



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 21, 2006

The Honorable Tom Corbett
Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120

Albert H. Masland, Esq.
Chief Counsel
Department of State
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2601 North 3rd Street
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R. Mark Gesalman, Esq.
County Solicitor
2 N. Main Street, Suite 103
Greensburg, Pennsylvania 15601

Dear Messrs. Corbett, Masland and Gesalman:

I have authorized the filing of a lawsuit on behalf of the United States against the Commonwealth of Pennsylvania, the Pennsylvania Secretary of the Commonwealth in his official capacity as head of the Department of State, and Westmoreland County, pursuant to Section 301 of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15481. Section 401 of HAVA, 42 U.S.C. § 15511, authorizes the Attorney General to bring an action in federal district court for such declaratory and injunctive relief as is necessary to carry out the requirements of Title III of HAVA.

Section 301 of HAVA, which went into effect on January 1, 2006, sets forth standards for all states for each voting system used in an election for Federal office. Among other things, Section 301 requires that voting systems provide a mechanism for a voter to verify and, where necessary, correct his or her ballot, notify a voter of an overvote, produce a permanent paper record with a manual audit capacity, comply with federal error rate standards, and provide for accessibility for voters with disabilities or with alternative language needs. In particular, Section 301(a)(3)(A) requires that voting systems used in an election for Federal office "shall be accessible for individuals with disabilities ... in a manner that provides the same opportunity for

access and participation (including privacy and independence) as for other voters." 42 U.S.C. § 15481(a)(3)(A). States must comply with the accessibility requirements of Section 301(a)(3)(A) through use of "at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." 42 U.S.C. § 15482(a)(3)(B).

As of the January 1, 2006, effective date of Section 301, numerous Pennsylvania counties continued to use voting systems which did not comply with HAVA, e.g., by not providing accessibility for voters with disabilities required by Section 301(a)(3). A number of these counties now appear to be in serious jeopardy of not having HAVA-compliant voting systems in each polling place by the time of the first election for Federal office in the Commonwealth on May 16, 2006. Accordingly, the Commonwealth is not in compliance with Section 301 of HAVA.

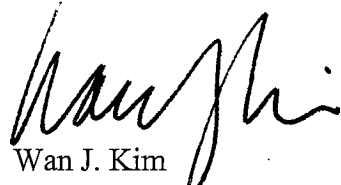
Further, we have noted the opinion of the Commonwealth Court of Pennsylvania enjoining Westmoreland County's use of HAVA-complaint electronic voting machines unless and until such machines are approved by in a referendum election. Kuznik v. Westmoreland County Bd. of Comm'rs, No. 18 M.D. (Pa. Commw. February 13, 2006). We believe the Court's opinion, which purports to require the County to employ a dual system involving paper ballots for elections for Federal office and lever machines for elections for state and local offices, would effectively preclude the County from complying with the accessibility requirements of Section 301(a)(3) of HAVA. Neither paper ballots, nor lever machines, provide accessibility for voters with disabilities in the manner required by Section 301(a)(3)(A) of HAVA, and the failure to provide for at least one accessible machine in each polling place for use in an election for Federal office violates Section 301(a)(3)(B) of HAVA. Where there is a conflict between federal and state law, the State is bound to resolve such conflict in favor of compliance with federal law.

Finally, we note that the Commonwealth has accepted nearly 23 million dollars in federal funds under Section 102 of HAVA, 42 U.S.C. § 15302, for replacement of its existing lever and punch card voting systems. Section 102 provides that failure to replace these systems by the time of the May 16, 2006 primary election for federal office will result in the Commonwealth losing the federal funds received under that replacement program, to the extent of the non-compliance.

We hope to resolve this matter through a negotiated consent decree rather than through costly and protracted litigation. We request that you contact us as soon as possible to indicate whether you are willing to enter into negotiations for a fair and equitable settlement of this matter that will remedy these violations. To that end, we are prepared to meet with you promptly to discuss terms of a possible consent decree to be filed along with the complaint. We will in any event file that complaint within 10 days.

Please contact trial attorney Richard Dellheim (202-305-1734) in our Voting Section, concerning your intentions or for any questions you may have. We look forward to working with you to resolve this matter promptly.

Sincerely,

A handwritten signature in black ink, appearing to read "Wan J. Kim". The signature is fluid and cursive, with the first name "Wan" being the most prominent.

Wan J. Kim
Assistant Attorney General

cc: Honorable Edward G. Rendell