

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

NEW YORK STATE BOARD OF ELECTIONS;  
PETER S. KOSINSKI and STANLEY L. ZALEN,  
Co-Executive Directors of the New York State Board  
of Elections, in their official capacities; and STATE  
OF NEW YORK,

Defendants-Appellees.

-----X  
UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

THE NASSAU COUNTY BOARD OF ELECTIONS;  
and THE NASSAU COUNTY LEGISLATURE,

Defendants-Intervenors-Appellants.

-----X

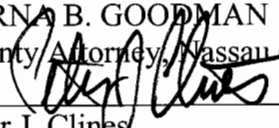
Pursuant to Federal Rule of Appellate Procedure 4(a) 4 (A) and (B), Amended Notice is given that Appellants and Proposed Defendants-Intervenors, the Nassau County Board of Elections and the Nassau County Legislature (collectively, "Appellants") hereby appeal to the United States Court of Appeals for the Second Circuit from each and every part of the Order of the District Court, Northern District of New York (Sharpe, J.), entered in this action on the 19<sup>th</sup> day of July , 2007, which, "for the reasons articulated in the U.S. Government's memorandum of law," denied Appellants' Rule 24(a)(2) motion to intervene as of right in this action and Appellant's Rule 24(b)(2) motion, in the

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AMENDED NOTICE OF  
APPEAL

alternative, to intervene by permission in this action and from the Order entered in this action on the 20<sup>th</sup> day of December, 2007, which denied Appellants' motion to reconsider the aforementioned District Court Order dated July 19, 2007.

Dated: December 27, 2007  
Mineola, New York

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Board of Elections, Peter S. Kosinski, and Stanley L. Zalen

<p>RECORD of Proceedings: Oral Argument held on December 20, 2007 before Judge Gary L. Sharpe, Court Reporter: Theresa J. Casal.</p> <p><b>IMPORTANT NOTICE - REDACTION OF TRANSCRIPTS:</b> In order to remove personal identifier data from the transcript, a party must electronically file a Notice of Intent to Redact with the Clerk's Office within 5 business days of this date. The policy governing the redaction of personal information is located on the court website at <a href="http://www.nynd.uscourts.gov">www.nynd.uscourts.gov</a>. <u><a href="#">Read this policy carefully.</a></u> If no Notice of Intent to Redact is filed within 5 business days of this date, the court will assume redaction of personal identifiers is not necessary and the transcript will be made available on the web 90 days from today's date. Notice of Intent to Redact due by 12/31/2007, Transcript due by 3/20/2008. (tjc, ) (Entered: 12/21/2007)</p>	
<p>12/20/2007</p>	<p><u>175</u> Minute Entry for proceedings held before Judge Gary L. Sharpe : Motion Hearing held on 12/20/2007; Appearances Made: Brian F. Heffernan, Esq., Paul Collins, Esq., Todd Valentine, Esq., Allison Carr, Esq., Jeffrey Dvorin, Esq., Bruce Boivin, Esq., Peter Clines, Esq., and Lori Barrett, Esq.; 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</p>

motion filed with brief will take on submit; any in non-compliance will be sua sponte denied; Court turns to the intervention motion by Nassau County and lumps in the State Board of Elections motion. Atty. Clines discusses position of Nassau. