



State of New York  
**STATE BOARD OF ELECTIONS**

James A. Walsh  
Chair  
Douglas A. Kellner  
Chair  
Gregory D. Peterson  
Commissioner  
Evelyn J. Aquila  
Commissioner

40 STEUBEN STREET  
ALBANY, N.Y. 12207  
Phone: 518/474-6367 Fax: 518/486-4546  
website: www.elections.state.ny.us

Todd D. Valentine  
Executive Director  
Stanley L. Zalen  
Executive Director  
Kimberly A. Galvin  
Special Counsel  
Paul M. Collins  
Deputy Counsel

August 29, 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,

I enclose herewith Weekly Status Report of the Defendant New York State Board of Elections for the week ending August 28, 2008.

Respectfully submitted,

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

Attorney for the New York State  
Board of Elections and  
Defendants Valentine and Zalen

**HAVA COMPLIANCE UPDATE**  
**Activities & Progress for the Week of 08/21/08 – 8/28/08**

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.

An additional status column has been added to the Status column in both Vendors' discrepancy logs. The "Pending" state notes discrepancies to which the Vendor has responded to the original discrepancy. Discrepancies will remain in this state until they are closed, as there may be multiple communications between the Vendor, the NYSBOE, and SysTest Labs throughout the process of resolving and closing the discrepancy.

○ **Overall progress of testing by SysTest:**

The initial PCA Documentation Review for both vendors is complete and the review of discrepancy fixes is in progress.

The initial PCA Source Code Review and Augmented Source Code Review for both vendors is complete and the review of discrepancy fixes is in progress.

The initial test pass of functional testing for both vendors is in progress. Both vendors continue to carry a high number of open discrepancies, which creates a risk to the mandated timeline.

- **Status of Sequoia/Dominion testing:**
  - Sequoia/Dominion did replenish its escrow account on August 22, 2008 in an amount satisfactory to SBOE.
  - The initial test pass of functional testing continued this week.
  - SysTest reports that documentation discrepancies and unclear error messaging requiring research to set up the test elections are delaying the test effort and presenting a serious schedule risk.
    - The review of documentation discrepancy fixes is ongoing. SysTest reports that the failure of the vendor to supply proper documentation is seriously hindering testing efforts.
    - SysTest reports that there is insufficient documentation from the vendor which the counties must have to build an election on their own, a serious flaw in the vendor's performance and one which is also delaying SysTest's efforts.
  - The source code review of discrepancy fixes remains in process.
  - The review of augmented source code discrepancy fixes was completed for the initial test pass.
- Throughout the week, all of the test teams have experienced show-stopper problems (i.e. ballot content not created successfully) which have delayed testing while the Vendor diagnoses the problem and prepares a resolution. SysTest Labs then tests the fix and reports back to the Vendor. Some of the issues are due to a fault with the Vendor's documentation and result in a documentation discrepancy, others have been functional issues. These delays are impacting the forward momentum of functional testing and may impact the overall schedule.
- SysTest Labs is experiencing intermittent application workstation crashes on all of the test systems. These have been identified in discrepancies 611, 692, and 708 and SysTest continues to add to discrepancies every time an additional crash is experienced. This is causing delays because the application either has to be restarted or the system has to be rebooted. It is also a risk because these crashes are intermittent and cannot be recreated

on demand.

- The Sequoia/Dominion TDP package still contains items that are not part of the Lot 1 test effort (i.e. Central Count Scanner). SysTest Labs has requested that all of these items be withdrawn from the TDP package.
- RISK: Sequoia/Dominion currently has 98 open source code discrepancies, 121 augmented source code discrepancies, 244 open documentation discrepancies, and 191 open functional discrepancies. Additional discrepancies are being discovered as functional testing progresses. This poses a serious schedule risk that these discrepancies can be addressed by Sequoia/Dominion and the fixes regression tested by SysTest Labs within the scheduled timelines.

### **Work In Progress**

The initial TDP documentation review is 100 % complete. The team is currently reviewing documentation fixes. There are currently 244 open documentation discrepancies.

The initial manual source code review is 100 % complete. The source code team is currently reviewing discrepancy fixes and preparing for the next pass. There are currently 98 open source code discrepancies.

The initial augmented source code review with the automated tools is 100 % complete. The source code team is currently reviewing discrepancy fixes and preparing for the next pass. There are currently 121 open augmented source code discrepancies.

The initial pass of functional testing is in progress; with test cases Gen01, Gen02, Prio01, Pri02, and GenSec currently being executed in parallel. There are currently 191 open functional discrepancies.

