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August 1, 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 fo the week ending July 31, 2008.

Respectfully submitted,

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

HAVA COMPLIANCE UPDATE
Activities & Progress for the Week of 07/25/08 – 07/31/08

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.
 - SBOE formally accepted Deliverable #7(Voting System Specific Test Plans) by SysTest, with specific conditions as recommended by NYSTEC.
 - SysTest continues to refine test cases, and work closely with NYSTEC in this regard.
 - Overall progress of testing by SysTest:
 - SysTest stated that time and schedule continue to be the major constraint and risk to the amount of comprehensive testing that can be executed prior to the test pass. The concern is attributable to the fact that the voting systems submitted by vendors will not be ready for the dry run of tests because of incomplete systems and unresolved discrepancies, relating to software and documentation issues. Identified risks include:
 - Insufficient time for vendors to address and fix discrepancies.
 - Insufficient time for the vendors to document modifications made to correct discrepancies.

- Risk that the effort to complete fixes will introduce additional discrepancies into the system.
 - Insufficient time for vendors to complete their internal build verification process and complete thorough internal quality assurance testing before the application is submitted for the run-for-the-record.
 - Risk that the trusted build process (to be completed in Denver and witnessed by SBOE) will require additional time because the vendor did not have sufficient time to perform their internal build verifications.
- Status of Sequoia/Dominion testing:
- SysTest reported that during their weekly meeting with the vendor, significant concern was expressed about their ability to address all of the source code, documentation, and functional discrepancies within the current timeline. The vendor was urged by SysTest and SBOE representatives to immediately follow up with contact at SBOE to discuss their concerns directly.
 - Hardware testing is in progress, but delayed by a failure discovered during the battery test. Environmental testing is 99% complete, as Sequoia/Dominion is researching the discrepancy from the battery test. EMC testing is 100% complete. Safety evaluation testing is 100% complete.
 - Initial TDP documentation review is 100% complete. The team is currently reviewing documentation fixes.
 - Manual source code review is 100% complete. Source code team is currently reviewing discrepancy fixes.
 - Augmented source code review with automated tools is in progress.
 - Setup and configuration of the test labs and voting systems is in progress, but was delayed due to an open discrepancy. SysTest was unable to successfully install a trusted build without the application crashing. This halted the configuration of the test computers and delayed the creation of test elections for functional testing. A Dominion representative was on site at SysTest to assist in diagnosing the problem. As of 7/31/08 the discrepancy had finally been resolved, and workstation set-up was restarted.

- SysTest has identified a risk regarding Sequoia/Dominion's documentation, which is written for installation to a network server. The installation to a standalone system is different, and will require updates to the installation documentation. Discrepancies are being entered and addressed by the vendor, but there is a schedule risk that the vendor will be unable to resolve them and undergo regression testing to the fixes within the timeline.
- This vendor's numerous open source code discrepancies are also identified as a risk by SysTest. Additional discrepancies will be discovered during functional testing, as well. This poses a serious schedule risk that the discrepancies can be addressed by the vendor and the fixes regression tested by SysTest within the timeline.
 - As of the latest report from SysTest (7/30/08), Sequoia/Dominion had the following outstanding discrepancies: 353 source code; 198 augmented source code; 80 documentation; 1 functional.
- Status of ES&S testing:
 - The initial TDP document review is complete and SysTest is waiting for updated documentation from the vendor.
 - Manual source code review is 100% complete and the team is reviewing source code discrepancy fixes.
 - The augmented source code review continued to the extent possible this week, as requested compilers have still not been provided by the vendor. The vendor has indicated to SysTest that all compilers will be provided along with the remaining build equipment scheduled for 8/4/08 arrival. This leaves little time for vendor response to any discrepancies encountered. ES&S has advised SysTest that they will make the compilers available sooner if possible.
 - Setup and configuration of the test labs and voting systems is complete; 5 ES&S test labs are functional.
 - Test elections are being created in anticipation of functional testing.
 - The vendor has still not delivered their final PCA Documentation Traceability Matrix which was due on 5/28/08. ES&S has

scheduled the submission of this and other documentation fixes for 8/8/08, which is only 5 days prior to the start of the run-for-the-record test pass. If fixes for all 969 discrepancies are delivered, SysTest states that there will be insufficient time to regression test them. The vendor has advised SysTest that the Matrix will be provided sooner if it is completed before 8/8/08.

- As of the latest discrepancy report (7/30/08) ES&S currently has 6 open source code discrepancies; 531 augmented source code discrepancies; 414 open documentation discrepancies; 18 functional discrepancies. Additional discrepancies will be discovered during functional testing. This is identified by SysTest as a serious schedule risk that the discrepancies can be addressed by the vendor and fixes regression tested within the timeline.
- NYSTEC has completed a quality control assessment of the TDP reviews performed by SysTest, and found no criticism of these reviews as conducted and documented by the ITA.
- Trusted/witness builds are now behind schedule, as the timeline submitted to the court identifies the period of 7/18/08 – 7/24/08 for this work.
- Per SysTest, System/Functional testing scheduling is threatened, as voting system vendors are not providing the necessary equipment and software for testing purposes, consistent with the court-mandated timeline.

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 with respect to ES&S counties are on schedule per the project timeline for Plan B. The Sequoia counties are behind schedule as set forth below.

Contracting with Voting System Vendors

Status of tasks in this category: *on schedule*

- As reported in last week's report, a total of 51 supply purchase orders have now been issued by OGS. Orders from Dutchess, Chautauqua County Boards continue in process. Orders have still not yet been requested by Hamilton, Nassau, Niagara, Rensselaer, and Schoharie County Boards.
 - OGS continues to provide periodic updates concerning the expenditure of Title I & II funds by County Boards.
- OGS continues to review specifications for privacy booths and related items that may be beneficial to place on state contract.

