with their mail-in voter registration form. This requirement was one of the most contentious issues during the Congressional debate over HAVA as various groups, such as the American Civil Liberties Union, National Council of La Raza, Lawyers Committee for Civil Rights Under Law and others opposed the identification requirements (Kim 2003: 601).

Lastly, Title VII improves the absentee voting process for overseas military personnel, addressing problems that emerged during the 2000 presidential elections. HAVA empowers the EAC, along with the Secretary of Defense, to conduct a study to

improve voting by members of the armed services serving overseas; guarantees that military personnel will have access to information regarding absentee ballot application deadlines and registering to vote; and contains provisions to ensure that a postmark is stamped on absentee ballots collected from overseas.

Federal bills making sweeping changes to elections have been rare and, for the past 50 years, have been limited to the VRA, the NVRA and HAVA (electionline.org 2007). A progress report on HAVA, five years after its passage, concluded that the act had accomplished its main objectives: provisional ballots were made available to voters nationwide; voting machines accessible for people with disabilities were deployed nationwide; polling places became more accessible; and voter statewide registration databases with more effective links to state agencies for faster record updating and wired between jurisdictions allowed for vastly improved tracking of voters (electionline.org 2007).

However, despite these positive changes, problems in the election system persisted. Electronic voting machines reported glitches and breakdowns (electionline.org 2007). Additionally, researchers questioned the integrity and reliability of electronic voting machines. Voter identification, which under HAVA is required for first-time voters, who registered by mail, riled partisan tensions that culminated with lawsuits in Georgia and Indiana and ultimately prompted the U.S. Supreme Court to hear arguments on the issue. The Supreme Court ruled 6 to 3 that the requirements enacted by Indiana's legislature were not enough of a burden to violate the Constitution. Also, not every state

was able to meet HAVA's deadline to set up statewide voter registration databases by 2004 and Alabama, New Jersey, New York and Maine were sued by the DOJ for also failing to meet the January 1, 2006 deadline (California also missed the deadline but avoided a lawsuit with an agreement with the DOJ to extend the deadline until 2009 while employing an interim system) (electionline.org 2007). Overall, by the 2008 election, much had changed in the way Americans voted. And so had their level on confidence in the American electoral system. About 94% stated that they were very confident that their vote in the general elections was counted accurately (Alvarez et al. 2009).

Conclusion

This chapter looked at the myriad of problems that were revealed during the 2000 election. The election had a substantial impact on the level of public confidence in democracy and elections in the U.S.. A CBS News poll in 2000 revealed that 80% of Americans thought that the methods for voting and counting the votes in the U.S. needed to be more accurate (CBS 2000). Also that year, almost 70% thought the election system needed major reforms or a complete overhaul (Gallup 2000). In response to the 2000 crisis, Congress passed HAVA, which established the EAC; authorized the first federal funding for election administration in U.S. history; and set statewide requirements for changes in voter registration, voting technology, and polling place operations. However,

although HAVA imposed requirements on the states, it left them with considerable discretion to decide how to implement those requirements, based on local circumstances.

By 2008, the way Americans voted, as well as their level of confidence in the electoral system, had substantially changed. About 72% of voters in 2008 said they were very confident that their vote was counted as they intended (Alvarez et al. 2009). Furthermore, 98% said it was “very easy” or “fairly easy” to find their polling place; 98% said their polling place was run very well or with only minor problems; and 96% said that poll worker performance was either excellent or very good (Alvarez et al. 2009). Nonetheless, in some states, the changes required by HAVA came sooner than in others. We turn next in Chapter 3 to an examination of the experiences of two states on opposite ends of this continuum: New York and Maryland.

CHAPTER 3

MARYLAND AND NEW YORK: THE TWO OPPOSITES IN HAVA'S IMPLEMENTATION CONTINUUM

The process of HAVA's implementation included the participation of federal, state and local entities. At the federal level, the EAC had to come into being and then begin its mandated scope of work, including the distribution of HAVA's funds. At the state level, state legislatures had to pass state legislation that incorporated the federal legislation into the state election code. And at the local level, election officials, among other things, had to learn new procedures, learn how to work with the new voting equipment, as well as, on occasions, learn how to work more closely with the state. Challenges were encountered by all of them.

At the federal level, challenges took the form of delays in the establishing of the EAC, lack of full funding, as well as hostility directed at the very existence of the EAC. The implementation of HAVA across the states proceeded more slowly than anticipated and there are at least two reasons, at the national level, for the slow pace of implementation. Firstly, the members of the Election Assistance Commission (EAC) were not selected on the timetable that HAVA mandated. Although HAVA required that the EAC's members be appointed by February 26, 2003 (120 days after HAVA's enactment), the nominees were not formally nominated by the President until October of 2003 and were not confirmed until December of 2003. Secondly, Congress did not fully fund HAVA in fiscal year 2003: only \$833 million of the authorized \$1.4 billion was appropriated in fiscal year 2003. Similarly, in fiscal year 2004, only \$1.2 million was appropriated for the EAC's functioning, even though HAVA authorized an annual budget of \$10

million. The delays in establishing the EAC and in appropriating funding made some states reluctant to move forward with the changes required by the Act, as they were unsure if they would be given the financial resources needed to pay for election reform. EAC's own timeline of activities was delayed as well (Election Assistance Commission 2003:16). Yet, there was an enormous surge in state election reform legislation as states did not wait on the federal government to release money for HAVA before they acted: at least 28 states introduced compliance bills in advance of the federal funding (Storey 2003). Additionally, state legislators were hard at work in the years subsequent to 2002 to pass legislation that contributed to the state's HAVA compliance. Thus, state legislators reviewed 140 HAVA compliance bills in 2003, 82 in 2004 and 33 in 2005 (National Conference of State Legislatures).

But these were not the only challenges to the EAC. In February of 2005, the National Association of Secretaries of State (NASS) passed a resolution urging Congress not to fund or authorize the EAC beyond the 2006 Federal elections. To that resolution, during Congressional testimony, one of the EAC's commissioners replied that there is an "inherent and sometimes healthy tension between the States and the Federal Government and where the line begins and where it ends" (Hillman 2005). The renewal of the Voting Rights Act in 1982 and the passage of the Motor Voter Act in 1992 illustrated pushback coming from some of the states. They did not want to continue under the oversight of the Federal Voting Rights Act and wanted to resist federal imposition of the components of the Motor Voter Act" (Hillman 2005). At the state level, states were not only in tension with the new federal role in elections, but also with localities over the state's new role in election administration. In addition to these intergovernmental tensions, states also experienced a variety of challenges implementing the different provisions of HAVA.

The 2004 election, just two years after the passing of HAVA, was the first test of the impact of the legislation, though a premature one perhaps as states had only two years to implement the mandated changes. A variety of positive developments were observed: voters who believed they were registered were given provisional ballots rather than turned away if their names were not on registration rolls; voters who cast ballots on punch-card machines in Florida, California and elsewhere in 2000 used newer technology that guarded against over votes and warned of under votes; statewide registration databases were used in 16 states and the District of Columbia, thus reducing duplicate voter registration and better tracking voter movement between jurisdictions (electionline.org 2004).

Yet, there still were problems in 2004. While the use of provisional ballots allowed voters not to be turned away from the polls on election day, there were problems with their application. Though it was not a new concept for all states, “it turned out to be a painful exercise for many” and “provisional voting in 2004 became what was the hanging chad in 2000,” as diverging definitions of what constitutes a jurisdiction led to a different application of HAVA’s provisional ballot requirements and litigation ensued in at least five states (Hillman 2005).

The 2006 midterm election, which coincided with the final deadline for becoming HAVA compliant, had more voters than ever before casting ballots on new machines, states using statewide voter registration databases, and in some states, new or updated requirements for identification at polling places (electionline.org 2006). There were also serious problems, however. Voters in a number of states had difficulties at the polls due to equipment delays, long lines, ballot shortages or other issues (electionline.org 2006).

An important effect of HAVA on states was the opportunity it gave them to innovate, which is one of the main goals of the decentralization in the U.S. election system. Election

officials and policymakers sought solutions to the challenges and opportunities presented by HAVA. For example, the need for accessible voting was one of the reasons Colorado's Larimer County pioneered vote centers, or super precincts, which are essentially super-precincts at which any registered elector in the subdivision holding the election may vote, regardless of the precinct in which the elector resides. Vote centers lead to reduced staffing needs and voters can find centers closer to where they work, shop or attend school rather than only where they live. Larimer County successfully used Vote Centers for the 2003 Coordinated Election, both the primary and general Elections in 2004, the 2005 Coordinated Election, both the Primary and General Elections in 2006, and both the Primary and General Elections in 2008. Vote centers, however, were not successful in Denver, where, during the 2006 midterm elections, electronic poll book malfunctions caused massive lines and poll closures.

With this broader picture in mind HAVA's impact on states and their experience on election day in both 2004 and 2006, it is important to ask what has been their experience the rest of the time during the election cycle, when their task is to prepare for election day. This chapter will look at the HAVA implementation efforts of two states, New York and Maryland, that had vastly different experiences. While Maryland was the first state to come into compliance with HAVA, in February 2006, the U.S. Department of Justice (DOJ) sued New York State for its failure to comply with HAVA by 2006. On June 2, 2006, as part of the settlement of the HAVA lawsuit, the United States District Court for the Northern District of New York issued a Remedial Order accepting the New York State Board of Elections plan for partial HAVA compliance for the 2006 election cycle, and setting forth future deadlines for full HAVA compliance. What factors led New York to fail to comply with HAVA on time while Maryland met the Act's requirements on time? This chapter will analyze these factors using both primary and secondary sources. The

conclusions of this chapter will contribute to the identification of an empirical model for analysis of nationwide variables that affect state's experience with federally mandated election reforms.

New York's Experience with HAVA

New York's response to implementing HAVA has been referred to as a "strategic delay" necessary due to the need for greater clarity about policy implications, the lack of support from key stakeholders, and concerns about how the federal mandate would affect local preferences (Liebschutz and Palazzolo 2006). Strategic delays are implementation delays on the part of states for the purpose of improving policy implementation through innovation, bargaining, and policy learning (Goggin 1989).

While some of New York's delay in implementing HAVA can be coined strategic (due to what New York state election officials have called the "backwards federalism" of HAVA), the state's lack of compliance with federal legislation by 2006 seems to be also due to the interaction of partisanship and intergovernmental relations issues, as well as a variety of technical problems/concerns. Together with New York's essentially unchanged (and resistant to change) system of election administration for more than a century, these factors led to failure to implement HAVA on time.

Main Characteristics of New York's Election System Before HAVA

New York's election administration system before HAVA is a reflection of the overall nature of election administration in the nation—heavily decentralized and largely partisan. The

decentralization of election administration in New York was, and still largely is, reflected in the roles of state and local boards of elections as well as of cities and towns. The New York State Board of Elections, established in 1974, has a variety of functions. Some authors have argued it is mostly an advisory body (Liebschutz 2005a: 601). However, despite the decentralization, it does perform oversight/regulatory functions (New York State Office of the State Comptroller 2001; New York State Board of Elections 2006). The State Board bears responsibility for administering and enforcing all laws relating to elections in the state and is also charged with preserving citizen confidence in the democratic process and enhancing voter participation. The Board also oversees the filing of petitions circulated by candidates for elective office and resolves challenges to those petitions. The State Board further provides oversight to New York's counties and the boroughs of New York City. Their activity is monitored through reviews of monthly and annual reports. The Board also offers assistance to local election boards and investigates complaints of possible statutory violations.

On the other hand, county boards are responsible for all aspects of the electoral process, from voter registration to the implementation of and compliance with the election law. They support and oversee election operations for both primary and general elections; oversee the registration of eligible voters within the county; provide assistance and information to candidates and the public; and conduct training and oversight related to election procedures and technology for election inspectors and ballot clerks. The decentralization in responsibilities and power is also apparent in the fact that cities, towns, and counties in New York bear the responsibility for the cost of elections (New York State Office of the State Comptroller 2001). Also, until 2005, cities, towns, and villages in New York owned their respective voting systems (with the exception of

the City of New York and the counties of Monroe, Nassau and Suffolk, which owned their own voting machines).

Despite this decentralization of election functions, a 2001 questionnaire distributed by the State Board to local election officials revealed that local officials called for the State Board to make an effort to help the localities achieve more uniform standards in their election operations (New York State Office of the State Comptroller 2001). They suggested that a more practical and efficient way to do this would be to work with the county boards, which already have relationships with their local communities, than to deal individually with the hundreds of towns and cities that currently own the voting machines. They also called for the State Board to exercise more authority than it had exercised to date.

Both the state and local boards of elections are bipartisan. The State Board consists of four commissioners, two of which are the Board's bipartisan co-chairs, appointed by the Governor: one each by recommendation of the state committee of each major political party, and one each by recommendation of the legislative leaders of each major political party. Each county board outside New York City consists of two commissioners representing each of the county's two major political parties. The City of New York Board consists of 10 commissioners: two from each borough upon recommendation by both political parties and then appointed by the City Council.

New York's election law and election system have been the result of the influence of three dominant values: 1) party competition (partisanship), 2) home rule, and 3) the traditions of the conceptualization of voting as a civil right (Liebschutz 2005a). In New York, election reform, in whatever form, is perceived as a "frontal challenge" to political parties and their positions (Liebschutz 2005a). In turn, home rule, or the amount of autonomy and discretion granted to

local governments by the state legislature, has led to inconsistencies in the decentralized structure of election administration (Liebschutz 2005a). One such inconsistency was the fact that while voting procedures were administered by all of New York's county boards of elections until 2005, only three of them owned and maintained the voting equipment used in their jurisdictions. Finally, the conceptualization of voting as a civil right (Liebschutz 2005a) has been a substantial motivator for the election reform advocacy groups in New York.

Response to HAVA: Partisanship, "Backward Federalism" and Intergovernmental Turf Issues, and Technical Challenges

New York's response to HAVA was complex. HAVA implementation faced challenges of a partisan, technical and intergovernmental relations nature that effectively slowed down the state's progress toward meeting HAVA's requirements on time. Furthermore, the lack of a threat of a close election and the lack of a champion for change additionally stumped progress towards implementing HAVA on time (Liebschutz 2005b). In addition to these challenges, the September 11, 2001 terrorist attacks and the recession into which the country was plunging additionally strained the state's ability to focus its attention on election reform. Thus, in March of 2006, the U.S. Department of Justice (DOJ) sued the New York State Board of Elections for failing to meet HAVA requirements for a statewide voter registration database, accessible voting systems and voting systems that allow for correction and notification of over-votes.

The partisan challenges to election reform concerned the state's HAVA implementation plan as Democratic legislators, community advocates and government watchdog groups attacked the plan itself as well as the process by which it came about (Hu 2003). Governor Pataki appointed Peter Kosinski, a Republican and the State Board of Elections Deputy Director, to

convene the HAVA Task Force instead of appointing the Director of the Board. Advocacy groups argued that Kosinski stacked the HAVA Task Force with Republicans (of the 20 members of the task force, five represent Democrats and two represented citizens' advocates) (Common Cause 2004). Kosinski was also criticized for having his staff at the Board of Elections draft New York's HAVA implementation plan, rather than the HAVA Task Force (Common Cause 2004).

A HAVA Implementation Task Force minority report, signed by 6 members of the commission and issued in response to the State Implementation Plan (SIP) criticized the procedures by which the plan came about and the fact that the Task Force was prevented from playing any significant role in the preparation of the plan (New York State HAVA Implementation Task Force 2003). Kosinski was criticized for never presenting the HAVA SIP to the HAVA Task Force or to the State Board of Elections for approval and for submitting it unilaterally to the EAC. The minority report additionally argued that the plan "purports to bind the State Board to a HAVA implementation plan" but that "given that Mr. Kosinski has no unilateral authority under HAVA or state law to make policy decisions on behalf of the State Board of Elections, this is troubling" (New York State HAVA Implementation Task Force 2003).

New York's HAVA SIP was also criticized for being "vague and skeletal" and leaving too many decisions up to the State Board of Elections (Hu 2003; electionline.org 2003). The HAVA Implementation Task Force minority report argued that the plan provided very few details about how New York's state and local election officials would implement HAVA's requirements to improve the election process and left too many items to the sole discretion of the staff of the New York State Board of Elections without public comment or participation (New York State HAVA Implementation Task Force 2003; Krueger 2003). The minority report also argued that the plan failed to identify numerous areas where implementation of HAVA would require state legislation

and that “in sum, the Plan is no plan at all” (New York State HAVA Implementation Task Force 2003).

The SIP also drew criticism over issues pertaining to voter identification requirements, flaws in New York’s provisional voting system, the lack of provisions regarding testing requirements for election workers and the process of selection of new voting equipment (Krueger 2003). This latter proved to be the most controversial issue to delay the implementation of HAVA in New York. Nor did the SIP challenge New York’s decentralized election administration system, such as ownership of voting machines and the full-face ballot (Liebschutz 2005a). This has been attributed to the fact that such changes would require legislative action and the SIP could not “anticipate changes that may happen in New York statutorily” as it was merely intended to be the framework for “an ongoing process” (Liebschutz 2005a: 608).

Partisanship, interacted with intergovernmental turf issues, echoed during the New York Senate and the Assembly’s deliberations on substantive (the statewide voter registration database and voting machine issues) and procedural issues (election complaint procedures and state-local allocations of federal HAVA funds) pertaining to HAVA (Liebschutz 2005a). The Senate and Assembly majority parties were divided on ownership of voting machines, with Assembly Republicans (a majority of whom represented New York City districts) supporting ownership by counties and Senate Republicans (who mainly represented upstate suburban and rural counties, towns, and small cities) supporting the *status quo* where machines are owned by towns and cities (Liebschutz 2005a). A change in ownership of the voting system was considered very significant and had been a very touchy subject. Attempts to pass legislation that transferred ownership of the voting equipment to counties were unsuccessful before HAVA. The New York State’s Election Commissioners Association had been an advocate for transferring the ownership to county

boards on grounds of efficiency, but the idea was objected to by the association representing towns and cities in New York (Liebschutz 2005a). The Governor's 2001 Task Force on Election Modernization also had recommended restricting machine ownership to counties (Liebschutz 2005a).

The changing ownership had been seen as a solution to poll worker training problems—if counties owned the equipment, they would be able to provide better poll worker training on how to use the equipment. This was viewed also as a move to professionalize election administration: county election officials have better (more trained and full-time) staff to look at key elements of the election process rather than part-timers at the town and city levels (Kellner 2010). HAVA provided the impetus—through funding—to make this change possible. Thus, in 2005, the New York's Election Modernization and Reform Act of 2005 strengthened the authority of county boards by transferring the ownership, maintenance and transportation of voting machines from towns and cities to county boards of elections.

The interaction of technical and intergovernmental problems also stalled New York's progress on meeting HAVA mandates and deadlines. One such intergovernmental problem, according to New York state election officials, was "the backwards implementation of HAVA at the federal level" (Kellner 2010). Specifically, HAVA required the replacement of voting machines across the states (2004 was set as the deadline, but states could request a 2-year extension) before the EAC issued Voluntary Voting System Guidelines (VVSG) for the certification of voting equipment. Section 202 directs the EAC to adopt these guidelines and to provide for the testing, certification, decertification, and recertification of voting system hardware and software. The purpose of the guidelines is to provide a set of voluntary federal performance standards and requirements against which voting systems can be tested to determine

if they provide all the basic functionality, accessibility, and security capabilities required of voting systems. The guidelines were issued in 2005, but many jurisdictions bought the voting equipment earlier. Hence, a very legitimate concern is raised by the question why those federal guidelines were not issued before the legislation insisted that states replace their voting equipment using HAVA funds for that purpose? This is a particularly salient question for states that require compliance with the voluntary federal guidelines.

