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September 5, 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 September 4, 2008.

Respectfully submitted,

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

HAVA COMPLIANCE UPDATE

Activities & Progress for the Week of 08/29/08 – 9/5/08

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.
 - PCA Documentation Reviews of discrepancy fixes continued this week.
 - PCA Source Code Review and Augmented Source Code Reviews of discrepancy fixes continued for both vendors.
 - The initial test pass of functional testing for both vendors is in progress.
 - Planning was initiated for the public demonstration testing to be conducted in Albany as part of the run-for-the-record testing. Needs and logistics have been discussed with SysTest. They will tour the SBOE central testing site while in Albany the week of 9/15/08, to further planning efforts.
 - Both vendors continue to carry a high number of open discrepancies, which creates a timeline risk.

- **Status of Sequoia/Dominion testing:**
 - The initial pass of functional testing is in progress, with test cases being executed in parallel. Progress toward percentage complete does not appear to have increased, due to new discrepancies being discovered, incomplete documentation, and/or the flow of documentation, communicating with the vendor to assist in resolution of the discrepancies, update the test cases, and/or incorporate additional test steps that are not identified in the vendor documentation, then incorporating this information into the test election.
 - SysTest reported that, throughout the week, all of the test teams have experienced “show-stopper problems,” such as Audio Studio not working. This has delayed testing, while the vendor diagnoses the problem and identifies a resolution. Some of the issues are due to a fault in the vendor’s documentation, resulting in a documentation discrepancy. Others have been functional issues. Such delays are reported as impacting the forward momentum of functional testing, and impacting the overall testing schedule.
 - SysTest reported it continues to experience intermittent application workstation crashes on all of the test systems. This causes delays, as the application must be restarted or the system has to be re-booted.
 - This problem is also identified as a risk, as the crashes are intermittent and cannot be recreated on demand.
 - Also identified as a risk, are the cumulative delays in creating the election definition. The ballot layout continues to impact the estimated time schedules.
 - This is week 6 of the estimated 8 week initial test pass, and SysTest still is unable to create the ballot definition to print test ballots, primarily due to incomplete documentation.
 - SysTest has again identified as a risk the source code discrepancies (87 open); augmented source code discrepancies (2 open; 423 pending); documentation discrepancies (136 open; 132 pending); informational discrepancies (6 open/6 pending) and, (184 open/60 pending) functional discrepancies currently posed to the timeline by Sequoia/Dominion. Additional discrepancies are being discovered as functional testing

progresses, further endangering timely completion of the schedule.

- Open documentation discrepancy fixes are currently being reviewed.
 - Open source code discrepancy fixes are currently being reviewed, and the team is preparing for the next test pass.
 - Open augmented source code discrepancy fixes are currently being reviewed, and the team is preparing for the next test pass.
- **Status of ES&S testing:**
- The initial test pass of functional testing is being delayed, as SysTest waits for the completion of the trusted build. When the trusted build is complete, fixes will be regression tested, and all test cases will move forward.
 - SysTest states that this delay is impacting the estimated time schedules, noting that it is week 6 of the estimated 8 week initial test pass, and this delay, along with other issues and discrepancies, will extend the initial test pass.
 - While waiting for fixes, the ITA is reviewing fixed discrepancies and generating the test elections.
 - SysTest has again this week identified the open discrepancies for this vendor as a schedule risk: 121 open/209 pending documentation discrepancies; 97 open/48 pending functional discrepancies; 15 open/14 pending informational discrepancies; and, 3 open source code discrepancies. 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. Current focus is on source code testing following the requirements of the Master Test Plan and the Requirements Matrix.
 - NYSTEC also continues to participate in weekly SysTest/vendor conference calls to discuss discrepancy reports and various testing issues.

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*

- All supply orders have been issued, with the exception of the Hamilton County Board. OGS indicates that Hamilton County has advised that the payment is in process.
- Nassau County Board continues to be the only county that has not yet paid the matching funds on their BMD order. OGS reported this week that Nassau County has advised that the payment has been approved and should be forthcoming shortly.

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.

Delivery and Implementation of Voting Systems & Devices

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

- County Boards were notified by SBOE that the Voter Education website has been completed and is now available for their use. The site offers voters the opportunity to learn about the type of voting system selected for use in their county; provides an opportunity to look up their voter registration status; and, where provided, offers the ability to identify their poll site location. Additionally, this site can serve as a poll worker recruitment tool for use by County Boards. The web address is <http://www.vote-ny.com>. A link for the site is located on the home page of the SBOE website.
 - Work continues to provide information from the Voter Education site in languages required for use in New York State.

HAVA COMPLAINT PROCESS

NYC HAVA Complaint

The Notice of Acceptance of Complaint was sent on 8/29/08, and the matter will be processed in accordance with SBOE regulations.

McFeeley HAVA Complaint

The meeting referenced in previous Status Reports between IT/management staff from the State Board and the New York City Board has not as yet been held or scheduled as New York City personnel require the authorization of the City Board for such a meeting.