Testing, Certification, and Selection of Voting Systems & Devices

Status of tasks in this category: *completed with respect to ES&S machines, behind schedule with respect to Sequoia machines*

- 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: *in jeopardy and behind schedule*

- Acceptance Testing activities continued at the SBOE central test site.
 - During this reporting period, Sequoia/Dominion's estimated schedule called for delivery of 600 units; 381 were received, leaving a deficit of 219 for the week as of 7/30/08. Overall, this vendor is approximately 520 units behind in estimated deliveries. It is anticipated that the balance of machines will be delivered no later than August 11th. Acceptance testing will take approximately two (2) days and the machines will then be delivered to the remaining counties.

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- Suffolk and Cayuga County Boards received the balance of their orders, as acceptance testing was completed and units were shipped out this week. Dutchess and Seneca counties are scheduled for pick up on August 4th, Westchester on August 5th, 6th, and 7th, Sullivan August 7th, Oneida on August 8th, Herkimer and Hamilton Counties the week of August 11th.
- Periodic paper jams (13 this week) continue to occur during the acceptance testing process.
- All deliveries for orders of ES&S units were completed this week. During this period, ES&S was not scheduled for deliveries, although 204 units were received this week.
 - Multiple shipments of ES&S systems were sent out to County Boards this week: 75 units were shipped to Schenectady; 120 to Rockland; 535 to Brooklyn; and, 460 to Manhattan. 190 units will be picked up by the Albany County Board on Friday, 8/1/08.
 - Paper jams also arose with this system, in 9 instances this week.
- Efforts by SBOE and OGS progressed relative to the procurement of public service announcements. The NYS Broadcasters Association meets the requirements of contract as a single source, and OGS is drafting a Contract Reporter exemption. The plan remains to accomplish a procurement that will fill minimum needs for the Fall 2008 elections, and go out to bid for a larger and more comprehensive advertising campaign for the 2009 elections.
- NYSTEC continued preparation of asset management spreadsheets populated with individual County Board inventory data, which was released for implementation by the County Boards.
- The escrow agreement with Iron Mountain remains pending. SBOE Special Counsel's Office to finalize.
- SBOE is reviewing draft "Guidelines for Quarterly Testing and Maintenance of BMD's" prepared by NYSTEC.
- SBOE is reviewing a draft checklist of items County Boards will need in order to prepare for Election Day (i.e., Election Day responsibilities).
- The draft BMD Security Policy document remains under review by SBOE.

HAVA COMPLAINT PROCESS

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New York City has reduced its potential duplicate voters list from 37,552 on July 6th to 5,719 on July 31st. SBOE counsel is reaching out to NYCBOE counsel to resolve open issues of users and real time interaction.

NASSAU COUNTY ISSUES:

Nassau County advises that it has sufficient BMDs on hand to accommodate one machine in each polling place for the September Primary and SBOE Counsel is conferring with Nassau County Counsel to resolve outstanding issue with Sequoia. SBOE counsel has elevated discussion to the level of outside counsel at Sequoia in an attempt to resolve the issue of resuming delivery to Nassau County.



Exemption Certificate

Tax on occupancy of hotel rooms

This form may only be used by government employees of the United States, New York State, or political subdivisions of New York State.

Name of hotel, motel, lodging house, etc.		Dates of occupancy	
		From: / /	To: / /
Number and street	City, village, or post office	State	ZIP code
Country			
<p><i>This is to certify that I, the undersigned, am a representative of the department, agency, or instrumentality of New York State, the United States government, or the political subdivision of New York State indicated below; that the charges for the occupancy at the above establishment on the dates listed have been or will be paid for by that governmental entity; and that these charges are incurred in the performance of my official duties as a representative or employee of that governmental entity.</i></p>			
Governmental entity (federal, state, or local)		Agency, department, or division	
Employee name (print or type)	Employee title	Employee signature	Date
			/ /

Instructions for the government representative or employee

If you are on official New York State or federal government business and staying in a hotel or motel:

1. Complete all information requested in the box above.
2. Sign and date this exemption certificate in the box above.
3. Show the operator of the hotel or motel your appropriate and satisfactory identification.
4. Give this completed Form ST-129 to the operator of the establishment.

You may pay your hotel bill with cash, with a personal check or personal credit card, with a government voucher, or with a government credit card.

Please note:

- If, while on official business, you stay at more than one location, you must complete an exemption certificate for each establishment.
- If you are in a group traveling on official business and staying in this particular hotel, each person must complete a separate exemption certificate and give it to the hotel operator.

Caution: Willfully issuing a false or fraudulent certificate with the intent to evade tax is a misdemeanor under section 1817(m) of the Tax Law and section 210.45 of the Penal Law, punishable by a fine of up to \$10,000.

Instructions for the operator of the hotel or motel

Keep this completed Form ST-129, *Exemption Certificate*, as evidence of exempt occupancy by New York State and federal government employees who are on official business and staying at your establishment. You must keep this exemption certificate for at least three years after the later of: 1) the due date of the last sales tax return to which this exemption certificate applies; or 2) the date when you filed the return.

This exemption certificate is valid if the government employee is paying with:

- Cash.
- A personal check or personal credit card.
- A government voucher.
- A government credit card.

Do not accept this certificate unless the representative or employee presenting it shows appropriate and satisfactory identification.