Additional issues that precluded the implementation of HAVA's voting system requirements were more of a technical nature. They concerned what was coined the "bankruptcy of the EAC [voting technology] certification process at the time and total uselessness of the prior certification procedures by the National Association of State Election Directors (NASED)" (Kellner 2010). Reviews by state election authorities in California, New York, Ohio, Colorado, Florida, Maryland, and others, as well as numerous academic studies and many public reports, demonstrated that vendors obtained NASED certification even though their equipment did not meet all of the standards—even the modest standards—that existed before the adoption of the 2005 VVSG (Kellner 2008; Gordon 2008). Consequently, concerns about NASED's testing grew in intensity and prompted New York's elections board to scrap a \$60 million contract to buy new touch screens to replace old lever voting machines and Vice Chair Douglas Kellner expressed his opinion that a "qualified" rating from NASED is "meaningless ...a piece of toilet paper"(Gordon 2008).

Another major problem was the inability of vendors to meet voting technology requirements. In 2006, when the State Board was adapting legislation and regulations to EAC's 2005 VVSG standards (and New York was, at the time, the only state to require compliance with

the 2005 standards), it asked vendors whether they can comply with the 2005 standards. Unfortunately, none of the vendors was able to comply (Kellner 2010).

Besides the replacement of the voting equipment, another issue where intergovernmental concerns intertwined with technical issues and generated substantial controversy in New York was the structure of the state's voter registration database. New York's counties used some type of computerized system for storing voter registration information, but there was great variety in terms of types of computer platforms used to maintain voter registration lists (New York State Board of Elections 2003). Although most of the local boards (34 boards) housed, managed and maintained their computer systems at their offices, 23 systems were located in county information/technology centers, and the New York City system was housed and maintained at the city's data processing center (New York State Board of Elections 2003).

New York's SIP, as per HAVA's requirement, proposed a uniform, centralized statewide voter registration list. The HAVA SIP proposed an allocation of \$20 million for the centralized state database, and stipulated completion of planning, development, and implementation stages and associated tasks by November 2004. This centralized database marked a major departure from the decentralized procedures in place in New York's 62 counties at the time (New York State HAVA Implementation Task Force 2003). The introduction of the database would change dramatically the nature of intergovernmental relations between the state and counties in New York (Wilkey 2010). Hence, the structure of the database (whether it would be top-down or bottom-up) was also a contentious issue and emblematic of the growing pains other states were going through over the same issue. Jurisdictions in New York had spent a lot of money to create their databases and these databases went beyond just voter registration information. They also stored poll worker information and other information into a massive database so counties did not

want to give that data up (Wilkey 2010). For New York's counties, the bottom-up model, which they had, helped keep that infrastructure and only share voter registration data with the state (Wilkey 2010). And that had been their preferred approach. The top-down approach, which would imply a stronger state role in the process, was not the preferred option, particularly as it would be more appropriate for states that had inadequate voter registration systems, not for states that had a sophisticated system of local databases, such as New York (Wilkey 2010). Other states faced the same challenge when it came to selecting an architecture for their databases.

The deadline for completing the database was not met and New York received a waiver from the EAC to extend compliance to January 2006, but no progress was made to create the statewide voter registration database until the New York state legislature acted in August 2005 (Liebschutz 2005a). Ultimately, localities retained control over the voter registration database as New York adopted a bottom-up approach where all voter registration list maintenance is conducted by local boards of elections.

The New York legislature eventually passed major reforms in 2005 which overturned central features of its election system, features that were in place for more than a century, and brought its laws into compliance with HAVA, thus meeting the conditions for federal HAVA aid (Liebschutz 2005a). One of the major changes that came about concerned the structure of New York's State Board of Elections: instead of being run by an executive director and deputy executive director, it was going to be administered by two co-executive directors, one from each major party.

Other changes included the creation of a new statewide voter registration—the New York database, NYSVoter, which was fully implemented in summer 2007. This is still a bottom-up voter registration database whereby counties maintain their voter registration databases and feed

registration data to a statewide database, which cross checks the data with other systems to verify the identity of the voter and assign a statewide voter ID number. Prior to HAVA, county Boards of Elections maintained their own voter registration database with little or no integration with other counties or state agencies (such as the DMV) to identify duplicate voters between counties or to verify that voters were eligible to vote. Additionally, New York upgraded to DRE or optical scan machines to be certified by the State Board of Elections and to be purchased by local boards (counties and New York City) with the State Board acting as a purchasing agent.

Despite the fact that New York passed legislation that incorporates HAVA's statutes into state law, which is just one of the requirements for compliance and does not equate with the actual translation of planned reforms into reality, other factors compromised the ability of the state to become compliant with HAVA. These were its declining fiscal situation in the aftermath of the September 11th, 2001 terrorist attacks, the recession that was beginning to plague the nation as a whole, and the lack of a strong champion for change (Liebschutz 2005b) to push for election reform. The lack of a strong champion for change has been attributed to the strong partisanship and two party competition, which make election reform to be perceived as a challenge to the control of the two parties. This prevented the governor and the state legislature from acting to implement reforms in the aftermath of the 2000 election and before the state had to submit its HAVA compliance plan (Liebschutz 2005b:216-217). Hence, the partisanship and the strong two-party competition did not allow the emergence of a champion for change that would "overcome the formidable forces of resistance to change" (Liebschutz 2005b:216).

There is, however, another explanation why New York lacked a champion for election reform. There are still people, although a minority, that question whether there is really a need to replace voting equipment in New York (Kellner 2010). Even though it was a funded mandate,

ongoing maintenance costs were not covered by HAVA (Cederqvist 2010). In the City of New York, for example, these costs are about 10% over the operating budget (Cederqvist 2010).

New York was, ultimately, not able to meet the January 1, 2006 deadline for HAVA implementation. The state was sued by the DOJ and entered into an agreement with the department with a proposed remedial plan in two-phases: interim compliance in 2006 and full compliance in 2007. Both phases concerned the implementation of HAVA's voting systems and statewide voter registration database mandates. New York was not alone in missing the January 1, 2006 deadline. Alabama, Maine, and New Jersey were also sued by the DOJ for non-compliance and entered into agreements to extend the HAVA deadline.

Conclusions about New York's Implementation of HAVA

New York's implementation of HAVA was mainly affected by challenges of a partisan, technical and intergovernmental relations nature. The partisan challenges concerned the process and substance of the HAVA implementation plan, a crucial step in the implementation of the federal legislation at the state and local levels. Additional challenges resulted from the intertwinement of intergovernmental turf issues and technical choices, which became apparent in New York's decision about the structure of its voter registration database (a bottom-up database that reflects the role and responsibilities of localities vs the state). An additional obstacle for implementation of HAVA in New York concerned what New York state officials perceived as the "backward implementation" (Kellner 2010) of the voting equipment provisions of HAVA (given that, as referenced above, HAVA required the replacement of voting machines across the states before the EAC actually issued its Voluntary Voting System Guidelines) and the flawed (and

delayed) federal voting equipment certification process. Some New York officials thought that what Maryland did to come into compliance with HAVA when it came to voting equipment was wrong, but said that New York “wanted to do it right the first time” (Kellner 2010), even if that meant being delayed and sued by the DOJ.

New York’s experience in implementing HAVA’s Title III requirement for replacing voting equipment magnified the discrepancy between the federal government’s choice of policy implementation tools for implementing that provision—categorical grants—and its actions in the years after HAVA’s passage which led some election administrators in New York to refer to it as “the backwards implementation of HAVA at the federal level” (Kellner 2010). As will be discussed later, the federal government chose to use categorical grants as an intergovernmental policy implementation tool for the Title III provisions as a means to create centralization and some degree of standardization on the way voting is administered across the states. But for Title III, that standardization was dependent on the EAC issuing the Voluntary Voting System Guidelines (VVSG) for voting equipment (and even though they are voluntary at the federal level, many states require compliance with the VVSG under their state law). These guidelines came late (in 2005) and thus after many jurisdictions had already purchased voting equipment. This federal delay limited the ability of HAVA’s Title III grants to standardize.

Maryland’s Experience with HAVA

In Maryland, HAVA’s mandated reforms did not create as much commotion as in New York. The state had gone through a change from a loose structure of county election administration to a system where the state had a larger role in election administration in mid-90’s

after a close election raised concerns about lack of uniformity and cohesive policies in the state. Thus, the advent of HAVA, in many respects, meant continuing with reforms that had already been initiated, namely centralization of election responsibilities at the state level as well as creating a centralized state voter registration database and replacing voting equipment throughout the state.

Main Characteristics of Maryland's Election System Before HAVA

Maryland made a decision to centralize long before HAVA and the “chaos of the 2000 election [was used] to catapult the momentum for the change (Wilson 2010). Thus, in Maryland, HAVA delineated in more detail the path towards reforms that had already started half a decade ago. An active executive leadership (by Secretary of State John Willis), the recommendations of Maryland's Special Committee on Voting Systems and Election Procedures, unified party control (of the executive and legislative branches) and a preference among most Democrats to centralize power and standardize Maryland's electoral system have been identified as the main factors pushing for the state to implement major election reforms prior to the passage of HAVA (Gimpel and Dyck 2005). Indeed, some of these reforms preempted HAVA in several respects.

Maryland's ability to undertake election system reforms is in stark contrast with New York's essentially unchanged, until HAVA, election system. Maryland's election process changed several times since the late 1960s. Until 1969, there was no state entity with responsibility for the conduct of elections. In 1969, the State Administrative Board of Election Laws (SABEL) was created to exercise advisory supervision over the conduct of voter registration and elections; to review, approve, certify or decertify voting systems; and to be a depository for election records

(Willis). These were responsibilities previously vested in the Secretary of State. Concerns about the lack of authority SABEL had over local election practices were in evidence from the beginning, as no major structural changes were undertaken (Maryland Department of Legislative Services 2001). SABEL was replaced in 1998 with a five-member, bipartisan, State Board of Elections (SBE), which is charged with managing and supervising elections and ensuring compliance with state and federal election laws (Willis nd). Under this structure, the SBE appoints a State Administrator, who is charged with the oversight of the SBE's functions and with the supervision of the operations of the county Local Boards of Elections (LBEs). The LBE's (and Baltimore City Elections Board) are appointed by the Governor and confirmed by the State Senate and are subject to the direction and authority of the SBE. However, the SBE's State Administrator has no *direct* supervisory authority over the local election directors or local budgets and expenditures (Willis). Each LBE appoints an election director who in turn appoints the employees for that jurisdiction's operations and supervises the local staff.

Not long before the fateful 2000 presidential election, Maryland had had its own experience with a close election: in the 1994 gubernatorial election, Paris Glendening won by a narrow vote margin. This close election sparked interest in election reform in Maryland in both the legislative and executive branches. In 1995, the state legislature set up a special commission, headed by former State Administrator of Election Laws Marie M. Garber. The Commission found that the state's election code needed revisions in various areas, including enhancing the powers of the State Board of Elections (SBE); establishing uniform processes and procedures throughout the state; improving absentee voting, poll worker recruitment and poll worker training; and creating a statewide voter registration database. As a result of the Garber commission's efforts, a revised election code was enacted in 1998, which recognized a

compelling state responsibility for the organization, administration, and financing of Maryland's election systems and which strengthened the rule-making authority of the SBE over the conduct of elections.

The next wave of election reform in Maryland prior to the passage of HAVA came in response to Florida's difficulties in the 2000 presidential election. Governor Glendening convened a special committee in January 2001, headed by Secretary of State John T. Willis (which in Maryland is a gubernatorial appointee), to make recommendations concerning voting systems and election procedures in Maryland. The recommendations were released in March of 2001 and, immediately thereafter, the Maryland General Assembly took up the recommendations. On May 15, 2001 Gov. Glendening signed a bill which gave the SBE authority to determine which voting machines should be used by local governments, set up a cost sharing program between the state and the counties, and addressed voter registration and provisional ballots.

The Maryland legislature largely followed and passed all of the committee's recommendations, despite opposition from county elected officials, local election administrators, and the Maryland Association of Counties (MACO). They were concerned about the cost of the reforms to localities and the state's intrusion on local government autonomy (Gimpel and Dyck 2005: 80). Although Maryland had a positive fiscal forecast at the time, almost all of the state's counties were concerned that upgrading the election system would be too costly and that they would not have the money to match the state's 50% contribution for the required upgrades. Furthermore, county officials, particularly those of Montgomery county (the largest in the state), argued that they did not have any problems with the administration of elections (Gimpel and Dyck 2005: 81) and resented state involvement. The intensity of the resentment among county

officials was a product of concerns about the division of power among states and counties, which as creatures of the state have no constitutional autonomy (Gimpel and Dyck 2005: 82). Much of Maryland's ability to pass the reforms it did in the aftermath of the 2000 election, but before HAVA, can be attributed to the leadership of Secretary of State John Willis, despite the fact that the Secretary of State Office in Maryland does not have any formal role in election administration. Thus, before HAVA, Maryland's election system had already undergone a state level centralization, which was apparent in the fact that the SBE assumed authority to determine which voting machines should be used by local governments.

Response to HAVA: Continuity of Reforms, Intergovernmental Turf Issues and Technical Challenges

As evidenced by the previous section, events prior to the 2000 election, as well as the state's own response to that election, paved the way for Maryland to embark on the path towards compliance with HAVA after 2002. When President Bush signed HAVA into law in October of 2002, Maryland did not start from scratch and only needed to continue with the reforms it had already initiated. In 2003, Maryland legislators only had to pass a bill correcting the provisional balloting law in order to make the state compliant with HAVA and establish a HAVA fund to begin receiving its federal funds (Gimpel and Dyck 2005: 84). Thus, the timeline for implementation of HAVA was not an issue in Maryland because centralization and a head start provided the state an advantage in the implementation of HAVA (Trella 2010). However, centralization led to mistakes, which were particularly evident in the state's choice of voting

equipment and the later decision by the Maryland legislature to scrap the purchased voting equipment that had been implemented statewide.

What changed in the way elections were managed in Maryland after 2002 and what challenges did the state face in implementing HAVA? The changes involved further centralization at the state level. Even though there was centralization of power at the state level before 2002, election administration was still in local hands as localities (1) owned the voting systems they used and 2) decided the methods of registering voters. They also had the authority and budgetary responsibility over their management (Maryland Local Election Administrator 2010), and they followed state law and little federal law (Maryland Local Election Administrator 2010). That changed after 2002 and HAVA, which marked a transition to state ownership of the voting equipment and the statewide voter registration system.

In 2001, responsibility for acquiring voting machines shifted from county election officials to the state. Maryland enacted legislation empowering the State Board of Elections to certify, select, and acquire a voting system, including voting machines, to be used in all counties throughout the state. Maryland used a state-level, centralizing, approach where state officials assumed responsibility for both certifying and acquiring voting machines (Peisch 2009: 893). Maryland's SBE, and in particular the State Election Administrator, Linda Lamone, played a major role in Maryland's choice of uniform statewide voting equipment--DREs. In Maryland, prior to HAVA, there was a patchwork of election systems used and the most widely used voting system was optical scan. In 2002, Maryland began using Diebold DREs, and in 2004, the state switched to a uniform system, using Diebold DREs everywhere except in Baltimore city. In 2006, every voter in the state voted on a Diebold DRE. The originally cost projections of this transition were delusory. About \$110 million was spent (on both the acquisition of the machines,

as well as their consumables) when just \$35 million was initially estimated for the transition (Wilson 2010; RTI International 2010). Cost was not the only problem as studies found serious security problems with the Diebold machines (Kohn et al 2004). Also, there were tensions between the state and counties over the choice of voting equipment. But since some counties in Maryland are not chartered, and hence have less autonomy, elections there are administered by the state, which reduces their ability to oppose state mandated changes; chartered counties, on the other hand, such as Montgomery county, have experienced a lot of tension with the state (Wilson 2010) over election reform.

Due to concerns over the security problems associated with DREs, Maryland enacted legislation in 2007 that was contingent on future appropriations. This legislation set a target of 2010 to replace the statewide DRE machines with a statewide optical-scan system (Peisch 2009). The legislature enacted this change despite the unwavering support for the DRE machines by Linda Lamone (Peisch 2009). Thus, the state had to again change its voting equipment, for which it had already used its HAVA funding (in addition to state and local funds), due to the fact the SBE took control of the machine procurement process. This resulted in the acquisition of millions of dollars in voting machines that the legislature later unanimously agreed needed to be replaced (Peisch 2009: 895).

Before the passage of HAVA, the state's voter registration records were created and maintained at the local level as state statute designated the local jurisdictions as the exclusive authority of their voter registries. In 1999, the SBE began the process of creating a statewide voter registration. By the time of passage of HAVA, the SBE maintained that aggregate list, but it did not meet HAVA's requirements (Maryland State Board of Elections 2003). Advisory boards were created and a lot of re-learning had to be done at the local level to get localities on board

(Trella 2010). In general, Maryland localities had a negative attitude towards HAVA initially (Mickley 2010). That attitude stemmed from the perception that local election administrators should have had more input in the HAVA drafting process (Mickley 2010).

Additional intergovernmental challenges derived from the need to create solutions that work well for large jurisdictions. Legislation tends to come up with an average (Maryland Local Election Administrator 2010), but that average might not work well in large or small or otherwise diverse jurisdictions. Thus, while the timeline for implementation was arguably not an issue for Maryland, the state still faced challenges in implementing HAVA's requirements, which similarly to New York, were the result of the intertwinement of intergovernmental and technical issues. That interaction concerned both the replacement of voting equipment as well as the setup of a state voter registration database and working with 24 counties which, until HAVA, had owned their voting equipment (Trella 2010).

State level election administrators have also shared that even though federal funding was available for the implementation of HAVA, i.e. HAVA was a funded mandate, that funding was not sufficient (Trella 2010) to maintain and implement election systems throughout their lifecycle, which was a similar issue pointed out by New York election officials—HAVA does not provide funds for maintenance of the voting system once it is introduced and that cost is born by states and/or localities.

Conclusions about Maryland's Implementation of HAVA

In 2003, Maryland issued its HAVA implementation plan, where it noted that the state simply had to continue with the reforms it had already initiated. Thus, the centralization that

HAVA promoted merely continued a process that had began in the 90s (Creek and Karnes 2010; Gimpel and Dyck 2005). Unlike New York, partisanship was not an issue in Maryland. State-local relations, however, were as Maryland localities had a negative attitude, initially, towards HAVA. Also, there were tensions between the state and counties over the choice of voting equipment.

Much like New York, Maryland also experienced challenges associated with implementing the voting machine sections of HAVA. But whilst New York's challenges resulted from awaiting the federal government to come up with Voluntary Voting System Guidelines for the certification of voting equipment, Maryland's challenges came on later after the adoption of voting equipment that proved to be unreliable and unsecure. This equipment has now been deemed for replacement throughout Maryland.

The States Compared

For the reader's convenience, Table 3.1 summarizes the factors that drove the disparate dynamics in the two states. Importantly, these factors reflect the scholarly consensus that differences in structural, historical, political, and technological challenges can account for differences in implementation outcomes. New York is a particularly stark example of how these can come into play to affect implementation. In New York, the intertwinement of the partisanship in the structure of the State Board of Elections with: the state's historical resistance to change, intergovernmental turf issues, and technical challenges associated with HAVA's voting equipment provisions and the federal voting equipment certification all affected the state's ability, or in this case, inability, to achieve implementation by the required deadline.

Table 3.1: Factors Affecting Implementation of HAVA in Maryland and New York as identified by the case studies

Factors affecting implementation	Maryland	New York
Factors Affecting Implementation Based On Case Study Findings		
Election administration structure	Bipartisan State Election Board led by one State Election Administrator	Bipartisan State Board of Elections led by two Co-Chairs from each of the parties
Partisanship	n/a	Partisanship
Intergovernmental relations	State centralization vis-à-vis localities (top-down voter registration database) Willingness to change Intergovernmental Turf Issues	State decentralization vis-à-vis localities (bottom-up voter registration database) County centralization vis-à-vis towns and villages Resistance to change Intergovernmental turf issues (example: “Backward Federalism”)
Technical challenges	Technical challenges associated with voting machines and voter registration database	Technical challenges associated with HAVA’s voting equipment provisions AND the federal voting equipment certification process
Different “bottom-ups” (the degree to which reforms similar to the one’s required by HAVA were already in effect)	Example: Maryland already had started putting together a statewide voter registration database	Example: the move to a statewide database was contentious and emblematic of the essence of local-state relations

Both New York and Maryland have similar election administration structures: elections are managed by bipartisan election boards with overall election management responsibility (Maryland Department of Legislative Services 2001), but with differing levels of centralization of power in those structures (in Maryland, the board is led by a single State Election Administrator while in New York, the board is led by two Co-Chairs, each representing a party), differing levels of experience with election reform prior to HAVA, and also differing approaches and challenges with the implementation of HAVA.

Partisanship was identified as a factor in the implementation of HAVA only in the New York case study. Arguably, this can be attributed to the aforementioned difference between the two states—Maryland has one State Election Administrator whilst New York has two Co-Chairs (each from a different party).

Intergovernmental relations and technical challenges were identified as factors in both case studies. In regards to the technological challenges, both states encountered such with HAVA's voting equipment and voting registration provisions. Differences existed, however, within some of these common challenges. For instance, Maryland displayed a general willingness to undertake reforms, whereas New York was historically averse to reforms. Also, centralization vs. decentralization was an issue in both states with Maryland opting to centralize, and New York opting to decentralize in regards to voter registration. However, both went through centralization when it came to voting equipment: in Maryland, the state assumed more responsibilities over this field vis-à-vis counties, whereas in New York counties assumed more responsibilities vis-à-vis towns and villages.

In Maryland, the centralization that HAVA reinforced was seen as a major plus since it allowed a system where all voters are treated the same, but HAVA did not necessarily create that

standardization to the extent it was implemented in Maryland (Trella 2010). Maryland took centralization to the next level, after HAVA gave the lead and the momentum (Trella 2010). The problem with the centralization, however, was that counties had their own way of doing things and there is no one size fits all approach (Wilson 2010). Most of Maryland consists of small counties that do not have a county government or much staff and have different needs from the larger counties, which are more autonomous and “do not want to be given marching orders” (Wilson 2010).

On the other hand, HAVA also raised a variety of challenges for state and local election officials, tipped the balance of power and responsibilities more in the direction of the state, and, as previously discussed, pushed it in the direction of the federal government as well. This created some resentment amongst local level election officials, particularly in regards to the drafting of HAVA. The drafting process should have consulted local election officials more (Mickley 2010).

An additional issue that both New York and Maryland election officials have raised concerns the federal funding made available by HAVA. While HAVA was not an unfunded mandate, the general feeling is that it was underfunded (Trella 2010; Maryland Local Election Administrator 2010; Cederqvist 2010). Despite this discontent over underfunding, of the over \$3 billion in federal funds were provided by HAVA to the states since 2002, approximately \$1 billion remained unspent as of September 2009.

Conclusion

The implementation of HAVA across the different states has varied substantially. This chapter has chronicled two outlier cases of HAVA implementation. In New York, the delay in implementing HAVA can be coined strategic, but the state’s lack of compliance with federal legislation by 2006 seems to be also due to the intertwining of partisanship (i.e. partisan

disagreements over the contents of the HAVA implementation plan as well as the process by which it came about) and intergovernmental relations issues as well as a variety of technical problems/concerns. Together with New York's essentially unchanged (and resistant to change), for more than a century, system of election administration, these factors led to failure to implement HAVA on time. In Maryland, the decision to centralize was taken long before HAVA came into being, but, much like New York, it also experienced challenges associated with implementing the voting machine sections of HAVA. Unlike New York, however, partisanship was not an issue in Maryland. Yet, state-local relations, however, were as Maryland localities had a negative attitude, initially, towards HAVA. But what accounts for variation in HAVA implementation across *all* the states? After all, New York and Maryland are outliers on a continuum that varies across all 50 states. The next chapter explores the theoretical framework, data and methods in this dissertation to identify possible theoretical answers to this question in preparation for offering a model suitable for testing.

CHAPTER 4

THEORETICAL FRAMEWORK, DATA, AND METHODS

This chapter begins with a review of the election administration literature and lessons that can be derived from it and subsequently reviews the theoretical frameworks that can help explain the dynamics of implementing federally mandated election reforms across 50 states with diverse legal, political, and socioeconomic conditions that can modulate the implementation of these federal mandates. These frameworks are policy implementation, federalism and intergovernmental relations. This literature will lay out the basis that, informed by the findings from the forthcoming Maryland and New York case studies, will serve to develop an empirical framework for understanding variation in the implementation of HAVA across the 50 states.

Theoretical Frameworks Applicable to the Study of Election Administration.

The distinctive characteristics of election administration in the U.S., particularly its decentralized nature, incline towards an analysis that takes into consideration the parameters that affect the implementation of policies, particularly those mandated by the federal government. After a review of prior research on election administration, the chapter turns to additional theoretical frameworks that help explain implementation in a (decentralized) federal system: policy implementation, federalism and intergovernmental relations.

Lessons form the Election Administration Literature

Various theoretical frameworks have been applied to the study of election reform. The theoretical framework most predominantly applied is that of the diffusion of policy innovations (Palazzolo and Liefer 2004; Palazzolo and Ceaser 2005; Krutz 2005; MacManus 2005).⁹ However, other theories, such as principal-agent theory, state policy-making, party electoral strategies, representation theories, and decision-making theory have also been applied. The process of policy diffusion has been explained through a combination of internal characteristics, external pressures, and neighboring states' influences. The research that has applied this theoretical framework to study electoral reform varies on whether it looks at policy innovation *prior* to or *after* HAVA; whether it uses empirical models or is a case study; and on the types of variables from the literature it chooses to incorporate.

Empirical studies employing a diffusion of policy innovations framework also have looked at the variation of election reforms enacted by states after the 2000 election but *before the passage of the HAVA* (Palazzolo and Liefer 2004). These studies have used a broad array of variables, some unique to election reform, while others generally typical for policy innovation studies (Palazzolo and Liefer 2004). This research includes political and electoral variables (threat of a close election, party control of the legislature, incumbent political risk), policy-related conditions (the capacity of election law in the state prior to 2000 and commission recommendations), and socioeconomic factors (fiscal situation, interested groups).¹⁰ The factors found to have a significant effect on election reform and policy innovations were the *need for such reforms*, the *existence of commission and task force recommendations*, and *one party*

⁹ The literature on policy diffusion is substantial. Overviews of this literature have been provided in Berry, Frances Stokes (1994). "Sizing Up State Policy Innovation Research." *Policy Studies Journal* 22 (3): 442-456; Berry, Frances Stokes, and William D. Berry (1999). "Innovation and Diffusion Models in Policy Research." In *Theories of the Policy Process*, ed. Paul Sabatier. Colorado: Westview Press.

¹⁰ The dependent variable in this work is an index of scores on election reforms developed by the authors using data from the National Council of State Legislatures that measures the number and types of reform enacted by states. The authors develop it using 12 categories of reforms and assign a weight on the categories to differentiate their level of *significance* based on number of states that have passed such reforms.

control of the executive and legislative branches in the respective states (Palazzolo and Liefer 2004).

Case studies (Palazzolo and Ceaser 2005) have also looked at the variation in the passage of major reforms by the states *before* HAVA. Using a diffusion of policy innovations perspective, Palazzolo and Ceaser (2005) identified a series of structural factors (the threat of a close election, the capacity of the election law before 2000, political culture, and party control) and situational factors (state commission recommendations, fiscal resources, key stakeholders, leadership and external factors) affecting the passage of election reforms. The authors classify states in 3 categories: “leading major reform states”, “incremental change states” and “late-developing states” (Palazzolo and Ceaser 2005). Based on their case studies of all three categories of states, they conclude that *unified party control of the legislature and the executive branches, state commission, and effective leaders* (i.e. policy entrepreneurs) are the most important factors in explaining variation in the passage of major reforms by states *prior* to HAVA.

From the empirical and case studies employing the diffusion of policy innovation as a theoretical lens for analysis of election reform **before** HAVA, one derives the following propositions and their logic:

- Proposition 1: The need for reform has a significant (positive) effect on the enactment of election reform.
- Proposition 2: The existence of commission/task force recommendations has a (positive) effect on the enactment of election reform.
- Proposition 3: Effective leaders (i.e. policy entrepreneurs) have a (positive) effect on the enactment of election reform.

- Proposition 3: One party control of the executive and legislative branches has a (positive) effect on the enactment of election reform.

Researchers have also begun to focus on the diffusion of election reforms after HAVA. For example, Krutz (2005) uses policy-diffusion to examine the reform processes in Arizona and Illinois (two late to innovate states) to test for the effects of HAVA on state decision making. He found that traditional (internal) explanations of policy innovation (*divided party control* and *lack of a critical mass of leaders early on willing to address reform*), are better at explaining why some states do not innovate on the front of an innovation wave, but are less helpful in explaining why late-to-innovate states eventually do innovate. He argues that the initially gridlocked states eventually innovated due to exogenous factors—such as the enactment of HAVA by the U.S. Congress—but that there were significant institutional impediments for this. These included the *state structure of election administration control* and the *setup of state election boards*. Krutz (2005: 588-589) points out that strong local level control of election administration in Arizona led to opposition to reforms related to voting technology changes and that the partisan nature of state election board members (two of each party) led to gridlock when election legislation was introduced.

MacManus (2005) focuses her attention on the implementation of HAVA's voter education requirement in Florida. In her case study, she tests several propositions: (1) a crisis is often the mother of policy 'invention'; (2) in the U.S. federal system, policy innovations often occur at the grassroots before they bubble up to Washington, D.C.; and (3) once a policy is "nationalized," state-local relations often change as it is being implemented, particularly if federal funds are involved (MacManus 2005: 538). She concludes that in the process of implementing voter education reforms, cooperation between state and local election officials in

Florida improved rather than worsened, as is so often the case when a policy area becomes “nationalized.” MacManus (2005) also argues that Florida’s results contradict expectations that HAVA implementation would go more smoothly in states with centralized election administration.

From these studies employing the diffusion of policy innovation as a theoretical lens for analysis of election reform **after** HAVA, one derives the following propositions and their logic:

Proposition 1: Internal factors, such as divided party control and lack of a critical mass of leaders willing to address reform, have a negative effect on some states’ ability to innovate (i.e. adopt election reforms) on the front of an innovation wave

Proposition 2: Exogenous factors, such as the enactment of HAVA by Congress, positively affect the election reform ability of late-to-innovate states

Proposition 3: State structure of election administration control, particularly strong local control over the election administration process, is an institutional impediment for reform.

Proposition 4: The setup of state election boards, namely their partisan nature, is an impediment for reform.

Proposition 5: An election crisis generates policy reform.

Proposition 6: In the U.S. federal system, policy innovations often occur at the grassroots before they bubble up to Washington, D.C.

Proposition 7: Once a policy is “nationalized,” state-local relations often change as it is being implemented, particularly if federal funds are involved

Research on election reform has also applied principal-agent theory to election administration and has focused on the implications of (non)partisanship in election administration and why that is a preferable model (Pastor 2004; Kimball and Kropf 2006;

Kimball, Kropf and Battles 2006). Pastor (2004) argues that the administration of elections must be impartial and nonpartisan as a bipartisan structure would either lead to stalemates or to collision against the public interest. The Commission on Federal Election Reform (2005) also noted that “to minimize the chance of election meltdown and to build public trust in the electoral process, nonpartisan structures of election administration are very important, and election administrators should be neutral, professional, and impartial” (Commission on Federal Election Reform 2005:50). Research has also suggested that, internationally, the character, competence, and composition of Electoral Management Bodies (EMBs) can determine whether an election is a source of peaceful change or a cause for serious instability (Pastor 1999).

Kimball and Kropf (2006) note that “while there is a growing debate about nonpartisanship in election administration, it seems as though political science and public administration scholarship has not contributed to the debate.” They also note that, while both political science and public administration have debated the issue of nonpartisanship of elected officials, the scholarship consists primarily of case studies and is not systematic.

What difference, if any, does it make to have nonpartisan, partisan or bipartisan chief election officials? The existing research suggests that nonpartisan election administration is preferable to partisan election administration. Survey research seems to suggest that both the general population and registered voters prefer nonpartisan election administrators. In a 2005 survey, about 66% of the general population thought that local or state election officials who run elections should be nonpartisan, while just 19.6% thought they should be partisan (Alvarez and Hall 2005). The percentage of registered voters favoring nonpartisan election administration was higher—72.6%—and just 0.9% of registered voters favored a *partisan single elected official*, the

model that predominates at the state level, as opposed to a nonpartisan elected or appointed board (Alvarez and Hall 2005).

Kimball and Kropf (2006) find, in their empirical study, that *party affiliation* affects the quality of ballot designs in a statistically significant way and that *nonpartisan or bipartisan election administration*, which generally occur in densely populated jurisdictions that have more professionalized local government services, tend to produce the best designed ballots. Kimball, Kropf and Battles (2006) reach similar conclusions in their empirical study of the impact of state and local election officials on provisional voting in the 2004 presidential election, when it was first required by HAVA. They found conditional partisan effects (after creating dummy variables for Democratic and Republican election officials, but excluding bipartisan and nonpartisan authorities) in the casting and counting of provisional ballots: ballots were more likely to be cast and counted in heavily partisan jurisdictions administered by an election authority of the same party.

From these studies, one derives the following propositions and their logic:

Proposition 1: Party affiliation affects the quality of ballot designs.

Proposition 2: Nonpartisan or bipartisan election administration produces the best designed ballots.

Proposition 3: Ballots are more likely to be cast and counted in heavily partisan jurisdictions administered by an election authority of the same party.

Proposition 4: The partisan affiliation of election officials affects aspects of the election administration process.

Finally, there has also been some research that intersects various theoretical frameworks. Using state policy-making, party electoral strategies, and representation theories, Bali and Silver

(2006) look at state election reform efforts in 2001 and 2002 (before HAVA passage and implementation). They use a multivariate statistical model that includes the impact of politics, ethnicity, and fiscal health in leading states to pass electoral reform legislation embodied in five factors: (1) base need for reform of the state's electoral system, (2) state partisan politics (party control and party balance), (3) state fiscal health and constraints, (4) the size of the mobilizable vote of major ethnic minorities, in particular African Americans and Hispanics, and (5) the interaction of partisan politics and constituency characteristics, in particular minority presence. These factors are tested on four key areas of reform in 2001 and 2002: new equipment, improved voter registration lists, provisional voting, and voter ID. The authors conclude that states with a *divided government or high levels of party competition* were averse to conducting some key electoral reforms (Bali and Silver 2006). Also, partisanship and the interaction of partisanship and minority representation influenced selected electoral reforms. Finally, fiscal constraints had a minor impact. Bali and Silver (2006) also look at state-by-state efforts to implement HAVA-compliant legislation in 2003, again using empirical models, and find that only one factor—*legislative professionalism*—had a statistically significant effect on passage of HAVA-compliant legislation. Furthermore, the effect was negative: more professional legislatures were less likely to pass HAVA-compliant legislation, which they hypothesize to be due to the fact that professionalized legislatures may be more independent of federal guidance, while having more legislative time and resources to develop an independent electoral reform policy.

From these studies, one derives the following propositions as possible factors affecting variations across the states in implementing HAVA:

Proposition 1: States with a divided government or high levels of party competition are averse to conducting key electoral reforms.

Proposition 2: Partisanship and the interaction of partisanship and minority representation influence some electoral reforms.

Proposition 3: Legislative professionalism has a negative effect on passage of HAVA-compliant legislation, i.e. more professional legislatures are less likely to pass HAVA-compliant legislation as they are more independent of federal guidance and have more time and resources to develop independent electoral reform policy.

Case studies of Georgia and California have looked at approaches to HAVA implementation from the perspective of decision-making theory (Alvarez and Hall 2005). Alvarez and Hall (2005) examined how HAVA changed the relationship between states and localities, mainly through the HAVA planning process, using rational and pluralistic approaches. The rational approach consists of defining the policy problem, collecting information, defining the proposed policy solution and then communicating it. In turn, the pluralistic approach involves emphasizing political considerations in the policy process, with interest group pressures and the political interests of the principals determining the selection of a solution. Alvarez and Hall (2005) also examined the level of conflict that framed the environment in which the decision-making process occurred and found that California's HAVA process was political, pluralistic, and conflictual, while Georgia's was consensual, participatory and rational. They conclude that states vary widely in the level of participation they allow local election officials on the HAVA planning process. Georgia provided local election officials a substantial say in how the state would move forward with the implementation of HAVA, whereas California allowed local election officials to only play a modest role.

Proposition 1: States vary in the level of participation they accord to local election administrators in the process of implementing HAVA.

From the election administration literature, it is possible to conclude, in summary, that the following factors were found to have a significant (positive) effect on election reform, both before and after HAVA: *single party control*, the existence of *commissions with task force recommendations* and *policy entrepreneurs*. The literature also suggested that *state structures of election administration with a strong local level control* (and states vary in the level of participation they accord to local election administrators in the process of implementing election reform) and the *partisan nature of election boards* are both impediments for reform and the latter is also a factor affecting the quality of election administration.

Lessons from the Federalism and Intergovernmental Relations Literatures

It is also important to consider the intergovernmental context and the nature of federalism in the U.S. in an analysis of policy implementation, that is, into models that attempt to explain policy implementation. One of the earliest policy implementation models, that of Pressman (1975), developed a "donor-recipient" model of the grant-in-aid process that explicitly incorporated the inter-jurisdictional conflict, mutual dependence, and power asymmetry of American federalism (Krane 1993). Later, only with the "third generation" of policy implementation studies did the capacity of states and localities to act as "power wielders" (Pressman's term) get restored as an explanatory variable (Karne 1993).

Federalism is a form of government where power is distributed between a national government and a number of constituent territorial units. The Constitutional Framers' idea of federalism was one of a division of political power between member states and the central government, with each tier of government having the final say regarding matters belonging to its sphere of power (Diamond 1985). Wright (1988) provides three analytical models to describe the

relationships between the federal, state and local governments: the inclusive authority model, which assumes that the national government has a superior role and controls the other levels, which are dependent on this national government; the coordinate authority model, which assumes the federal and state government are independent and have their own spheres of powers that do not overlap (hence it emphasizes the autonomy of states) and interprets localities as creatures of the state; and the overlapping authority model, which assumes interdependence as well as that many policy areas require the participation of all tiers of government and the areas of autonomy and discretion for each tier of government are limited.

With this conceptualization of relationships in mind, the evolution of federalism in the U.S. underwent a series of stages and metaphors to describe them. These stages and metaphors have evolved from one where there is a substantial degree of independence between the federal and state government to dense networks of interaction to more coercive relationships (Beam et al 1983).¹¹ The dual model of federalism (1800s-1930s), also known as "layer cake federalism," suggests clearly defined powers between the national and state governments and Congress and states are "sovereign" and "equal" within their respective spheres. Under dual federalism, changes in the power distribution between the two planes of government can be accomplished only by constitutional amendments and inter-plane relations are minimal as Congress and state legislatures operate autonomously by employing their respective powers (Zimmerman 2001). Cooperative federalism (1930s-50s), also known as "marble cake federalism," describes a relationship between national and state governments with the following main characteristics: each plane of government possesses certain autonomous powers that may be exercised

¹¹For a more complete discussion of the evolution of American Federalism, please see Conlan, Timothy (2008). "Between a Rock and a Hard Place: The Evolution of American Federalism." In *Intergovernmental Management for the 21st Century*. Edited by Timothy Conlan and Paul Posner. Brookings Institution Press: Washington, DC; Stewart, William H. (1982). "Metaphors, Models, and the Development of Federal Theory." *Publius* 12(2): 5-24.

cooperatively; one plane of government does not coerce the other; and cooperation is negotiated (Zimmerman 2001).

Creative federalism (1950s-70s), also known as "picket fence federalism," characterizes a state of federal-state relations where the local government was added to the federal mix. Federal, state and local relations were explained using the metaphor of a picket-fence where the horizontal pickets represent the national, state and local governments, while the vertical pickets represent different programs and policies in which each level of government works to the develop the policy represented by the picket. The "picket-fence" metaphor of federalism is a description of implementation that pre-dates the top-down policy implementation models and suggests the need to, given its multi-layered and multi-actor components, infuse policies with enough capacity to overcome the complexity of joint action (Krane 1993).

More recently, the so-called new federalism (1970s-80s) has been understood to describe further devolution of power from national to state governments, deregulation, but also increased difficulty for states to fulfill their new mandates. Some have characterized the current era as one of "coercive federalism" (Kincaid 1990; Posner 2007), where the federal government centralized and nationalized policy in major areas formerly controlled by states and localities (Posner 2007). The scholarship on "coercive federalism" has focused on trends in American politics that correlate with the growth in mandates, preemptions, and other restrictions of state authority, which are just some of the instruments, or tools, of intergovernmental relations.

Any analysis of policy implementation in the context of federalism and intergovernmental relations should include an emphasis on the tools of policy implementation in that context. Policy tools are the techniques used to increase the probability that agents or targets will take action consistent with the desired policy results (Ingram and Schneider 1990). Salamon

(1989), rejecting existing policy implementation research paradigms that examined agencies, programs, actors, or organizations, promoted an approach that focused on the specific devices, or tools, used by government. Tools affect policy implementation outcomes and it is assumed that policy makers and administrators can perform their tasks better, especially in complex settings involving different tiers of government, by selecting the appropriate policy tools.

A variety of tools, or instruments of intergovernmental relations, are available to shape the working relationships amongst the three tiers of government. Radin et al (1996) provide a taxonomy of policy instruments which defines four broad categories: structural (such as reorganization, coordination, deregulation, devolution, decentralization, regulation and oversight), programmatic (broad purpose grants, partnerships and collaborations), research and capacity-building (research, provision of information, capacity-building) and behavioral (conflict management, individual and group communication, organizational development and strategic planning) (Radin et al 1996).

From these studies, one derives the following propositions and their logic:

Proposition 1: The choice of policy implementation tools affect policy implementation outcomes.

Proposition 2: A variety of tools, or instruments of intergovernmental relations, are available to shape the working relationships amongst the three tiers of government.

Relatedly, Ingram and Schneider (1990) have developed a framework where the structural elements of policy content they identify—agents, target populations and goals/objectives—are linked together by policy tools, rules and assumptions. Ingram and Schneider's (1990) framework conceptualizes statutes in terms of the level of discretion they allocate and propose four categories of statutes (strong statutes, Wilsonian, grass roots, and

consensus building). They also offer broad hypotheses about the contexts in which the different models for statutory design are likely to succeed.

From these studies, one derives the following propositions and their logic:

Proposition 1: Statutes vary in terms of the level of discretion they allocate.

Proposition 2: There are contexts where the utilization of certain types of statutes is more appropriate and conducive to success than the utilization of other statutes.

One recent study that has blended policy implementation theory and federalism in the analysis of the implementation of HAVA across three states used as case studies—Virginia, Maryland and New York—has looked at how centralization of state election authority can affect the inequality of implementation costs between rural and urban districts (Creek and Karnes 2009). While interesting, this study only focuses on monetary costs as an indicator of HAVA-compliance, which is a too simplistic conceptualization of a model that would explain policy implementation, particularly when it comes to election reform. Policy implementation theory suggests a variety of variables that can influence this process and so does the above reviewed research on election administration. Additionally, the study does not cite a single figure that demonstrates the magnitude of those monetary costs, and their differential, amongst rural and urban districts.

Additionally, Ewald (2009) has reviewed recent developments in American felony disenfranchisement law from the federalism perspective. He argues that HAVA centralized administration of this policy, while local officials retained important roles. Ewald (2009) found that only *initial policy severity* is a strong predictor of restriction-relaxing change, as most of the dozen states enacting such reforms in the last decade began the period with extremely restrictive policies.

From the studies that have blended policy implementation and federalism, one derives the following propositions and their logic:

Proposition 1: Centralization of state election authority is assumed to affect the implementation costs between rural and urban districts.

From the federalism and intergovernmental federalism literatures, it is possible to summarize several conclusions important for the analysis of implementation of election reform. Firstly, the nature of federalism and intergovernmental relations in the U.S. is constantly evolving and affecting the distribution of power amongst local, state and the federal government. Secondly, there are a variety of tools to shape the relationship amongst the three tiers of government and thus federal statutes vary in terms of the level of discretion they allocate to states depending on the context. Thirdly, *centralization of state election authority* was a factor found to affect the implementation of election reform.

Lessons from the Policy Implementation Literature

Theories of policy implementation, beginning with Pressman and Wildavsky (1973), focus on why policy does, or does not, get into effect as intended by its framers. Scholars have identified more than three hundred variables that might affect implementation (O'Toole 1986), the majority of which can be categorized into four general classes of influence on implementation: policy and the policy process; organizations and their environment; agents; and conditions within the policy implementation environment (Hill 2003). These categories will be reviewed next with an emphasis on a few factors in each category that are going to be of particular interest further on in terms of their interpretation in the context of election administration.

Several studies have applied aspects of the policy implementation to theory to the study of election administration reforms. Montjoy and Chapin (2005) apply the “tools of government” approach (Salamon 2002) to election administration and particularly, to the study of the Election Assistance Commission (EAC) and its role. Salamon (2002) defines “tools” as methods through which collective action is structured to address public problems. He argues that tool choices significantly structure public management and affect its results. Given that the EAC is expected to lead states through the implementation of HAVA, but has no regulatory powers and a very limited set of tools (the main ones being grants and information), Montjoy and Chapin (2005) hypothesize that its long-term contribution will be (only) to create and disseminate information.

As noted in the previous chapter, Liebschutz (2005), in a case study of New York, employs policy implementation theory to account for this state’s “strategic delay” in responding to HAVA. The study reveals that the characteristics of New York’s legal and election administration systems *before HAVA* were influenced by *party competition, home rule, and voting as a civil right*, which were also found to be important in New York’s responses to the 2000 election and to HAVA. The study also reveals that this state’s delay in implementing election reform that would bring it in compliance with HAVA was a strategic rather than a routine delay in state activities. The delay was due to strong, competitive parties highly vested in the old system and a widespread perception that New York’s election system was not broken. In turn, the push for reform was due to interest groups, such as persons with disabilities (who argued that their civil rights as voters were incomplete) and local elections officials.

Still, there is a much broader literature offering frameworks for understanding policy implementation. These include:

Policy design and the policy process. Policy design and the policy process shape implementation and outcomes through the policy's design, the resources devoted to its execution, the validity of its causal theory, and the presence of fixers (Calista 1986; Linder and Peters 1990; Lippincott and Stoker 1992; Meier and McFarlane 1996; Mazmanian and Sabatier 1989; Pressman and Wildavsky 1973; Bardach 1977).

Organizations and organizational characteristics. Implementation generally requires actions from organizations and organizational characteristics (such as supportive behaviors from external stakeholders; agency autonomy in refining and implementing its mission; high "mission valence" (an attractive mission); a strong, mission-oriented culture; and certain leadership behaviors) affect outputs (Van Meter and Van Horn 1975; Rainey and Steinbauer 1999). Scholars have also noted the existence of problems when organizations have to work together, including diverse organizations, to implement policy (O'Toole et al. 1997; Alter and Hage 1993; Sandfort 2000).

Agents. A third class of variables that affect policy implementation are agents, whose preferences and leadership abilities may further shape policy outcomes (Lipsky 1980; Brehm and Gates 1997; Vincent and Crothers 1998). Lipsky (1980) famously argues that public policy is best understood not by looking as it was coined by the legislatures, but by looking at street-level bureaucrats' decisions, routines, and devices they invent to cope with uncertainties and work pressures effectively *become* the public policies they carry out.

Implementation environment. Finally, implementation can be influenced by conditions within the implementation environment. These conditions could be the behavior of groups affected by policy, economic conditions, and public opinion (Mazmanian and Sabatier 1989).

From literature applying policy implementation to the study of election administration literature, one can derive the following propositions that may help account for variation in the implementation of HAVA across the 50 states:

Proposition 1: Policy design and the policy process shape implementation and outcomes through the policy's design, the resources devoted to its execution, the validity of its causal theory, and the presence of fixers.

Proposition 2: The choice of policy tools significantly affects the results of public management and this is relevant for election management too.

Proposition 3: Implementation requires actions from organizations and organizational characteristics affect outputs.

Proposition 4: Agents, whose preferences and leadership abilities can shape policy outcomes

Proposition 5: Characteristics of state's election administration systems *before HAVA*, such as party competition, home rule, and the conceptualization of voting as a civil right, can affect states' responses to HAVA.

Proposition 6: States where there is a widespread conviction that the election system is not "broken" will strategically delay the implementation of HAVA.

From the policy implementation literature, it is possible to summarize several conclusions important for the analysis of implementation of election reform across the 50 states. It is also possible to identify overlap with conclusions from the other reviewed theoretical frameworks. Firstly, and also suggested by the federalism literature, the choice of tools structures public management and affects its results. Secondly, implementation requires actions from organizations and their characteristics affect outputs. This conclusion is quite similar to the

conclusion from the election administration literature that the partisan nature of election boards, an organizational characteristic, is a factor affecting the quality of election administration. Thirdly, it is possible to conclude that agents can shape policy outcomes and this conclusion echoes conclusions from the election administration literature, which also points out that effective leaders or policy entrepreneurs can affect the implementation of election reform. Lastly, the implementation environment, where the characteristics of the state election administration system and the existence or lack of a conviction that reform is necessary, can also shape policy implementation.

HAVA Under the Theoretical Microscope

With federalism, intergovernmental relations and policy implementation as theoretical frameworks, it is possible to proceed to analyze HAVA and how well it was crafted for implementability. Put differently, what aspects of HAVA boded well or ill for the prospect of implementation success or failure regardless of whether state variations occurred or not? By the same token, however, answering this question also helps us anticipate factors that will help us account for variations in state implementation of HAVA.

Federalism, Discretion, and the Extent of Behavioral Change Required

Given the changing nature of federalism, as revealed by the reviewed theoretical literature, how has HAVA changed the federal-state-local level relationships? Also, are those changes representative of a particular stage or metaphor for federalism? The answer to the latter question is yes: HAVA, through its direct order mandates, would be characterized as a coercive federalism statute (Posner 2007). Because of its requirements in Title III and the potential civil

penalties for noncompliance in Title IV (the U.S. attorney general is authorized to initiate civil action against state and local governments that do not comply with Title III requirements), HAVA represents a direct order from the federal government to the states (Liebschutz and Palazzolo 2005: 506). Mandates, or direct federal orders requiring state or local governments to provide certain services or perform certain duties, are characteristic of coercive federalism. HAVA instituted new direct order federal mandates (applicable to all states, whether or not they choose to receive federal funding or not) requiring states to implement the use of provisional ballots; to create computerized statewide voter registration databases; to implement minimum federal standards in voter identification (for first-time voters who register to vote by mail) and in voting equipment.

Through HAVA, the federal government exercised preemption and set forth some uniform standards (a feature generally associated with coercive federalism), but left states discretion to implement the law according to local circumstances and constituent needs. Also, while the federal government has created an expanded role for itself, that role is constrained and implementation depends more on collaboration rather than coercion. In the process, however, we can also discern the factors in HAVA that might also account for variation in state implementation of the law.

HAVA, however, is also a partial federal preemption that required amendments to state law in order to ensure compliance with federal standards. Under partial preemption, Congress establishes minimum national standards for a function or service and authorizes states to exercise primary regulatory responsibility, provided that state standards are at least as high and are enforced (Advisory Commission on Intergovernmental Relations 1992). HAVA set the first federal minimum standard for voter identification. The HAVA standard stipulates that all first-

time voters who register by mail and fail to include verifiable identification in their voter registration application (such as the last 4 digits of their Social Security Number or a Driver's License/State ID number) need to show some form of identification at the polls. Additionally, HAVA set requirements that voting machines must meet, required the creation of unified statewide voter registration databases, and the implementation of provisional balloting.

Yet, HAVA allowed states to exercise a great deal of discretion in complying with the above requirements. While the Act requires first time voters to show ID, it does not mandate what type of ID those first time voters should show at the polls, simply that an ID must be provided—the minimum national standard—and allows for a wide range of acceptable ID options (current and valid photo ID, copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter). It then becomes up to the state to decide what to require and there is considerable variation in the approach states have taken, as previously discussed.

Similarly, HAVA does not prohibit punch card and lever voting equipment or any other kind of equipment, but rather imposes requirements that all voting equipment systems must meet and provides funding for states to replace punch card and lever voting machines, if they accepted funding for such replacement. Every state was unique in its approach. Georgia and Maryland, for example, purchased a single system from one vendor for the entire state, while Ohio and Michigan allowed counties to choose from multiple vendors that have been approved by the state (National Association of Secretaries of State 2005). With the passing of the January 2006 deadline for implementation of this requirement, most of the punch card and lever machines were replaced. However, certain states, such as New York, had not yet made the switch to new voting equipment. As of October 2006, all of its 62 counties were still using lever machines

(Election Data Services 2006; electionline.org 2006). In Connecticut, where elections are conducted by townships, only 25 of the state's 169 towns shifted from lever to optical scan equipment for the 2006 elections (Election Data Services 2006).

While HAVA required states to build centralized voter registration databases, it was also silent as to what is the best infrastructure model for a statewide database and left that decision at the discretion of the states. As previously mentioned, states could adopt one of three possible ways of building and updating the statewide databases: a bottom-up, a top-down or a hybrid approach. The vast majority of states, or 40 to be more precise, chose to have a top-down registration database; 8 states have bottom-up databases in which the registration lists are organized at the local level; and 1 state has a hybrid system (North Dakota has no voter registration database as it does not conduct voter registration). The choice of infrastructure for the statewide database is a reflection of the reorganization of power and responsibilities over voter registration records between states and localities. A top-down system can be associated with a stronger state role in the maintenance of voter records, whereas a bottom-up system implies more local control and input in the process, which is what was traditionally the case prior to HAVA. For some states, such as Vermont, where voter registration lists were maintained on a town-by-town basis, the switch to a top-down system was quite the change in intergovernmental dynamics.

Lastly, Section 302(a) of HAVA requires a state to permit an individual to cast a provisional ballot if that individual declares that he/she "is a registered voter in the jurisdiction in which [he/she] desires to vote and that [he/she] is eligible to vote in an election for Federal office," but his/her name "does not appear on the official list of eligible voters for the polling place or an election official asserts that [he/she] is not eligible to vote." HAVA, however, leaves

it up to state and local election officials to determine if the individual is eligible under state law to vote and whether the provisional ballot he/she cast should be counted as a vote in that election. Thus, HAVA does *not* preempt state law with respect to the counting of provisional ballots cast outside a voter's assigned precinct and nothing in Section 302(a) forces state and local election officials to count such votes (Schlozman 2004). HAVA defers this counting determination to state law (Schlozman 2004). Additionally, the term "jurisdiction" in Section 302(a) of HAVA, is not defined. Congress chose this flexible term because it recognized that the delineation of the appropriate locale for casting a lawful vote will vary depending on state laws, which differ widely from state to state (Schlozman 2004).

Complexity of Joint Action, Lack of Hierarchical Integration, and Cultural Competence

HAVA has elements of both cooperative and coercive federalism. In addition to discretion in the above matters, HAVA has another feature that links it more to cooperative than to coercive federalism. While with HAVA the federal government created an expanded role for itself, that role is constrained and implementation depends more on collaboration (amongst tiers of government) rather than coercion. Under HAVA, federal, state and local governments each participate in meeting its requirements (DeGregorio, Martinez, Davidson, and Hillman 2006). Yet, HAVA assumes that states are ultimately responsible for its implementation, that is, for implementing compliant voting systems, statewide voter registration databases, provisional voting and its other requirements, regardless of the participation level or decisions made by local governments (DeGregorio, Martinez, Davidson, and Hillman 2006). In cases where there are funding agreements between states and local governments, local governments may be held responsible by the state if they fail to meet one or more of the mandates of HAVA.

The EAC, the bipartisan agency HAVA created, has no regulatory powers over the states. HAVA's Sec 209 stipulates that the EAC "shall not have any authority to issue any rule, promulgate any regulation, or take any other action which imposes any requirement on any State or unit of local government, except to the extent permitted under section 9(a) of the National Voter Registration Act of 1993." The EAC is stripped of any coercive authority over the states, and it is responsible for distributing grants to the states. Federal aid (grants) forms the basis for cooperative federalism and is a tool of persuasion and encouragement (Cho and Wright 2001). This makes it possible to conclude that both the tools available to the EAC and its responsibilities suggest a cooperative, rather than a coercive role (Montjoy and Chapin 2005).

The wide discretion HAVA left to the states has, however, created problems relating to the statute's implementation across the states. HAVA aimed to address problems identified during the 2000 election. As noted in Chapter 2, HAVA was the result of political compromise between the Republican and Democratic parties and election experts have commented that because portions of HAVA are the result of political compromises, they do not necessarily mean a better system. This is a very valid argument. While HAVA identified *what should be done*, it left a number of issues to be addressed as to the manner of *how they should be done* and opened up the stage for discretionary interpretation by states and variation in approaches (relating to, for example, provisional balloting and structure of statewide voter databases).

I would argue that the portions of HAVA that are most problematic relate to issues of *how* the required reforms should be put in place. The majority of election problems since 2002 are not related to: 1) whether there should or should not be provisional balloting, but rather to issues such as when those ballots should be counted and why poll workers do not administer them the same way across states and even across counties within the same state, which is something

HAVA remained silent about; 2) whether to have or not to have a statewide voter registration database, but rather to how to construct that database, which is something HAVA remained silent about; and 3) whether or not to scrap the outdated lever and punch card voting equipment, but rather what is the best equipment to opt for, which is something HAVA remained silent about.

Likewise, HAVA also utilizes collaboration and partnerships as programmatic tools of intergovernmental relations (Radin et al 1996). HAVA's Title III, which requires states to create a centralized, computerized statewide voter registration list, also requires that the data in this list be coordinated with the data of other state agency databases (such as the Social Security Administration records and State Motor Vehicle Authority records) for accuracy. Thus, HAVA promoted interagency partnerships to achieve its objectives. However, this interagency coordination effort leads to a well described phenomenon in policy implementation—the complexity of joint action. Complexity of joint action describes a situation where a multitude of participants pursue policy goals that may be conflicting. The pursuit of these policy goals is also, naturally, accompanied by the use of different policy tools. The use of these different policy tools, namely different state standards in maintenance and matching of voter registration data in the case of HAVA, that can also lead to problems in the collaboration of several agencies as mandated by legislation. Additionally, joint action might be further impeded by power fragmentation and the lack of sufficient authority of any one of the implementing agents/agencies to drive the policy implementation process.