- o Test case Gen01 is approximately 21 % complete
- o Test case Gen02 is approximately 66 % complete
- o Test case Gen03 is approximately 0 % complete
- o Test case Pri01 is approximately 75 % complete
- o Test case Pri02 is approximately 73 % complete
- o Test case GenSec is approximately 46 % complete
- o Test Case Secure Telecom is approximately 0 % complete
- o Test Case Crypto is approximately 0 % complete
- o Test Case Hash Code is approximately 0 % complete
- o Test Case VSA Setup is approximately 0 % complete
- o Test Case Data Accuracy is approximately 0 % complete
- o Test Case Volume/Stress is approximately 0 % complete

- o **Status of ES&S testing:**

**Work In Progress**

The initial TDP document review is complete. SysTest received an updated TDP documentation package from ES&S on Thursday, August 14 and is currently reviewing documentation fixes. There are currently 451 open documentation discrepancies.

The initial manual source code review is 100 % complete and the team is reviewing source code discrepancy fixes. There are currently 2 open source code discrepancies.

The initial augmented source code review with the automated tools is 100 % complete. The team is currently reviewing discrepancy fixes. There are currently 225 open augmented source code discrepancies.

The initial pass of functional testing is in progress; with test cases Gen02, Prio01, Pri02, and GenSec currently being executed in parallel. There are currently 104 open functional discrepancies.

- o Test case Gen01 is approximately 5 % complete
- o Test case Gen02 is approximately 58 % complete
- o Test case Gen03 is approximately 0 % complete
- o Test case Pri01 is approximately 71 % complete
- o Test case Pri02 is approximately 62 % complete
- o Test case GenSec is approximately 74 % complete
- o Test Case Secure Telecom is approximately 0 % complete
- o Test Case Crypto is approximately 0 % complete
- o Test Case Hash Code is approximately 0 % complete
- o Test Case VSA Setup is approximately 0 % complete
- o Test Case Data Accuracy is approximately 0 % complete
- o Test Case Volume/Stress is approximately 0 % complete

Functional testing of test cases Gen02, Pri01, and Pri02 are being delayed while ES&S determines the cause of the ERM error messages "000?? – Software Problem" and "Cobol error code 104". ES&S is currently scheduled to deliver new code to SysTest Labs on Tuesday, September 02. This will require source code review of the fixed code, a new trusted build of the code, and functional regression testing. While waiting for this fix, the SysTest Labs functional test team is reviewing fixed discrepancies and generating the test elections for test cases Gen01 and Gen03.

**RISK:** ES&S currently has 2 open source code discrepancies, 225 open augmented source code discrepancies, 451 open documentation discrepancies, and 104 open functional discrepancies. Additional discrepancies are being discovered as functional testing progresses. This poses a schedule risk that these discrepancies cannot be addressed by ES&S and the fixes regression tested by SysTest Labs within the scheduled timelines.

NEW YORK STATE BOARD OF ELECTIONS

- Weekly conference call meetings between NYSTEC and SysTest continue.
- NYSTEC continues the independent review of ITA security test plans and cases. Test cases will be continuously revised as testing begins and more complete instructions are developed.

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

Status of tasks in this category: *on schedule*

- Nothing new to report in this category this week.

## 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*

- A total of 55 supply orders have been issued; only Rensselaer and Hamilton County Boards have not yet placed their requests and Rensselaer County has advised it will not be placing an order through Sequoia/Dominion. OGS has received a requisition form Hamilton County but will not process it until payment is received as Hamilton County is out of HAVA funds.
- Nassau remains the only County Board that has not paid matching funds on their BMD order.

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

Status of tasks in this category: *on schedule*

- The weekly status meeting on progress with Plan B was held with NYSTEC.
- The weekly status meeting on progress with Plan B was held with SysTest.

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

Status of tasks in this category: *Complete except for Nassau County machines*

- Acceptance Testing activities concluded on 8/16/08 at the SBOE central test site.
- BMD Test Deck training for both Primary and General Elections was conducted for County Board personnel through 8/22/08.
- All individual county asset spreadsheets have been provided, however Nassau County Board data remains outstanding, and it is currently being reviewed. Once QA has been completed, the document will be forwarded.
- The Voter Education website (<http://vote-ny.com>) is operational. The site offers content on both ES&S and Sequoia/Dominion units, as well as meeting voter access needs, poll worker training, and other informative content.
- The Poll Worker Training portal is in final review.

**HAVA COMPLAINT PROCESS**

**NYC HAVA Complaint**

NYC filed a formal HAVA Complaint on August 27, 2008 and Enforcement Counsel is reviewing and will send a Notice of Acceptance of Complaint, if appropriate. Until that occurs, there is no open complaint, and the matter could be dealt with in another manner.

**McFeeley HAVA Complaint**

At the August 15, 2008 meeting with the New York City Board the State Board recommended that a meeting be held as soon as possible between IT/management staff from the respective boards to review the specific technical requirements of NYSVoter and the interface with the City Board to determine a path to resolution. That meeting has not occurred as of this date.