

MOTION HEARING MINUTES

CASE NAME:

United States of America	VS	New York State Board of Elections, et al.
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CAUSE: 28:1343 Violation of Civil Rights

DATE: December 20, 2007

PROCEEDING: Motion Hearing

LAW CLERKS: _____

CASE NUMBER: 1:06-cv-263 (GLS)

TRIAL DATE: **/**/**

STENO: Theresa Casal

Note: None

PRINT NAME	FIRM NAME	PARTY:
Brian F. Heffernan, Esq.	U.S. Department of Justice	USA
Paul M. Collins, Esq.	New York State Board of Elections	New York State Board of Election Defendants
Todd D. Valentine, Esq. Allison Carr, Esq.	New York State Board of Elections	New York State Board of Election Defendants
Jeffrey M. Dvorin, Esq.	Office of the Attorney General	Defendant New York State
Bruce Boivin, Esq.	Office of the Attorney General	Defendant New York State
Peter James Clines, Esq., Lori Barrett, Esq.	Nassau County Attorney's Office	Nassau County Movants

BEGINNING TIME: 9:00 A.M.

END TIME: 11:45 A.M.

APPEARANCES: All attorneys present.

9:00 a.m. Court discusses procedural history of the case; Court gives analysis of the case.
Court discusses pending matters before the court; court discusses amicus

applications; Court grants all motions to file amicus brief; Court discusses parameters of the amicus brief; Court will not accept any other motions without brief; if motion filed with brief will take on submit; any in non-compliance will be sua sponte denied;

- 9:19 a.m. Court turns to the intervention motion by Nassau County and lumps in the State Board of Elections motion.
- 9:20 a.m. Atty. Clines discusses position of Nassau.
- 9:21 a.m. Court inquires of letter by other counties.
- 9:21 a.m. Atty. Clines discusses number of vote of their county regarding other counties. Discusses compliance; Discusses causation.
- 9:23 a.m. Court discusses causation.
- 9:23 a.m. Atty. Clines discusses legal duty.
- 9:24 a.m. Court inquires why State Board can't take Nassau's view into consideration.
- 9:25 a.m. Atty. Clines discusses order and right for a need to appeal. New York state can't thumb nose at HAVA; discusses loss of money for boards; requires to hand up state transcript.
- 9:26 a.m. Court DENIES request and directs counsel to summarize.
- 9:26 a.m. Atty. Clines summarizes transcript for the court.
- 9:29 a.m. Atty. Clines discusses standard met for automatic intervention.
- 9:31 a.m. Atty. Valentine discuss difference in counties; discusses why counties should now be joined as parties in the litigation.
- 9:32 a.m. Court states counties must implement what the State Board tells them; need to pick machine certified by State and then implement that discusses the control of the money.
- 9:32 a.m. Atty. Valentine states in control of the Comptroller; Discusses need for the counties; discusses why their motion was brought at this time; adopted standards.
- 9:35 a.m. Court inquires of legal interest of county boards and need to be parties.
- 9:35 a.m. Atty. Valentine states mechanism in place for the state to enforce the order of this court; expedient to bring in this action instead of bringing a state court action; only tool is a judicial proceeding; other issues to be resolved;
- 9:38 a.m. Court discusses remedial order and have not complied. Can't submit a plan.
- 9:38 a.m. Atty. Valentine states has reiterated position to comply; there have been steps backwards; tried to make explanation on what has transpired; have set high standard for voting systems; time frames by Congress was unrealistic.
- 9:40 a.m. Court discusses 49 other states have complied. Court discusses issue of New York.
- 9:43 a.m. Atty. Valentine states enforcement is for basis of motion to join; each county is in a different position.
- 9:43 a.m. Atty. Heffernan discusses the motions to intervention and to join. Discusses case

law that the State Board oversees the County Boards; Counties are not necessary parties; If all counties were added the case would be unmanageable. Discusses federal money in the State account to comply with HAVA; it is state money and not county money;

9:50 a.m. Court states for reasons articulated by the federal government, the motions to intervene and the motion to join is DENIED.

9:51 a.m. Court turns to the enforcement action; Court discusses State Board in regards to prevention under State law; federal law preempts state law;

9:54 a.m. Atty. Dvorin discusses the remedial order; attempt to come up with solution and a plan; discusses independent testing agency issues; Board has made tremendous progress in recent months; process was expedited through other state agencies; Board indicates compliance in 2009.

9:59 a.m. Court states the State has to resolve the law under HAVA; federal law preempts state law;

10:00 a.m. Atty. Dvorin discusses the purpose of the State Board of Elections.

10:04 a.m. Court discusses states position is to give time to implement.

10:05 a.m. Atty. Dvorin states federal law preempts in this area;

10:06 a.m. Court inquires of State on what enforcement it has if the State Board does not do its job.

10:08 a.m. Atty. Dvorin discusses state board election and appointing process; discusses compliance is not issue; it is when to get in compliance.

10:12 a.m. Court states compliance was January 1, 2006.

10:12 a.m. Atty. Dvorin discusses implementing HAVA;

10:14 a.m. Court discusses compliance, submitting plans and implementing plans.

10:14 a.m. Atty. Dvorin discusses mindful of implementing plan under HAVA;

10:16 a.m. Court inquires who represents the Comptroller.

10:16 a.m. Atty. Dvorin states to an extent represents as through the State as an official.

10:18 a.m. Court inquires from legal standpoint where state board is paralyzed under some obligation.

10:19 a.m. Atty. Valentine discusses statute and process with bipartisan board; statute has a default mechanism; open to an enforcement action; in the process now; trying to meet federal standards first. States none of the machines in US have been certified and meets federal standards. Discusses plan b machine to start testing in 10-14 days; have a testing agency; have bid for voting machines; ready to contract with vendors in 1st quarter of 2008; began initial analysis to test the machines.

10:30 a.m. Court takes recess.

10:45 a.m. Atty. Heffernan discusses HAVA non-compliance.

11:05 a.m. Court discusses issue raised regarding appointment of special master.

- 11:05 a.m. Atty. Heffernan discusses accessibility;
- 11:12 a.m. Court discusses submission of plan; court inquires of federal government in regards to enforcement.
- 11:14 a.m. Atty. Heffernan states government has been monitoring.
- 11:14 a.m. Atty. Valentine states elements of steps not issue but it is the dates.
- 11:18 a.m. Court inquires of State Board if time requested to submit a plan.
- 11:24 a.m. Atty. Valentine discusses elements in Zalen plan; necessary steps; only issue and will accept time to make sure dates are accurate; ask until January 4, 2008 to comeback with details; time to assured accurate dates on testing; delivery dates; when delivered to the counties;
- 11:25 a.m. Atty. Collins would urge the court to adopt Zalen plan with verification of dates by Atty. Valentine
- 11:26 a.m. Atty. Heffernan states does not have problem with January 4, 2008. Have the board come in with plan review for sufficiency. Discusses letter from county board members yesterday. Focus on accessibility; discusses HAVA compliant machines;
- 11:31 a.m. Court will convert Nassau County's motion to an amicus brief for consideration. Need to move this process forward. Court inquires of Zalen plan from the federal government.
- 11:32 a.m. Atty. Collins states Zalen plan has time frame for full compliance for 2009.
- 11:33 a.m. Court states State Board of Election to submit a plan by January 4, 2008. Court is going to want position of the federal government and if further action is going to be required by the court.
- 11:35 a.m. Atty. Heffernan states would like to have a conference.