Complexity of joint action in HAVA's case can best be exemplified in the Act's requirement of collaboration amongst state Motor Vehicle Agencies, the Social Security Administration (SSA), and state election officials. State election officials must enter into agreements with these agencies to cross-check voter registration information. Additionally,

HAVA calls for coordination of state voter registration data with state death and felony databases in accordance with state law. These procedures are required in order to ensure that only those eligible are listed in the voter registration list and to remove duplicates as well as certain categories of individuals (often felons in states that disenfranchise them) as excluded from the voter rolls. However, HAVA does not specify how the coordination with other state agencies' databases is to take place and lacks specific guidance on standards or methods for removal of ineligible voters from the databases for these reasons. Consequently, states have considerable discretion to decide what criteria to use for matching (Committee on State Voter Registration Databases, National Research Council 2008: 31). Some states use fuzzy matching while others use exact matching for checking any given data field. States also vary in the fields that they check as some compare addresses and others do not. This leads to a situation where election offices may be using match criteria without sufficient consideration of possible false-positive and false-negative error rates (Committee on State Voter Registration Databases, National Research Council 2008).

This lack of guidance on coordination or how the identity verification process should be conducted has led to several major problems. First, states use different criteria to determine whether information on a voter registration application matches information in the databases of the SSA or MVA. According to 2006 data, 25 states would still list voters in the poll books if there is no match and describe them as "registered," "provisional" or "pending," and the voter will often have a notation in the roll stating that identification or an affidavit are required to complete the registration process or to cast a regular ballot (Levitt et al. 2006). On the other hand, 4 states (Georgia, Kentucky, Oklahoma, and South Carolina) did not at the time match or plan to match information from new voter registration forms to the MVA or SSA databases

before placing the voter on the registration lists. The remaining states used diverse approaches to maintain the accuracy of voter records and different criteria to determine whether information on a voter registration application matches information in another government database (Levitt et al. 2006). Second, there are a number of technical challenges to data crosschecks using several databases due to different standards of data collection and maintenance. Finally, crosschecking presumes that the databases to be matched against the voter registration database are in fact available.

However, “in the real world of state voter registration databases, fragmented state control over state social service agencies and departments of motor vehicles, and state/county tensions regarding authority over voter registration, the politics of database availability are at least as challenging as the technology for matching” (Committee on State Voter Registration Databases, National Research Council 2008: 32). Database-providing agencies not under the authority of state election officials (whether state or county) might be assigning low priority to meeting the election needs of the state, thus leading to difficulties for state election officials in gaining access without undue delay or difficulty (Committee on State Voter Registration Databases, National Research Council 2008:32).

Finally, HAVA also promoted changes in horizontal federalism by promoting interstate interactions. Some states went beyond the interagency coordination requirement and have entered into interstate agreements to share data amongst each other. Interstate voter registration database exchange is of interest to states with metropolitan areas that span state borders and in situations where there is a great deal of residential mobility between two or more states. These agreements are not actually compacts, but Memorandums of Understanding (MOUs), which have led to the formation of consortiums. Data exchanges first began among Iowa, Nebraska,

Missouri and Kansas in 2006 (Center for Democracy and Election Management 2008). Later, Minnesota and South Dakota joined this group. As a result of these exchanges, Kansas alone removed 27,629 registrations from the rolls in 2006 and 66,483 in 2007 (Greene 2007). Smaller numbers were removed in other states. In 2007, a new data exchange group was formed and included Kansas, Arizona, Arkansas, Colorado, New Mexico, Oklahoma and Texas. Overall, Kansas leads the nation in information exchange as it currently has MOUs with 11 different states to share voter registration data. These are examples of horizontal intergovernmental relationships that emerged post-HAVA, which while not required by it, can be attributed to the same consideration for interagency coordination it requires, i.e. to improve the integrity of the voter rolls.

Capacity Building, Resource Adequacy, and the Efficacy of Policy Tools

Given that both federalism and policy implementation theories have identified the choice of tools to shape policy implementation, it is important to analyze what tools, or instruments, did Congress select for the implementation of HAVA? Preemption is one of HAVA's tools as well as distinguishing features of coercive federalism. But as discussed, while HAVA has some features of coercive federalism, it also has characteristics that resonate with cooperative federalism. The Congressional choice of tools further emphasizes the fact that HAVA is an interesting amalgamation of cooperative and coercive federalism.

Grants. Money is rarely “not a factor” in intergovernmental relations and in policy implementation. Grants are considered a programmatic tool of intergovernmental relations that involves the application of resources to attack a particular problem (Radin et al 1996). HAVA

uses grants, to improve the management of elections, both as coercive and cooperative tools of intergovernmental relations. The use of categorical grants and mandates has been identified as an expression of coercive federalism because they strengthen the federal government at the expense of state and local governments (Posner 1998). Categorical grants can only be used for a narrow range of activities and include administrative and reporting requirements to help ensure financial and programmatic accountability. Because of these characteristics of categorical grants, state and local governments generally prefer block grants, which give them greater discretion in how the grant money is spent within a functional area, i.e. block grants come with fewer "conditions" or "strings" attached (Benton 2007).

Title I of HAVA uses grants as tools in ways that promote both centralization and devolution. It authorizes \$650 million to improve election administration through two grants: one a block grant and the other one a categorical grant program, thus promoting devolution and centralization at the same time but in different areas. Sec. 101 of Title I provides \$325 million in block grants for the improvement of election administration (Sec. 101 allows funds to be spent on educating voters, training poll workers, election officials and volunteers, improving federal election administration, updating voting technology and systems and creating voter hotlines to report complaints and receive general voting information such as voter registration status and polling place location) based on voting-age population (Montjoy and Chapin 2005). Block grants increase state flexibility and have important consequences for program outcomes and the distribution of power in domestic policy (Posner and Wrightson 1996). Congress decided to devolve the decision about how to improve election administration to the states, through block-grants. Here, HAVA adopted an approach that emphasized a broad principle and did not push for

a standardized solution. It left the states to act as labs for democracy and come up with solutions that best suit their constituents.

On the other hand, Sec. 102 of Title I provided another \$325 million, in the form of categorical grants, with the condition that the money be used by states to replace punch card and lever voting machines (in other words, states that accepted this funding incurred an obligation to replace old voting equipment) and distributed on the basis of number of precincts using that equipment in the 2000 election (Montjoy and Chapin 2005). Similarly, Title II authorizes the largest grant program, again in the form of categorical grants, to help states meet the requirements in Title III of HAVA, but states are required to meet these requirements whether or not they accept this funding (Montjoy and Chapin 2005). Title III has a number of requirements for voting systems, for voter registration (the creation of statewide voter registration databases) and for voting safeguards (provisional voting and voter ID requirements). Acceptance of the funds introduces additional requirements that states set up matching fund programs and prepare a state implementation plan that addresses a number of elements and is designed through a broad participatory process. The federal government chose to use categorical grants as an intergovernmental relations policy implementation tool for the Title III provisions as a means to create centralization and some degree of standardization on the way voting is administered across the states.

The use of categorical grants for the replacement of punch card and lever voting equipment has led to some not so surprising attitudes amongst local election administrators (LEOs). Surveys have shown that LEOs believed that the federal government has too great an influence on the acquisition of voting systems and local elected officials have too little (Fischer and Coleman 2008). On the other hand, while strings attached do bring a certain level of

discontent, amongst all of the provisions of HAVA, LEOs were most supportive of its provision of federal funds to the states (Fischer and Coleman 2008).

In addition to grants, HAVA combines several other types of instruments of intergovernmental relations to promote the implementation of its reforms across the states through capacity building. These are visible in the duties assigned to the EAC—to be a clearinghouse of information about election administration. The EAC conducts and disseminates research, which is considered an indirect intergovernmental tool that builds increased management capacity at all levels (Radin et al 1996). The EAC has engaged in a process of commissioning, collecting, and disseminating information about election administration, often not directly related to HAVA requirements. This represents a substantial federal investment in informational tools (Montjoy and Chapin 2005). Interestingly, however, EAC's research and capacity-building functions have caused a great deal of controversy as well as calls for stricter federal oversight of the agency. The controversy stemmed from the way the EAC handled two research projects it commissioned: a report on voter identification and a report on voting fraud and voter intimidation. Voter fraud, intimidation, and identification are sharply partisan issues. Republicans argue that voter fraud plagues the nation's federal elections and advocates mandatory photo identification for voters at the polls. Democrats, on the other hand, argue that voter fraud is not a problem, and that voter ID laws will intimidate and disenfranchise certain groups, such as African-Americans and the elderly, who might not have photo IDs or for whom getting one would be associated with incurring a cost, in which case getting this ID would be tantamount to a poll tax.

The EAC reports were completed by mid-2006, but the EAC refused to release them until mid-2007, after it came under intensive scrutiny and pressure from members of the House

Subcommittee on Financial Services and General Government and others. There were allegations that the EAC was trying to suppress or delay the findings of the reports, due to the sensitive and highly political impact of the findings. It was also found that the EAC cut the original voter fraud report in half and made substantive changes to the language of the report's conclusions. These events are evidence that research and capacity-building tools, such as those in the hands of the EAC, might have a high degree of impact on the conduct of elections across states, potentially leading them to adopt legislation informed by EAC's research findings.

HAVA through the Scenario-Writing Lenses of Policy Implementation Theory

It is useful to also analyze HAVA from the perspective of scenario-writing lenses of the implementation literature. A variety of definitions have been generated to describe the policy implementation process. Perhaps the most detailed definition of policy implementation has been offered by Mazmanian and Sabatier (1989):

Implementation is the carrying out of a basic policy decision, usually incorporated in a statute but which can also take the form of important executive orders or court decisions. Ideally, that decision identifies the problem(s) to be addressed, stipulates the objective (s) to be pursued, and, in a variety of ways, "structures" the implementation process. The process normally runs through a number of stages beginning with passage of the basic statute, followed by the policy outputs (decisions) of the implementing agencies, the compliance of target groups with those decisions, the actual impacts of agency decisions, and, finally, important revisions (or attempted revisions) in the basic statute.

Other definitions are more parsimonious. Ferman (1990) defines implementation as what happens between policy expectations and (perceived) policy results. O'Toole (2000) argues that policy implementation is what develops between the establishment of an apparent intention on the part of government to do something, or to stop doing something, and the ultimate impact in the world of action. O'Toole (2000) also makes a distinction between implementation (action on behalf of the policy) and the ultimate impact on the policy problem. Schneider and Ingram (1993) talk about implementation as causing changes in behavioral patterns (i.e., getting constituents to cease doing one activity and getting them to do another). According to them, behavioral change is sought by enabling or coercing people to do things they would not have done otherwise.

There are two main scenario-writing approaches to studying the specifics of policy implementation: forward (a “top-down” approach) and backward mapping (a “bottom-up” approach). Applying forward and backward mapping to the same problem provides alternative policy options. Elmore (1979-1980) argues that forward mapping stresses factors that tend to centralize control and that are easily manipulated by policymakers: funding formulas; formal organizational structures; authority relationships among administrative units; regulations; and administrative controls (budget, planning, and evaluation requirements) (Elmore 1979-1980). Unlike forward mapping, backward mapping does not begin with a statement of intent, but with a statement of the behavior that creates the need for a policy and must be changed for successful policy implementation (Elmore 1980). Backward mapping begins with an identification of the outcomes that need to be affected and the choices we want the targets of the policy to make. The process of mapping works backwards, asking “what ability each [organizational] unit has to affect the behavior that is the target of the policy; and what resources it would require to do so”

(Elmore 1980: 604). At each stage, it identifies a set of organizational operations and how they work.

Forward mapping

As noted, the "forward mapping" approach begins at the top of the policy process and proceeds downward through an organization or system of implementation to define what must occur at each level. It stresses uniformity, standardization, and control from the top level, with, of course, the assumption that policymakers control the organizational, political, and technological processes that affect implementation.

Implements. Table 4.1 shows the set of implements available to the federal government and their corresponding streams of action, as suggested by forward mapping and the constitutional constraints on Congressional involvement in election administration (which limit the implements available at the disposal of Congress). These implements are structural (issue new federal legislation and create a new federal agency), programmatic (provide grants and foster partnerships), and research and capacity-building (promote more research that builds capacity, best practices and promotes professionalism).

Expected outcomes. New federal legislation is expected to lead to the adoption of uniform standards and implementation of federal requirement across the states. These standards and requirements, as is the case in forward mapping, will push towards centralization of power and standardization of election administration practices nationally. These standards, as well as the mission of the new federal agency, which will be restricted to the non-regulatory functions of providing research and capacity-building services, aim to improve the integrity and reliability of the election process. The grants provided by the federal government are expected to contribute to the achievement of this outcome as well.

Parameters. The implements suggested by forward mapping will be affected by a number of parameters or external conditions. The most important parameters are going to be partisan conflict over the roles of federal, state and local authorities as well as Constitutional limits on the role of the federal government in election administration. These two parameters are going to shape the main implements or tools available to Congress: legislation. Legislation is the “master” implement, which in turn, will contain a series of “sub-implements” drafted also in accordance with partisan compromise and Constitutional limits on federal authority in election administration.

Legislation, a structural tool, can affect elections through mandates that set standards and requirements that states and localities must meet by a certain deadline. Other parameters influencing federal legislation and its ability to induce changes in the policy targets will be the existing division of state and local responsibility over the election administration process and state and local opposition and resistance to federal involvement and standards. In some states, there might be resistance to change the status quo, i.e. to change the existing division of control over election administration matters. For example, in New York, before HAVA, proposals to transfer the ownership of voting equipment from cities and towns to the county level, a clear centralization maneuver, in order to professionalize the voter equipment training and management processes had been futile and utterly resisted by city and town election authorities. That resistance was also apparent to some degree after HAVA, but HAVA was able to tilt the balance and legislation establishing a county-maintained and bought voting system and a county provided uniform voting equipment training became a reality. Legislation can also create and task a new federal agency, as is often the case after a policy crisis, to become engaged in some capacity in the respective policy field. The external parameters influencing the roles and ability

of this agency to exercise them will be the existing division of state and local responsibility over the election administration process and state and local opposition and resistance to federal involvement and standards.

Grants, a programmatic implement in the hands of the federal government, are susceptible to federal budget constraints. In addition, the type of grant being made available to implementing agencies/agents will depend on the current nature of federalism (coercive or cooperative, as previously discussed) and the conceptualization of what roles should the federal, state and local governments play. The effectiveness of partnerships—also a programmatic implement—among state election authorities, SSA and DMVs will depend on the level of priority these agencies assign to the task at hand. If DMV's and SSA do not think that collaboration with state election offices ranks high on their agenda's, state election offices will not be able to effectively implement what is required from them when it comes to improving the integrity and reliability of voter registration lists.

Research is the other implement available to the federal government to improve the election administration process. Research is a capacity-building implement whose effectiveness will depend on the level of commitment of state and local election administrators to contribute with data and to use the available research to improve the election process.

Implementing agencies. Moving to the right of the table, we can identify who is responsible for what implements and what actions are required from them. All of the implements require action by the federal government agency and that action consist of distributing grant money to states and localities and conducting research. State and local election administration offices also bear responsibility for implementing the federally mandated requirements, through the use of federal funds, and of sharing their election administration data with the new federal

agency. They also can, but are not obliged to, use the research provided by the new federal agency to improve the way they manage elections.

Targets. The implements are addressed to induce changes in the voting process. First and foremost, they target voters: to ensure that all eligible voters get a chance to cast a ballot and that that ballot is counted. The secondary target of the implements is election administrators (state and local) who have to implement the required federally mandated changes of the election process.

[Table 4.1. about here]

Backward mapping

The "backward mapping" approach, as discussed in the previous chapter, begins with a statement of the specific behavior, at the lowest implementation level, that creates the need for policy. After that behavior is described, backward mapping focuses on a statement of how that behavior needs to change. It will then offer solutions that, instead of centralizing control and standardizing practices across the plane, will promote dispersal of control and the delegation of discretion to the street-level bureaucrats of election administration—local election officials. It just so happens that federalism and the constitutional constraints on federal involvement in elections had already promoted that dispersal of discretion at the lowest levels of election administration for the past 200 years. And during congressional testimony in the aftermath of HAVA, as already discussed above, it appeared that it was this very dispersion of control that created much of the problems observed during the 2000 election. Given these aspects of the nature of election administration at the time and the problems of election administration, does HAVA approximate or divert from the policy options recommended by backward mapping?

[Table 4.2. about here]

Targets. Backward mapping begins by asking what decisions have the most immediate effect of improving the integrity and reliability of the election administration process. In other words, it starts by asking what are the targets of the policy changes we would like to undertake. Looking at Table 4.2., and based on the major problems that the 2000 election pinpointed, it is possible to make a list of the decisions that will have the most immediate effect on the election process: improving the reliability of voting equipment; applying clear standards for what constitutes a valid ballot; improving the voter registration database maintenance process; providing every voter (no matter what his state is) with the chance to vote provisionally if his or her name is not on the voter registration list, but the voter believes to be registered to vote; improving poll worker training; and last but not least, providing grants for the implementation of the above changes.

Most of the target/decisions listed on the table have been left vague. That vagueness stems from the assumption that pre-HAVA, and given the decentralized nature of federalism when it comes to election administration, states and counties might assume different stances about what it means for them to “improve the reliability of voting equipment” or to “improve the voter registration database process.” For example, for some states or counties, improving the voting equipment might mean switching to new, more modern voting machines, such as DREs or optical scan machines. For those already using such equipment, particularly DREs, it might mean requiring that the voting equipment produce a paper trail. Improving voting equipment might also generally mean the need to set up certain reliability and security standards. The vagueness

also stems from the fact that backward mapping advocates that discretion be left at the lowest implementation levels, and hence leaving proposed solutions vague will allow each state/county to address the issue according to its own needs and circumstances.

Outcomes. The expected outcome from improving the reliability of the voting equipment and from setting clear standards about what constitutes a valid vote (depending on the voting equipment used) is a more accurate vote tabulation process. Improving the voter registration database maintenance process is expected to produce up-to-date and accurate voter registration lists that include all eligible voters and that exclude those who do not have the right to vote in a particular state. Providing every voter with the chance to vote provisionally will prevent people from being turned away from the polls due to administrative errors. Providing better training to poll workers, who are the street-level bureaucrats in election administration, will ensure that they have an adequate knowledge of the rules and regulations governing the conduct of election day activities, as well as the rights of voters. Providing the necessary grants for the above reforms will ensure that the implementing agencies have the operating budget to effectuate them.

Parameters. There are several external conditions that affect each of the above decisions or targets. Examples of such external conditions or parameters are the ability of state and local election officials to appropriately train poll workers, the voter's knowledge of their rights to vote provisionally, as well as the availability of federal funding and the need to reach consensus about its distribution amongst reform areas. Whether there is adequate voting equipment being offered by vendors and whether that equipment satisfies the federal voluntary standards for voting equipment (as some states required by law that any voting equipment purchased must conform to these standards) are other examples. Enforcing a uniform definition of what constitutes a valid ballot can require actions that span from adapting voting equipment to recognize certain voter

choices or, in the case of recounts, to ensure that the state has the personnel and resources to conduct the recount.

