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October 10, 2008

Honorable Gary L. Sharpe  
United States District Court  
for the Northern District of New York  
James T. Foley U.S. Courthouse  
445 Broadway, Room 441  
Albany, New York 12207

Re: *United States v. New York State Board of Elections, et al.*  
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe,

We enclose herewith Weekly Status Report of the Defendant New York State Board of Elections for the week ending October 9, 2008.

Respectfully submitted,

s/ \_\_\_\_\_  
Kimberly A. Galvin (505011)  
Special Counsel

s/ \_\_\_\_\_  
Paul M. Collins (101384)  
Deputy Special Counsel

**HAVA COMPLIANCE UPDATE**  
**Activities & Progress for the Week of 10/2/08 – 10/09/08**

Following is a detailed report concerning the previous week's progress in implementing the terms of the Court's Orders.

**PLAN A**

**Overall Compliance Status Summary**

Overall, activities and progress toward HAVA compliance are in jeopardy per the project timeline for Plan A.

**Contracting with Voting System Vendors**

Status of tasks in this category: *on schedule*

- Nothing new to report in this category this week.

**Testing, Certification, and Selection of Voting Systems & Devices**

Status of tasks in this category: *in jeopardy and behind schedule*

- Weekly status meetings were held with SysTest Labs and NYSTEC to review progress with regard to Plan A.
  - Overall progress of testing by SysTest:
    - Initial test pass of functional testing continued for both vendors this week.
    - SysTest has begun the development of a test plan for the public functional user testing demonstration to be conducted in Albany as part of the run-for-the-record test pass. It is also developing a list of required vendor equipment, so that vendors have sufficient time to prepare and deliver it.
    - The PCA Documentation Review for both vendors is complete, and the review of discrepancy fixes continues.
    - The PCA Source Code Review and Augmented Source Code Reviews of discrepancy fixes continued for both vendors.
    - Both vendors continue to carry a number of open discrepancies, which creates a timeline risk.

- At the weekly meeting among SysTest, NYSTEC and SBOE staff on October 9, 2008 representatives of both SBOE and NYSTEC expressed strong displeasure with the responsiveness and progress of SysTest to date.
- Status of Sequoia/Dominion testing:
  - SysTest was able to report progress this week, as test elections for two of the test cases have been created and ballots printed. The team is currently voting the test elections and verifying the results.
  - SysTest has again identified as a risk the source code discrepancies (170 open); documentation discrepancies (91 open), functional discrepancies (73 open) and Info (6 open) currently posed to the timeline by Sequoia/Dominion. Additional discrepancies are being discovered as functional testing progresses, further endangering timely completion of the schedule and posing a schedule risk.
  - SysTest continues to emphasize that the cumulative delays in functional testing continue to impact the estimated time schedule, and that the initial test pass will extend beyond the original 8 week estimate. Vendors have indicated that the communications with SysTest are improving.
- Status of ES&S testing:
  - The initial pass of functional testing continued this week and SysTest was able to report progress. Test elections for three test cases have been voted and tallied. The team is currently validating the election results and central count reports, and entering new documentation and functional discrepancies.
  - SysTest stated that the cumulative delays in functional testing continue to impact the estimated time schedule and the initial test pass will extend beyond the original 8 week estimate.
  - This vendor has carried an open issue (since 8/27/08) concerning the provision of a detailed readiness test as required by the VVSG. SysTest will forward a list of VVSG requirements that must be satisfied by the readiness test.
  - SysTest has again this week identified the open discrepancies for this vendor as a schedule risk: 170 open documentation

discrepancies; 87 open functional discrepancies; 13 open Info and 1 open source code discrepancies, and 11 augmented source code discrepancies as of October 9, 2008. Additional discrepancies are being discovered during functional testing, further endangering the testing schedule.

- Weekly conference call meetings between NYSTEC and SysTest continue relative to the testing effort. Currently NYSTEC is working with SysTest to more accurately map all discrepancies to the proper VVSG/NYS requirements.
- NYSTEC also continues to participate in weekly SysTest/vendor conference calls to discuss discrepancy reports and various testing issues.
- In preparation for revising SBOE security policies to incorporate and address Plan A/Lot I systems, vendors have been asked to provide equipment for NYSTEC to analyze. ES&S set up their system last week; the request to Sequoia/Dominion still remains outstanding.
  - All (other) existing SBOE policies and procedures are being revisited to incorporate changes necessitated by the inclusion of Plan A/Lot I systems. Draft Test Deck documentation for Plan A/Lot I was completed this week.

**Delivery and Implementation of Voting Systems & Devices**

Status of tasks in this category: *on schedule*

- NYSTEC is analyzing the requirements definition for a long-term statewide asset management tool, and conducting additional research. A request to the New York City Board for sample reports remains outstanding, with further meetings pending the provision of this information.

**PLAN B**

**Overall Compliance Status Summary**

Overall, activities and progress toward HAVA compliance are on schedule per the project timeline for Plan B.

**Contracting with Voting System Vendors**

Status of tasks in this category: *on schedule*

**Testing, Certification, and Selection of Voting Systems & Devices**

Status of tasks in this category: *on schedule*

- SBOE Legal has continued work to develop the source code escrow agreement with Iron Mountain. Internal adjustments to the draft agreement are now nearing completion.
- Nassau County Board continues to remain the only Board that has not yet paid matching funds on their BMD order.

**Delivery and Implementation of Voting Systems & Devices**

Status of tasks in this category:

- Nassau County has accepted delivery of all machines, save for 12 damaged in shipping. An inquiry has been made to Sequoia as to whether those machines have already been replaced and at the time of the preparation of this Status Report, the answer received was that the machines would be repaired by October 10, 2008.

**HAVA COMPLAINT PROCESS**

**McFeeley HAVA Complaint**

- SBOE staff continues to review New York City's suggestions and concerns expressed at the October 1, 2008 technical staff meeting in an effort to reach a resolution to the impasse.

**NYC HAVA Complaint**

Nothing to report this week.