A parameter limiting the ability of states to improve their voter registration database is whether state and county officials can reach consensus about the structure of the database (which can be, in turn, a function of what the current structure and data ownership system): bottom-up or top-down. This was the case in some states, such as New York, before HAVA where there were differences in opinion between state and local jurisdictions about how to restructure since they had databases that went beyond just voter registration database. These databases were very sophisticated and also had poll worker information and other information compiled into a massive database and localities did not want to give that information up. For them the bottom-up model helped them keep that infrastructure and only share voter registration data with the state. For other states, however, the top-down structure was the best approach, especially for states that had a faulty voter registration systems.

Implementing agencies. The implementing agencies, which are going to be state and local election offices, will need to require from voting machine vendors that they meet certain standards. Implementing agencies should also monitor the implementation of a uniform definition of valid ballots as well as collaborate and share data in order to build more accurate voter registration databases. They should also invest more resources in poll worker training and ensure that grant money is being spent appropriately.

Implements. To ensure that the voting equipment used is accurate and reliable, there are a variety of tools/implements available to influence the quality of the voting machines, such as setting standards; requiring certification; and requiring periodic security and reliability audits to the voting equipment. Since this is a suggested implement in the context of backward mapping,

the entities issuing those standards would probably not be at the federal level, but at the state and local levels, where it would likely be necessary to reach consensus as to what those standards and audit procedures should be. Again, this is a decision that would be concentrated at the state and local levels due to the fact that backward mapping emphasizes decentralization and the awarding of discretionary power at the lowest implementation levels.

This requires clear standards for what constitutes a valid ballot depending on the type of voting equipment used and a monitoring system that ensures those standards are being applied; a centralized voter registration database that combines local and state voter registration records into a unified platform, but the structure of that platform is left at the discretion of the states; provisional voting requirements in every state; standards for poll worker training and an increase in the duration and intensity of that training; as well as earmark money for the various stages of the election administration process according to local priorities.

How does HAVA approximate or divert from the solutions proposed by backward and forward mapping?

Overall, the solutions proposed by HAVA resonate with the forward mapping approach. Forward mapping would emphasize federal government intervention in the management of elections and use of the resources available to it for that purpose, contingent on the constitutional limitations of its responsibilities in election administration. In that respect, the resources, or implements, available to the federal government range include structural, programmatic and research and capacity-building instruments (see Table 4.1.).

Yet, HAVA does have elements from the backward mapping approach. Those elements are mostly visible in the implements section of backward mapping. HAVA does incorporate those implements (see Table 4.2.), with the exception of those that relate to voting equipment requirements, as these are somewhat different in HAVA. HAVA also incorporates the general emphasis of backward mapping that certain decisions are better taken at the lowest implementation levels. However, HAVA identifies that level to be the state, not local election officials, as backward mapping would suggest.

The parameters that influence the forward and backward mapping approaches are decidedly different. The only parameter that seems to be common to both relates to state-local relations and how that would restrict any reform activity. A parameter that is missing from the forward mapping approach and from HAVA, but is suggested by the backward mapping approach, is the role of voting machine manufacturers. These need to provide, on the market, voting equipment that meets certain standards and need to be held accountable for voting machine malfunctions.

Research Design and Methods

As noted, and given variation in the extent to which HAVA has been implemented across the states, my central research question in this dissertation is as follows:

What factors account for the variance in the implementation of HAVA's election reforms across the states?

Premised on the variables identified in the literature and the case studies, I build and test models seeking to account for variation in the overall implementation of HAVA across the 50

states. I hypothesize that states with: 1) stronger power vis-à-vis localities, 2) nonpartisan election administration, 3) unified party control of the legislature, 4) government ideologies at the middle of the liberal-conservative continuum, and 5) lower median household levels are more likely to have higher levels of overall implementation of HAVA.

The models take into account HAVA and whom it puts in the “driving seat” of election reform. Section 254 of HAVA puts **states** in a dominant position for implementing the act (Alvarez and Hall 2005). States are the entities ultimately responsible for implementation. However, Section 255 affects the control that each state has over the HAVA planning process based on its choice of the composition of state planning committees (the two largest jurisdictions in the state have to be included but choice of the remaining members of the committee are left at the discretion of states). Hence, states are the unit of analysis. As the 50 states constitute the population rather than a drawn sample, that removes concerns about the representative nature of the sample.

I address the research question by introducing overall HAVA implementation and HAVA implementation by sections as dependent variables in my models. The deadline for HAVA implementation expired on January 1, 2006, which allows for a cross-state comparison of implementation up to that date. The dependent variable—extent of overall HAVA implementation—is operationalized as a percentage: percentage of HAVA funds expended over HAVA funds received.

Table 4.1: Empirical models

Model A: Overall HAVA implementation **Dependent variable:**

Percentage of HAVA Funds Expended¹²

Independent variables:

State structure of election administration control

Partisanship

Party control

Government ideology

State median household income level

*Implementation of HAVA by Sections.*¹³ Here three sub-models will probe to establish whether the examined independent variables have a differential effect on the implementation of some HAVA section in contrast to others as some aspects of the law may be more challenging than others to implement:

Model A.1:

Dependent variable

Percentage of HAVA Section 101 Funds Expended

Independent variables:

¹² HAVA provides funding to the states on the basis of criteria such as the proportion of total voting age population of a state to the total voting age population of all states or the number of precincts in a state.

¹³ As previously noted, Section 101 funds are intended for the following activities: implementation of uniform and nondiscriminatory election technology and administration requirements; improve the administration of elections; educate voters about voting procedures, voting rights and voting technology; train election officials, poll workers and election volunteers; develop a state plan for managing requirements payments under Section 251 of HAVA; improve or replace voting systems for casting and counting votes; improve the accessibility and quantity of polling stations; establish toll-free hotlines for voters. Section 102 funds are intended to replace punch card and lever voting equipment. Section 251 funds are intended to implement provisional voting; provide information to voters in the polling place; develop and implement a statewide voter registration list; implement identification requirements for first time voters who register to vote by mail; and improve the administration of elections for federal office.

State structure of election administration control – voter education

Partisanship

Party control

Government ideology

State median household income level

Model A.2.

Dependent variable

Percentage of HAVA Section 102 Funds Expended

Independent variables:

State structure of election administration control – voting system

Partisanship

Party control

Government ideology

State median household income level

Model A. 3.

Dependent variable

Percentage of HAVA Section 251 Funds Expended

Independent variables:

State structure of election administration control – voter registration system

Partisanship

Party control

Government ideology

State median household income level

A. Dependent Variables

Overall HAVA implementation and HAVA implementation by sections are the dependent variables in the tested empirical models. The approach to test overall HAVA implementation as well as implementation by sections is motivated by the fact that certain sections of HAVA are more technically challenging and or/controversial than others, as was visibly demonstrated in both of the above explored case studies. In New York, the implementation of HAVA's requirement to replace voting equipment caused the entire state to be delayed with the implementation of the Act and to be sued by the DOJ. Maryland was also challenged with the implementation of the voting machine requirement as well as with the voter registration database requirement. Hence, the following dependent variables will be used:

- *Overall HAVA implementation.* HAVA authorized \$3.86 billion for distribution to the states and U.S. territories. Sections 101 funds are intended for the implementation of the following HAVA provisions: **to educate voters**; train election officials and poll workers; improve the accessibility and quantity of polling places; establish toll-free hotlines for voters to report voter fraud, voting rights violations as well as obtain general voting information); Section 102: to **replace punch card and lever voting systems**; and Section 251 funds: to implement provisional voting; to provide information to voters in the polling place; to **develop a statewide voter registration list**; to implement ID

requirements for first-time voter and to improve the administration of elections for federal office). About \$3 billion was appropriated by Congress, all of which were distributed by the EAC to the states. Hence overall HAVA implementation can be operationalized through a proportion that measures funds expended over funds received (*Percentage of HAVA Funds Expended*) by each state. This data, as of 2006 since that was the final deadline for HAVA implementation, is available from the EAC.¹⁴ In certain cases, the balance is greater than the difference between funds received and expenditures in most cases because it includes interest earned on funds deposited in State election fund accounts.

Implementation of HAVA by Sections. Here three sub-models will have *Percentage of HAVA Section 101 Funds Expended*, *Percentage of HAVA Section 102 Funds Expended*, and *Percentage of HAVA Section 251 Funds Expended* as separate dependent variables that will probe to establish whether the examined independent variables have a differential effect on the implementation of some HAVA section in contrast to others. This data, available for 2006 since that was the final deadline for HAVA implementation, is available from the EAC.¹⁵

The dependent variables are thus labeled as:

- Overall HAVA implementation is coded as: hava_ovrl_n
- Implementation of section 101 is coded as: h101_ex_n
- Implementation of section 102 is coded as: h102_er_n
- Implementation of section 251 is coded as: h251_er_n

¹⁴ EAC (2007). *Report to Congress on State Governments' Expenditures of Help America Vote Act Funds*. p. 8.

¹⁵ EAC (2007). *Report to Congress on State Governments' Expenditures of Help America Vote Act Funds*. p. 11-14.

Data for the operationalization of the above dependent variables is available from the EAC for 2006. The data is based on information states submitted in annual reports covering 2003 through 2006. To identify expenditures of HAVA funds, the EAC mainly used the total federal share of net outlays reported on the Standard Form 269, which includes both expenditures and unliquidated obligations (EAC 2007). To categorize expenditures by type of HAVA activity, EAC mainly extracted information from the state narrative reports (EAC 2007).

Limitations in the data may stem from the fact that some states did not submit all required annual reports; failed to uniformly complete Standard Form 269; did not provide supporting information that presented expenditures by category of HAVA authorized activities; or did not relate their expenditures to their state plan (EAC 2007). Additionally, some states did not report the amount of State matching funds expended or the amount of interest earned on federal and matching funds deposited in the state election funds. Consequently, the data is qualified to the extent that some states did not submit all required reports or did not report all required information (EAC 2007).

B. Independent Variables

State structure of election administration control. The reviewed literature pointed out that states vary in the level of participation they accord to local election administrators in the process of implementing HAVA (Alvarez and Hall 2005). The literature also pointed that the level of control the state retains over election administration vis-a-vis localities plays a role in the implementation of election reforms (Krutz 2005; MacManus 2005; Creek and Kames 2009). The case studies also demonstrate that the degree of centralization of election administration control played an important role in Maryland and New York. In Maryland, the process of

centralization had already began before HAVA and the state was thus able to push for HAVA's reform more efficiently as a result; in New York, localities retained substantial power both before and after HAVA, as exemplified by the fact that the structure of the voter registration database remained with a bottom-up structure.

The model thus needs to incorporate how **(de)centralization** affects the implementation of HAVA. The literature argues that strong local control over the election administration process is an institutional impediment for reform (Krutz 2005; MacManus 2005). The case studies echo this proposition.

The incorporation of this variable into the model is done through an ordinal variable called state structure of election administration control. This variable will operationalize the degree of state vs. local control over the implementation of overall HAVA implementation as well as implementation of: voter registration databases, replacement of voting systems, and voter education and for each of these the following coding was used: 1=state control; 2=shared control; 3= local control; and . =no data. The variables are thus coded as:

- State structure of election administration control over overall HAVA implementation is labeled as: el_admin_ctrl
- State structure of election administration control over Section 251 is labeled as: eladmin_251
- State structure of election administration control over Section 102 is labeled as: eladmin_102
- State structure of election administration control over Section 101 is labeled as: eladmin_10

As previously discussed, states can have a top-down voter registration system in which local election authorities supply information to a unified database maintained by the state or a bottom-up system in which counties and municipalities retain their own registration lists and submit information to a state compilation of local databases (Commission on Federal Election Reform 2005). This choice is a good indicator of the level of control states retain vis-à-vis localities in regards to the implementation of Sec. 251. This information is available from research conducted by the Center for Democracy and Election Management (2009).

Data for the operationalization of replacement of voting systems (i.e. Sect. 102) and voter education (Sec. 101) is available from Alvarez and Hall (2005: 566). They categorize states across three dimensions: state control, local control, or shared control and define control through the language used in the HAVA state plans. For voter education, most state plans explicitly emphasize the role of the state election office. For voting system procurement, state control is noted when the state plan requires statewide uniformity. Shared control is noted when HAVA plans discuss collaboration. Alvarez and Hall (2005) did not have data on Arizona and New Hampshire's status on voting system and state vs. local control. Based on its HAVA implementation plan, the New Hampshire would fit better in the category of state-level control, as the HAVA plan points that it will "Manage the implementation effort through a standardized project management framework [...] to ensure smooth transition to new uniform voting systems" (New Hampshire Secretary of State 2003). Arizona can be classified as a shared control state since while the state HAVA plan references that "secretary of state will lead a statewide procurement effort to acquire" new voting systems and "act as contract administrator", "counties will own, operate, and work with the vendor to maintain the new voting systems and retain control of election services at the county level" (Secretary of State 2003). No data

limitations are known for the main data sources used: Center for Democracy and Election Management (2009) and Alvarez and Hall (2005: 566).

Partisanship. The reviewed literature (Krutz 2005; Bali and Silver 2006; Kimball and Kropf 2006; Kimball, Kropf and Battles 2006) points that partisanship as a factor in the implementation of election reform. The case studies also echo this assertion, which is clearly and unequivocally exemplified by the New York case study. From the literature and the New York case study, it is possible to derive the following proposition: the partisan composition of election administration bodies affects aspects of the election administration process. Furthermore, from the standpoint of public administration, neutral competence is the prime requisites of the civil service (Storing 1964). Hence, this study will look at the partisan affiliation of the office or body responsible, in each state, for the oversight of elections. In 37 states it is the Secretary of State that is the chief election administrator. In 10 states, the oversight of election is the responsibility of appointed boards or committees and in 3 states it is the Lieutenant Governor that oversees the administration of elections. Data on the partisan status of chief election officials or election boards, which are responsible for the implementation of HAVA, is available from state statutes (Henderson 2006). No data limitations are known as this data was based on the state's election law. Considering that these individuals or bodies can be nonpartisan, partisan, or bipartisan, partisanship is operationalized with the following categorical variable, coded in the following way: 0=nonpartisan, 1=partisan, 2=bipartisan.¹⁶

Party control. The reviewed literature (Greco 2002; Krutz 2005; Palazzolo and Ceaser 2005; Bali and Silver 2006) argued that party control of the legislature was a factor in the

¹⁶ Multivariate analysis test were also conducted with this variable being recoded as a dummy where 1=partisan and 2=bipartisan.

implementation of election reform. Case studies of Maryland's election reform, as discussed above, have also identified unified party control (of the executive and legislative branches) as one of the main factors pushing for the state to implement major election reforms prior to the passage of HAVA (Gimpel and Dyck 2005). Case studies of the election reform process in New York, as discussed above too, have also revealed that party competition was an important factor in New York's responses to the 2000 election and to HAVA (Liebschutz 2005). The proposition is that politicians are averse to election reforms and reforms are less likely in states with lower levels of political dominance by a single party (i.e. lack of unified party control). Party control will be operationalized by a categorical variable that reflects whether the 2002, 2003 and 2004 (as January 1, 2004 was the first deadline for HAVA compliance and January 1, 2006 was the final deadline for compliance with HAVA) state legislatures had a unified or divided party control. Thus, 3=unified (state legislature had a unified party control, regardless of party, during all three years after the 2002, 2003 and 2004 elections); and 2=partly unified after the 2002, 2003 and 2004 (state had a unified party control for 2 of the 3 years under analysis); and 1=divided after the 2002, 2003 and 2004 elections (state legislature had a unified party control for just 1 or divided party control during all three years); . =no data available. This data is available from the Party Control Project.¹⁷ The Party Control Project reports that data for state legislatures experience change over time due to death, resignation or party switching (Party Control Project). Other changes may occur due to the source of the data (they report using websites, including the party control summary of the National Conference of State Legislatures).

State government ideology. I will use state government ideology (measured along a liberal-conservative continuum) to account for any influence that the orientation of elected public officials in the state, weighted according to the power they have over public policy decisions,

¹⁷ See <http://www.polidata.org/party/>

might have had on the implementation of HAVA. In my models I already assume that partisanship influences implementation, but it would also be interesting to find out whether the orientation along the liberal-conservative continuum affects the implementation of election reforms, particularly given the fact that HAVA was a bipartisan compromise at the federal level. But does a bipartisan compromise at the federal level enough of a factor to facilitate the implementation of election reform at the state level? I hypothesize that government ideologies at the middle of the conservative-liberal continuum are likely to be associated with higher rates of HAVA implementation.

I will use the data originally presented by Berry et al (1980), updated for 2003, (Berry et al. 2010) as that was the year states spend considerable time putting together their HAVA implementation plans and the year preceding HAVA's first statewide deadline. Additionally, it should be noted that state ideologies do not change drastically on an annual basis (Berry et al 1998; Fiorina 1999). This is a continuous variable. The scores range in value from 0 (being the most conservative) to 100 (being the most liberal). The data is available online.¹⁸ I used the NOMINATE version of the data, because the validity of the NOMINATE version is stronger (Berry et al 2010). The updated NOMINATE scores were recommended for usage based on their stronger performance in the various validity tests. One possible limitation of this score is that it is invariant over time, even when a member of Congress moves to a new chamber or his or her district is changed (Berry et al 2010).

State median household income. Since HAVA aims to increase participation in the electoral process, which generally has been said to be hampered for low income and minority

¹⁸ See <http://bama.ua.edu/~rcfording/stateideology.html>

citizens, it is also important to consider to what extent state structural factors, such as income levels, influence the implementation of HAVA. I am introducing state median household income for 2003-2004, as that was the year states spend considerable time putting together their HAVA implementation plans and the year preceding HAVA's first statewide deadline, as an independent variable. Other empirical studies of election administration reviewed above also control for this demographic measure (Kimball, Kropf and Battles 2006). This data is available from: U.S. Census Bureau, Current Population Survey (CPS).

Limitations to the data from the CPS stem from the fact that responses to questions about money income depend on the memory or knowledge of one person in a household, which can cause problems underestimates of income in survey data as it is easy to forget minor or irregular sources of income (U.S. Census Bureau 2010). It is possible that respondents also misunderstand what the Census Bureau considers money income or may be unwilling to answer these questions correctly because the questions are considered too personal (U.S. Census Bureau 2010).

The table below (Table 4.3.) provides a summary of the data sources (which were also discussed above) and associated limitations.

Table 4.3: Data Sources and Limitations

Variable	Data source	Limitations
DEPENDENT VARIABLES		
Overall HAVA implementation	Election Assistance Commission (2007)	Some states did not submit all required annual reports; failed to uniformly complete Standard Form 269; did not provide supporting information that presented expenditures by category of HAVA authorized activities; or did not relate their expenditures to their state plan (EAC 2007); did not report the amount of state matching funds expended or the amount of interest earned on federal and matching funds deposited in the state

		election funds.
Implementation of section 101	Election Assistance Commission (2007)	Ibid
Implementation of section 102	Election Assistance Commission (2007)	Ibid
Implementation of section 251	Election Assistance Commission (2007)	Ibid
INDEPENDENT VARIABLES		
State structure of election administration control <ul style="list-style-type: none"> • Over HAVA overall • Over Section 251 • Over Section 102 • Over Section 101 	Center for Democracy and Election Management (2009); Alvarez and Hall (2005: 566); New Hampshire Secretary of State (2003); Arizona Secretary of State (2003).	No data limitations known
Partisanship.	Henderson (2006)	No data limitations known
Party control.	Party Control Project	Data for state legislatures experience change over time due to death, resignation or party switching. Other changes may occur due to the source of the data.
State government ideology	Berry et al. (2010)	Berry et al. (2010) claim stronger predictive value of this dataset compared to previous versions of the data.
State median household income	U.S. Census Bureau, Current Population Survey	Data depends on the accuracy of recollection of respondents, their understanding of the questions and their willingness to respond.

Conclusion

This chapter has reviewed a variety of theoretical frameworks applicable to the study of variation in the implementation of HAVA across 50 states and, combined with the comparative

case analyses presented in Chapter 3, has offered a model for testing key hypotheses. With this as background, and in combination with the findings derived from the case studies of New York and Maryland, the parameters of a general model suitable for testing across all states are visible. It is to such a model that we turn to in Chapter 5. That chapter also reviews the data and methods used to test the model.

Table 4.1: Forward mapping: election administration reform

Implements	Parameters	Implementing agencies	Outcomes	Targets
<i>What implements are available to the federal government to improve the integrity and reliability of election administration?</i>	<i>What external conditions influence these implements?</i>	<i>Who is responsible and what actions are required from them?</i>	<i>.....with what expected effect?</i>	<i>To whom are the implements addressed?</i>
<p>Structural Instruments:</p> <ul style="list-style-type: none"> • Mandates: federal legislation that introduces requirements/standards (for voting equipment; for voter registration databases; for provisional voting; for voter identification) • Reorganization: new agency with (some) responsibility over the election administration issues and responsible for distributing grants to states. 	<ul style="list-style-type: none"> • Partisan conflict over the roles of federal, state and local authorities in election administration • Constitutional limits on the role of the federal government in election administration • Current division of state-local responsibility/power over the election administration process • State and local opposition to federal involvement and standards 	<ul style="list-style-type: none"> • State and local election administrators: implement federally mandated requirements using federally provided funds • Federal agency: implements federally mandated role and distributes federal grants 	<ul style="list-style-type: none"> • The adoption of (some) uniform standards in the administration of elections across states • The improvement of the access to, reliability and integrity of the election process 	<ul style="list-style-type: none"> • Implements target voters, in the broader sense, but also state and local election administrators who have to implement the required changes
<p>Programmatic Instruments:</p> <ul style="list-style-type: none"> • Grants to states and localities to upgrade voting equipment, to improve voter registration and voter list maintenance process and to improve the overall election administration process • Partnerships among state election authorities, SSA and DMVs 	<ul style="list-style-type: none"> • Federal budget constraints • Type of grants made available depends on current nature of federalism and conceptualization of the roles of federal, state and local authorities in election administration • The ability of these agencies to forge effective partnerships depends on the level of priority these agencies assign to the task at hand 	<ul style="list-style-type: none"> • State and local election administrators: implement federally mandated requirements using federally provided funds • Federal agency: distributes federal grants 	<ul style="list-style-type: none"> • Funding of the required changes • The improvement of the integrity of the voter registration databases 	<ul style="list-style-type: none"> • Implements target voters, in the broader sense, but also state and local election administrators who have to implement the required changes

<p>Research and capacity building implements:</p> <ul style="list-style-type: none"> • Research 	<ul style="list-style-type: none"> • Partisan conflict over the role of the federal government in election administration • Level of commitment of state and local election administrators to contribute with data and use research provided by the federal agency to improve the conduct of elections 	<ul style="list-style-type: none"> • Federal agency conducts and disseminates research • State and local election administrators: contribute with data and use research provided by the federal agency to improve the conduct of elections 	<ul style="list-style-type: none"> • The federal government will act as a resource for information and research on election administration 	<ul style="list-style-type: none"> • Implement targets voters, in the broader sense, but also state and local election administrators who will benefit from the research
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Table 4.2: Backward mapping: election administration reform

Targets	Outcomes	Parameters	Implementing agencies	Implements
<i>What decisions have the most immediate effect on improving the integrity and reliability of election administration?</i>	<i>What outcomes would follow from these decisions?</i>	<i>What external conditions influence these outcomes?</i>	<i>What must implementing agencies do to promote the improvement of election administration?</i>	<i>What implements are available to affect the improvement of election administration?</i>
<ul style="list-style-type: none"> Improving the reliability of voting equipment 	<ul style="list-style-type: none"> Accurate tabulation of votes 	<ul style="list-style-type: none"> The availability of reliable voting equipment provided by vendors 	<ul style="list-style-type: none"> Require voting machine manufacturers to meet security and reliability standards 	<ul style="list-style-type: none"> Use more reliable and accurate voting equipment
<ul style="list-style-type: none"> Apply clear standards for what constitutes a valid ballot depending on the voting technology used 	<ul style="list-style-type: none"> Accurate tabulation of votes 	<ul style="list-style-type: none"> The availability of resources to enforce the uniform application of a definition regarding what constitutes a valid ballot throughout the state 	<ul style="list-style-type: none"> Monitor and test to ensure the application of a definition regarding what constitutes a valid ballot 	<ul style="list-style-type: none"> Develop uniform standards for what constitutes a valid ballot Monitor the implementation of those standards
<ul style="list-style-type: none"> Improving voter registration database maintenance 	<ul style="list-style-type: none"> Up-to-date and accurate voter registration lists 	<ul style="list-style-type: none"> The ability to reach a consensus about the structure and ownership of the voter registration database and its data 	<ul style="list-style-type: none"> State and local election offices need to collaborate and share data 	<ul style="list-style-type: none"> Set up a centralized voter registration database and better standards for keeping it up to date
<ul style="list-style-type: none"> Providing every voter with the chance to vote provisionally 	<ul style="list-style-type: none"> Prevent voters from being turned away at the polls due to voter registration errors 	<ul style="list-style-type: none"> Ability of the state and/or local election officials to appropriately train poll workers to administer provisional ballots Voter's knowledge of his/her right to vote provisionally 	<ul style="list-style-type: none"> Invest more resources in training poll workers and informing voters of their rights 	<ul style="list-style-type: none"> Introduce provisional voting in every state

<ul style="list-style-type: none"> • Improving poll workers' training 	<ul style="list-style-type: none"> • Poll workers would be better able to service voters 	<ul style="list-style-type: none"> • Ability of the state and/or local election officials to appropriately train poll workers 	<ul style="list-style-type: none"> • Invest more resources in training poll workers 	<ul style="list-style-type: none"> • Develop standards for poll worker training • Increase the duration and intensity of the poll worker training
<ul style="list-style-type: none"> • Providing grants for the implementation of election reform 	<ul style="list-style-type: none"> • Implementing agencies would have an operating budget to implement the required changes 	<ul style="list-style-type: none"> • Availability of federal funding • Reaching consensus about how the money should be spent 	<ul style="list-style-type: none"> • Ensure that grant money is spent appropriately 	<ul style="list-style-type: none"> • Earmark money for election administration • Develop requirements for the use and provision of the grants

CHAPTER 5

FINDINGS

This chapter will test the empirical models presented in Chapter 4 to account for variance in the implementation of HAVA election reforms across the states?

The main research questions asked in this chapter are the following:

1. What factors account for the variance in the implementation of HAVA election reforms across the states?
2. Is there variation in the factors that affect HAVA implementation based on what HAVA sections are being implemented?

Recall that a review of the literature indicated that the following factors are likely to have a significant (positive) effect on election reform, both before and after HAVA: *single party control*, the existence of *commissions with task force recommendations* and *policy entrepreneurs*. The literature also suggested that *state structures of election administration with a strong local level control* (and states vary in the level of participation they accord to local election administrators in the process of implementing election reform) and the *partisan nature of election boards* are both impediments for reform and the latter is also a factor affecting the quality of election administration.

The review of the policy implementation and federalism literatures suggested that the *choice of tools* both structures public management and affects its results. Both also suggest that organizations and their characteristics (for example—partisanship) affect outputs. Additionally, both suggest that agents or effective leaders can affect the implementation of election reform. Lastly, the implementation environment, where the

characteristics of the state election administration system and the existence or lack of a conviction that reform is necessary, can also shape policy implementation.

Furthermore, HAVA proposed election reform solutions that overall resonate with forward mapping and backward mapping. However, given the decentralization that federalism has created in the U.S it is highly likely that there is no single bottom but perhaps 50 different “bottoms-up”. It is with this assumption of variation across the states in mind that we turn to the review and analysis of the findings from the multivariate regression models testing for what variables impacted the implementation of HAVA across the 50 states.

As a reminder before the discussion of the findings, Section 101 funds are intended for the following activities: implementation of uniform and nondiscriminatory election technology and administration requirements; improve the administration of elections; educate voters about voting procedures, voting rights and voting technology; train election officials, poll workers and election volunteers; develop a state plan for managing requirements payments under Section 251 of HAVA; improve or replace voting systems for casting and counting votes; improve the accessibility and quantity of polling stations; establish toll-free hotlines for voters. Section 102 funds are intended to replace punch card and lever voting equipment. Section 251 funds are intended to implement provisional voting; provide information to voters in the polling place; develop and implement a statewide voter registration list; implement identification requirements for first time voters who register to vote by mail; and improve the administration of elections for federal office.

Results and Discussion

Below, in Table 5.1., are provided the means and standard deviations of the dependent and independent variables. Data is available for all 50 states for the majority of the variables with one missing value for the summary variable for election administration control for election administration control over Section 251 as well as two missing values for the variable operationalizing party control. Amongst the dependent variables, the highest spread can be observed for the HAVA Section 101 implementation variable, which ranges from a low of 3 to a high of 162. The highest spread amongst the independent variables can be observed for the state median income variable. The table demonstrates that the variable for election state election administration control over Section 101 of HAVA has no deviation, that is, all the values are 1 (the state entirely retained control over the implementation of that area in all 50 U.S. states).

Table 5.1. Descriptive statistics: variable means and standard deviations

Variable	Obs.	Mean	Std. Dev.	Min	Max
Overall HAVA imp.	50	59.88	23.83	10	100
HAVA 101 imp.	50	54.62	35.87	3	162
HAVA 102 imp.	50	53.88	50.94	0	151
HAVA 251 imp.	50	54.56	30.12	0	114
El. admin. control	49	2.14	0.71	1	3
El. admin. control (Sec. 251)	49	1.34	0.75	1	3
El. admin. control (Sec. 102)	50	2.32	0.93	1	3
El. admin. control (Sec. 101)	50	1	0	1	1
Partisanship	50	1.12	0.48	0	2
Party control	48	2.48	0.82	1	3
State government ideology	50	49.30	12.75	25.75	72.01
Median household income	50	50575.54	6658.562	38524	64660

Table 5.2. provides the results of testing the effects of all the independent variables (with state election administration control over overall HAVA implementation being utilized as an independent variable) on the dependent variables of interest—overall HAVA implementation. The multivariate regression analysis reveals that none of the independent variables are statistically significant. This is indeed interesting and unexpected because it suggests that none of the variables identified in the literature review and the case studies proves to have a statistically significant effect, i.e. none of the variables is able to explain variation, on the dependent variable of interest here—overall HAVA implementation. The value of the adjusted R-squared is negative, which suggests that this is not a good model (likely has too many regressors) of the overall implementation of HAVA across the states.

Table 5.2.: Multivariate Regression Model Predicting Overall HAVA Implementation¹⁹

Variable	Coefficient	t	p-value
constant	50.29	1.29	0.205
El. admin. control	2.932	0.55	0.582
Partisanship	-4.237	-0.54	0.590
Party control	0.676	0.15	0.884
State government ideology	0.125	0.42	0.675
Median household income	0.00000859	0.02	0.987

N = 47; * p<0.05, ** p<0.1; $R^2 = 0.021$; Adjusted $R^2 = -0.09$

Similar testing was done to analyze the implementation of HAVA by sections. In the model tested and displayed in Table 5.3. below, I use state election administration control over Section 251, which captures state election administration control over the

¹⁹ This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, none of the variables were statistically significant.

implementation of Section 251 of HAVA. The dependent variable in this model is implementation of Section 251. The model shows that state government ideology is statistically significant at the 0.1 level of confidence. Holding all else constant, a state government ideology score of 100 (with 100 being the most liberal and 0 being the most conservative along the continuum) would lead to a 66 percentage point reduction in the implementation of HAVA's section 251. This suggests that lower scores along the continuum (with 0 being the most conservative) would lead to higher levels of implementation of HAVA's Section 251. I had hypothesized that since HAVA was a bipartisan compromise a state government ideology along the middle of the continuum would be associated with higher levels of implementation of HAVA. The relationship found in the multivariate analysis suggests that as values of state government ideology move from the liberal to the conservative end of the continuum, that one can expect to see increasing (higher) levels of implementation of HAVA's Sec. 251.

The value of the adjusted R-squared suggests that the model only predicts about 3% of the implementation of HAVA's Section 251 across the states.

Table 5.3: Multivariate Regression Model Predicting Implementation of HAVA's Section 251²⁰

Variable	Coefficient	t	p- value
constant	136.8*	3.09	0.004
El. admin.control (Sec. 251)	-4.36	-0.76	0.452
Partisanship	-1.87	-0.21	0.838
Party control	1.32	0.25	0.806
State government ideology	-0.66**	-1.93	0.061
Median household income	.0008	-1.35	0.185

²⁰ This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, state government ideology was again significant at the 0.1 level and had: a coefficient of -0.7 and the t-statistic was -1.94. The R² was 0.14 and the adjusted R² was 0.02.

N = 47; * p<0.05, ** p<0.1; $R^2 = 0.135$; Adjusted $R^2 = 0.029$

Table 5.4. summarizes the effect of the independent variables on the implementation of HAVA's section 102. I use state election administration control over Section 201, which captures state election administration control over the implementation of Section 102 of HAVA. The analysis reveals that none of the independent variables are statistically significant predictors of the implementation of Section 102 of HAVA. The value of the adjusted R-squared suggests that the model's predictive value is very low.

Table 5.4: Multivariate Regression Model Predicting Implementation of HAVA's Section 102 ²¹

Variable	Coefficient	t	p-value
constant	-30.71	-0.39	0.698
El. admin. control (Sec. 102)	10.61	1.29	0.206
Partisanship	21.64	1.38	0.175
Party control	8.262	0.90	0.374
State government ideology	0.353	0.59	0.557
Median household income	-0.0000335	-0.03	0.977

N = 48; * p<0.05, ** p<0.1; $R^2 = 0.108$; Adjusted $R^2 = 0.001$

Table 5.5. summarizes the effect of the independent variables on the implementation of HAVA's section 101. I use state election administration control over Section 101, which captures state election administration control over the implementation of Section 101 of HAVA. This model reveals an interesting result: partisanship is found to be a statistically significant variable. Therefore, for the variable partisanship, I reject the

²¹ This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, none of the variables were statistically significant.

null hypothesis (at the .05 level of statistical significance). That means that holding all other variables constant, partisan election administration would decrease the implementation of Section 101 by about 21 percentage points. Bipartisan election administration would decrease the implementation of Section 101 by about 42 percentage points, respectively. This direction of the influence is as hypothesized. The value of the adjusted R-squared suggests that the model predicts only about 9% of the implementation of HAVA's Section 101 across the states.

Table 5.5: Summary table for implementation of HAVA's section 101²²

Variable	Coefficient	T	p-value
constant	127.8*	2.54	0.015
Partisanship	-21.41*	-2.04	0.047
Party control	-5.258	-0.85	0.398
State government ideology	0.494	1.25	0.217
Median household income	-0.00121	-1.63	0.109

N = 48; * p<0.05, ** p<0.1; R² = 0.17; Adjusted R² = 0.09

To explore other possible explanatory models, I tested the summary variable for election administration control against the implementation of HAVA's Sections 251, 102, and 101. The rationale for this was to see how the state's overall approach to retaining, decentralizing, or sharing control with counties would affect specific sections of HAVA.

As Table 5.6. shows, partisanship is a statistically significant variable (at the 0.1 level of significance, with a p-value of 0.055 that approaches a 0.05 level of significance) explaining the implementation of Section 101. Holding all other independent variables constant, if a state has partisan election administration (1=partisan), implementation of

²² This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, partisanship remained a statistically significant variable at the 0.05 level with a coefficient of -34.11 and a t-statistic of -2.63. The adjusted R² was 0.13.

HAVA's Section 101 would decrease by 20.78 percentage points. Also, holding all other independent variables constant, if the state has bipartisan election administration (2=bipartisan), implementation of Section 101 would decrease by about 40 percentage points. The value of the adjusted R-squared suggests that the model predicts about 7% of the implementation of HAVA's Section 101 across the states.

The results from Table 5.5. and Table 5.6. highlight and confirm the hypothesis that partisan and bipartisan election administration has a negative effect on the implementation of certain election reform provisions, namely Section 101 in this case.

Table 5.6.: Summary table for implementation of HAVA's Section 101²³

Variable	Coefficient	T	p-value
constant	120.31*	2.28	0.028
El. admin. control	0.24	0.03	0.973
Partisanship	-20.78**	-1.97	0.055
Party control	-5.92	-0.95	0.346
State government ideology	0.52	1.31	0.196
Median household income	-0.001	-1.47	0.150

N = 47; * p<0.05, ** p<0.1; R² = 0.17; Adjusted R² =0.07

Testing the summary variable for elections administration control against the implementation of HAVA's Section 251 yields the results in Table 5.7. below. State government ideology is significant at the 0.1 level. That means that holding all other independent variables constant, a state government ideology score of 100 (with 100 being the most liberal and 0 being the most conservative along the continuum) would lead to a 63 percentage point reduction in the implementation of HAVA's section 251. This suggests that lower scores along the continuum (with 0 being the most conservative)

²³ This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, partisanship was statistically significant at the 0.05 level with a coefficient of -33.24 and a t-statistic of -2.56. The adjusted R² was 0.11.

would lead to higher levels of implementation of HAVA's section 251. The Adjusted R-squared suggest that this model predicts about 4% of the variation of implementation of HAVA's Section 251 across the states.

Table 5.7: Summary table for implementation of HAVA's section 251²⁴

Variable	Coefficient	T	p-value
constant	118.08*	2.61	0.013
El. admin. control	6.62	1.08	0.286
Partisanship	-1.28	-0.14	0.888
Party control	1.63	0.31	0.761
State government ideology	-0.63**	-1.85	0.072
Median household income	-.000	-1.48	0.146

N = 47; * p<0.05, ** p<0.1; R² = 0.14; Adjusted R² = 0.04

Table 5.8, demonstrates that state election administration control is a statistically significant variable (at the 0.05 level). The direction of the relationship is intriguing. Holding all other independent variables constant, when the state has control over all three of the analyzed HAVA sections (3=state control in all three areas), the implementation of HAVA's Section 102 drops by approximately 60 percentage points; if the state has control just over two of the reviewed HAVA sections (2=state control in two areas), implementation of Section 102 would be reduced by 40 percentage points; and if the state had control over just one of the sections (1=state control in only one area), implementation would be reduced by about 20 percentage points. The value of the Adjusted R-squared suggests that the model explains just about 6% of the variation in implementation of HAVA's section 102.

²⁴ This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, state government ideology remained statistically significant at the 0.1 level with a coefficient of -0.66 and a t-statistic of -1.82. The adjusted R² was 0.04.

Table 5.8: Summary table for implementation of HAVA's section 102²⁵

Variable	Coefficient	T	p-value
constant	52.46	0.69	0.494
El. admin. control	-20.96*	-2.04	0.048
Partisanship	21.12	1.39	0.171
Party control	8.99	1.00	0.321
State government ideology	0.285	0.50	0.623
Median household income	-0.00	-0.22	0.825

N = 47; * p<0.05, ** p<0.1; R² = 0.16; Adjusted R² =0.058

The direction of the relationship is not consistent with what was hypothesized. While both the literature (Krutz 2005; MacManus 2005; Creek and Kames 2009) and the case studies demonstrated that the degree of centralization of election administration control plays an important role in HAVA implementation, I hypothesized that states with stronger power vis-à-vis localities would be more likely to have implemented HAVA's provisions. That appears not to be the case as state control in just one area, compared to state control over two or all three of the HAVA sections reviewed here, is associated with a higher percentage of implementation of HAVA's provisions for replacement of punch card and voting machines. What this means is that state devolution of control over the three sections to counties results in a higher degree of implementation of Section 102, i.e. replacement of punch card and lever voting machines.

Why could this be the case? One possible explanation is that if the state had control and a strong role to play over all three of the HAVA sections, that it could be stretching its resources thin over too many areas where a more decentralized approach would be more efficient. An alternative explanation may be that overall state

²⁵ This model was also tested with a dummy variable for partisanship where 1=partisan and 2=bipartisan. In that regression, election administration control remained a statistically significant variable but at the 0.1 level with a coefficient of -18.4 and a t-statistic of -1.65. The adjusted R² was -0.001 suggesting this was not a good model (and likely had too many regressors).

centralization creates turf issues with localities, especially in areas where they have been traditionally in control—such as decisions over the type of voting equipment for example—and this leads to administrative delays and hurdles in election reform implementation.

Limitations of the Study

What are the limitations of the above research? Firstly, the findings only apply to HAVA—as a piece of federal legislation—and would need to be tested on other federal legislation in the field of election administration. Thus, the NVRA could be tested in the same fashion. Secondly, the findings may not apply to the implementation of state election law and the variable would need to be tested further to ascertain whether they are also significant to explain variation, at the state level, of implementing state-generated election reforms. Thirdly, it appears that none of the models explained the implementation of statewide voter registration databases. This is indeed an issue that merits further research. A limitation of the above research given the highly technical nature of some of HAVA's provisions, and especially those relating to the implementation of Section 251, is that there is no variable to operationalize the technological challenges. Thus, there is no variable to account for the technological challenge of implementing a statewide centralized voter registration database, particularly given the fact that states approached the implementation of this section in various ways: some already had such a database before HAVA, others opted to build one in-house, while other states contracted out and had to face the challenges associated with outsourcing. Fourthly, this study is limited by the limitations associated with the data for the dependent and independent variables. Those limitations were already laid out above.

Conclusion

This chapter empirically tested the models presented in Chapter 4 to examine for variance in the implementation of HAVA election reforms across the states. Three variables explained the implementation of HAVA, but each explained the implementation of different sections of HAVA. State government ideology was an explanatory variable for the implementation of Sec. 251, with scores closer to the most conservative value along the liberal-conservative continuum (with 0 being the most conservative) leading to higher levels of implementation of HAVA's Section 251. Partisanship was a statistically significant variable explaining the implementation of Section 101. These results confirmed the hypothesis that partisan and bipartisan election administration has a negative effect on the implementation of certain election reform provisions, namely Section 101 in this case. State election administration control was an explanatory variable for the implementation of HAVA's Section 102, but not in the expected direction. The findings suggested that less state control, i.e. devolution to lower tiers of government such as counties, is more propitious for the implementation of HAVA's section 102. It should be noted that the models with statistically significant variables have a low predictive value. The following and concluding chapter discusses the implications of these findings for theory and for practice.

CHAPTER 6:

CONCLUSION: IMPLICATIONS FOR THEORY AND PRACTICE

This concluding chapter takes an overarching look at the changes HAVA brought about and how differently some of its provisions were implemented across the states, which prompted this research on the factors that affected the implementation of this federal legislation across the U.S. This chapter will also discuss the findings of this research and their implications in the context of the three theoretical frameworks used in this analysis—federalism, intergovernmental relations, and policy implementation. It will also discuss the implications of the findings for election administration. It will conclude with a discussion of the possible directions for future research.

HAVA was a bipartisan compromise that for the first time in U.S. history allocated federal funds for the administration of elections. This piece of legislation put forth several minimum election administration standards to be implemented across the states—standards for identification of first time voters, voting machines requirements and a requirement to implement provisional voting across all states. HAVA was one of the rare federal interventions in election administration, which the state and local level governments had been traditionally responsible for managing. It created a new federal agency –the Election Assistance Commission—to act as an information clearinghouse and to distribute the federal funding. Similar federal bills making such sweeping changes to elections, as previously pointed out, have been rare and limited to the VRA, the NVRA and HAVA (electionline.org 2007).

HAVA had a different reception across the states, which were responsible for developing HAVA implementation plans. Some states were able to meet the

implementation deadlines mandated by HAVA, while others found themselves in noncompliance in 2006—the final deadline for becoming HAVA-compliant. This variation in implementation prompted the research conducted by this dissertation, which looked into the following question:

What factors account for the variation in the implementation of HAVA election reforms across the states?

This research question was analyzed through the theoretical lenses of intergovernmental relations and federalism as well as policy implementation using the following research methods: literature review, case studies (of Maryland and New York), and a multivariate regression analysis conducted for all 50 states

The literature review and the case studies identified a series of variables that may affect the implementation of election reforms. The variables that were identified by *both* the case studies and the literature review were included in the empirical models tested above. These variables were: state structure of election administration control, partisanship, party control, and state government ideology. State median household income was an additional variable added to control for demographics. I hypothesized that states with: 1) stronger power vis-à-vis localities, 2) nonpartisan election administration, 3) unified party control of the legislature, 4) government ideologies at the middle of the liberal-conservative continuum, and 5) lower median household levels are more likely to have higher levels of overall implementation of HAVA.

The results of the multivariate analysis reveal that none of the independent variables were statistically significant in the model that explored the effects of the above delineated variables over overall HAVA implementation. This initial finding was

unexpected because it suggested that none of the variables identified in the literature review and the case studies was able to explain variation in overall HAVA implementation.

Three variables explained the implementation of HAVA, but each explained the implementation of different sections of HAVA. State government ideology was an explanatory variable for the implementation of Sec. 251, with scores along the liberal-conservative continuum (with 0 being the most conservative) leading to higher levels of implementation of HAVA's Section 251. Partisanship was a statistically significant variable explaining the implementation of Section 101. These results confirmed the hypothesis that partisan and bipartisan election administration has a negative effect on the implementation of certain election reform provisions, namely Section 101 in this case. State election administration control was an explanatory variable for the implementation of HAVA's Section 102, but not in the expected direction. The findings suggested that less state control, i.e. devolution to lower tiers of government such as counties, is more propitious for the implementation of HAVA's section 102. The following and concluding chapter discusses the implications of these findings for theory and for practice. These should be considered, however, along with the limited explanatory levels of the models where a statistically significant variable was identified.

Implications of the findings

It is important to revisit the implications of the above findings, particularly in relation to the three sets of literatures utilized in this research as well as for the field of election administration. This research sheds light on what factors have led to variation in the implementation of HAVA across the states. Answering this question has substantial

importance as it clarifies the conditions that facilitate policy implementation in a highly decentralized environment where implementation depends on multiple levels of government and actors, as it does in the case of election administration in the U.S..

As it has already been previously discussed, the research of what factors affect successful and timely implementation of better election administration practices is important not only for democracy in the U.S., but also for democracy abroad. My study also looked at variables previously unexamined all together. The implications of the results of this dissertation, overall, for the three sets of literatures, are that three variables—state government ideology, partisanship and election administration control—are statistically significant variables in the examined models, but the models themselves have low predictive values. For the policy implementation literature, this means that the process of election reform implementation needs to be revisited so as to test other variables on whether they would result in models with higher explanatory value.

As it was previously noted, implementation requires actions from organizations and their characteristics affect outputs (a conclusion similar to the conclusion from the election administration literature that the partisan nature of election boards, an organizational characteristic, is a factor affecting the quality of election administration). The partisan nature of state election authorities is such a characteristic. Partisanship in election administrations was found to have an effect on the implementation of Section 101 requirements. The models where partisanship was found to be a statistically significant predictor of HAVA implementation confirmed the hypothesized direction of the relationship: states with nonpartisan election administration have a higher rate of

implementation of HAVA election reforms compared to states with partisan and bipartisan election administration.

Other factors identified by the policy implementation literature were: the choice of tools; agents (i.e. effective leaders); and the implementation environment (such as whether it is characterized by the existence or lack of a conviction that reform is necessary). These factors were not examined here and hence future research should revisit and test them empirically, along with the factors found to be statistically significant through this research, to gauge their effect on the implementation of election administration reforms.

The implications for the election administration literature are several. Firstly, the research confirms the assertion that partisanship is a factor in the implementation of election reform, which is also echoed in the New York case study. This finding has significant repercussions for the election administration field, as it suggests a model—one of non-partisan election administration—as worthy of consideration across the U.S. states (and one which the U.S. already widely encourages abroad as a model for election management). Future research may wish to retest this variable on other federal legislation in the field of election administration. Secondly, while the election administration literature argued that one party control of the executive and legislative branches has a positive effect on the enactment of election reform, in the case of HAVA, one party control proved to be not a statistically significant variable. This was a surprising finding. Future research may wish to also retest this variable on other federal legislation in the field of election administration.

The fact that state government ideology was also found to be a statistically significant variable and the direction of the relationship was also interesting, with scores closer to the most conservative value along the liberal-conservative continuum (with 0 being the most conservative) leading to higher levels of implementation of HAVA's Section 251. I had hypothesized that since HAVA was a bipartisan compromise a state government ideology along the middle of the continuum would be associated with higher levels of implementation of HAVA. The relationship found in the multivariate analysis suggests that as values of state government ideology move from the liberal to the conservative end of the continuum, that one can expect to see increasing (higher) levels of implementation of HAVA's Sec. 251. This is a finding with implications for both the policy implementation and the election administration literature and could be investigated further.

The research conducted in this dissertation also has bearing over the federalism (and intergovernmental relations) and elections administration literatures. The election administration literature pointed out that states vary in the level of participation they accord to local election administrators in the process of implementing HAVA and that the level of control the state retains over election administration vis-à-vis a localities plays a role in the implementation of election reforms. The case studies also demonstrated that the degree of centralization of election administration control played an important role in Maryland and New York's implementation of HAVA. This was indeed confirmed by the findings of this research, in which state control of election administration was a statistically significant predictor in some models. However, while the election administration literature had identified strong local control over the election

administration process as an institutional impediment for reform, the results from the multivariate analysis show that devolution can lead to better results in implementing certain election reform provisions. State control in just one area, compared to state control over two or all three of the HAVA sections reviewed here (Sections 101, 102 and 251), was associated with a higher percentage of implementation of HAVA's provisions for replacement of punch card and voting machines.

The findings of the research seem to suggest that decentralization leads to higher levels of election reform implementation, in the case of certain election reform topics. Possible explanations for this are that states could be stretching their resources thin over too many areas where a more decentralized approach would be more efficient. An alternative explanation is the possibility that overall state centralization creates turf issues with counties, especially in areas where they have been traditionally in control and this leads to administrative delays and hurdles in election reform implementation. This is an interesting finding and one that would certainly reassert the degree of decentralization in the U.S. election system and that warrants additional research.

What are the implications of the above results for the management of elections and for the implementation of the examined HAVA sections? Section 101 funds were intended for states to, among other things, improve the administration of elections, educate voters and train election officials, poll workers, and election volunteers; develop a state plan for managing requirements payments authorized under Section 251; improve voting systems and technology and methods for casting and counting votes; and improve the accessibility and quantity of polling places. This suggests that all of the above activities and reforms are susceptible to the partisan inclinations of state election

administrators, which can reduce (in the case of partisan or bipartisan election boards) the extent to which such reforms are implemented. Given that partisanship has an effect on the level of implementation of elections reforms, states ought to reconsider the partisan and bipartisan election management models, which led some to compare these models to foxes guarding the henhouse in an election system where partisanship, combined with localism, results in a poorly run system and makes changes hard to implement (Gerken 2009: 1585). In fact, nonpartisan election administration is the best practices model that the U.S. advocates abroad whilst not practicing it domestically. The nonpartisan election administration model is not a new recommendation for reform.²⁶

What are the implications of this finding in the context of Section 102 of HAVA? Section 102 funds are intended for the replacement of voting equipment. Thus, given the above findings, the rate of replacement of outdated voting equipment across the states (the main element of Sec. 102) was negatively impacted by state centralization. What this suggests is that devolution of voting machine purchase and replacement to counties is likely a better approach to ensuring implementation. Thus, while leaving election administration to counties has several purported benefits (such as flexibility in responding to unique situations and accountability) (Harvard Law Review 2005), another argument for such devolution, as exemplified in the findings here, is the higher efficiency in implementing certain election reforms.

²⁶ Examples where such recommendations have been previously made include: Center for Democracy and Election Management (2009). *Nonpartisan Election Administration: Model Legislation for the States*. Retrieved from: www1.american.edu/ia/.../NonpartisanModelLegislation08-2009.pdf; Huefner, S. Tokaji, D., & Foley E. B. (2007). *From Registration To Recounts: The Election Ecosystems Of Five Midwestern States*. 188-89, 196-97; Richard L. Hasen (2005). "Beyond the Margin of Litigation: Reforming Election Administration to Avoid Electoral Meltdown." *Washington & Lee Law Review* 62 937, 973-92; Robert A. Pastor (2004). "Improving the U.S. Electoral System: Lessons from Canada and Mexico." *Election Law Journal* 3: 584; Gerken, H (2009). "Shortcuts to Reform." *Minnesota Law Review* 93: 1852-1614.

What are the implications of the research for Section 251 of HAVA? The findings suggest that more conservative state government ideologies are associated with higher levels of implementation of that section, whose main provisions are the implementation of statewide voter registration databases and provisional voting. Thus, while partisanship in the management of elections was negatively associated with the degree of implementation of some election reforms, certain partisan inclinations in the state, as measured by the state government ideology, are associated with higher levels of implementation of certain HAVA sections. It is important to note here that partisanship in the management of elections and state government ideology are quite distinct in the sense that partisanship in the management of elections does not capture the type of partisan affiliation, just whether or not the office responsible for the management of elections in a particular state is grounded on the principles of nonpartisan, partisan or bipartisan management. State government ideology captures the overall state's partisan inclination over a particular period and in the case here, over the period for HAVA implementation.

Overall, an interesting finding is that while certain variables were statistically significant in certain models, which focused on explaining variation of a particular HAVA section, they were not statistically significant together i.e. together in a single model. This seems to suggest that different explanatory variables affect the implementation of different election reform issues and this is also interesting to investigate further.

Concluding Remarks on HAVA

HAVA changed the way elections are conducted in the United States. Perhaps most would say for the better. The act set a precedent in providing federal funding for

election administration to states and localities. Of course, it was a one-time disbursement and it is unclear if that may happen again, unless, of course, there is a focusing event like the 2000 election.

HAVA attempted to implement some level of uniformity across the states by determining minimum federal standards that states had to meet. However, the uniform standards it produced actually resulted in additional variation as they were implemented differently across the states, which had the prerogative of complying with these provisions in any way they saw fit. This again highlights the effects of federalism and decentralization on the implementation of election reform.

HAVA provided funding for new voting equipment and while before 2000 there were many varieties of voting equipment used throughout the states, today there are two main types of voting equipment used—optical scan machines and DREs. The replacement of lever and punch card machines with optical scan and DREs led to improvements in accessibility by allowing people with disabilities to vote independently. However, voting equipment and its reliability has been one of the hot topics in election administration since the 2000 election. A plethora of research ensued after the 2000 election focusing on the reliability and security of the different types of voting equipment and barely an election passes without newspaper stories about voting machines problems. Critics raised questions about the security and integrity of paperless, DRE machines and have advocated for voter-verified paper audit trails.

HAVA also set minimum voter ID standards. These standards opened up the gate for much controversy, as some states opted for requiring all voters to show IDs at the polls and the subject area opened up a partisan rift with Republicans arguing for stricter

voter ID standards in order to ensure that only eligible people are able to cast a ballot—the integrity argument—and with Democrats asserting that voter ID requirements are tantamount to a poll tax—the accessibility argument—and can lead to disenfranchisement. This rift remains and is likely to continue to remain.

Provisional balloting now allows voters to cast a ballot on election day even if they are not on the voter register. That is, however, not a guarantee that their vote will be counted given the varying interpretations amongst states as to how they should apply the provisional voting requirement of HAVA, with some states only counting provisional ballots cast in the correct precinct while others counting the provisional ballots' votes for all offices for which the voter was eligible in the jurisdiction in which she/he cast a ballot. Thus, ultimately, while voters in all states can cast provisional ballots it is geography that will determine if those ballots will be counted.

States now have statewide, computerized voter registration databases, as per HAVA's requirements. HAVA also required that states coordinate with other agency databases within the state to cross-check information for accuracy. These changes were intended to ensure that registration lists were up-to-date. But states chose to take different paths in how to structure these databases, which interestingly led to variation stemming from a federal mandate to create national uniformity.

Some of the current issues and concerns in the administration of elections are derivative of the changes that HAVA brought about. Now that states have overall replaced the outdated lever and punch card voting machines, an important issue of concern across the states is auditability of voting equipment software and ensuring the accuracy of the tabulation process. This is yet another area with variation from state to

state.

Also, what is to happen to the EAC? There have already been several calls to scrap this federal agency and although the EAC has thus far withstood such tests to its existence, it is not clear whether it will continue to do so in the future. Since it merely serves as a clearinghouse and conducts research, in times of financial austerity, it is possible that funding such an agency will not be a federal priority.

Additional Suggestions for Future Research

In addition to the suggestions for future research, which were interwoven in the discussion on the implications of the above research findings, I provide below further proposals for additional research. While this analysis has focused on state level implementation of HAVA, it would be interesting to examine what factors have accounted for HAVA's implementation at the county level. However, such data is hard to attain at this juncture.

Another possible area of research is to consider the impact of public opinion on the rate of implementation of election reform across the states. For instance, are lower rates of confidence in the quality of election administration in each state associated with higher rates of implementation of election reforms as a way to address public concern over the quality and integrity of the election process? Internationally, in new democracies, public opinion tends to be a considerable generator and promoter for election reform, as exemplified most recently by the Arab Spring. Is that a variable that has an effect on U.S. implementation of election reforms?

Given the herein established predictive value of partisanship and state structure

of election administration control, it would be interesting to further research these in terms of their effect on the election administration system. For instance, it would be interesting to examine how a state's election administration structure and degree of control vis-à-vis localities bode for the implementation of state election law? This would allow us to see if the effect of partisan and state degree of control over the administration of elections apply in the same fashion to state and not just federal.

Another possible research area could be what successful implementation of election reform would look like, based on what was learned from HAVA? Perhaps one of the main lessons from HAVA was that while Congress intended to act quickly to fix the problems with the way elections were being run, it acted too quickly and with limited consultation and anticipation of what may ensue due to the decentralized nature of election management. Yes, HAVA was a funded mandate. It provided states with funding to replace outdated voting equipment, but the federal government was late in providing voluntary voting system guidelines, which had been anticipated by some states as guidance. Additionally, while HAVA provided funding, the funding was merely to support the purchase of this voting equipment. Once purchased though, states and localities had to bear the cost of its future maintenance. Additionally, perhaps the federal government left too much discretion at the hands of the states, which resulted in additional variation. Some of that variation, it can be argued, missed the point of certain HAVA provision, such as those relating to the application of provisional voting. What this decentralization essentially results in is a zip-code specific voting system, where voter's experience on election day can vastly differ from county to county within the same state as well as from state to state.

Is the U.S. election administration system another lawsuit away from additional changes in the way elections are run? While HAVA has generated substantial improvements, there remain areas where additional attention is necessary to strengthen the integrity and reliability of the election system. How immediate those concerns are may depend on the closeness of forthcoming key elections. However, it should not take a close election and a disputed result to initiate improvements.

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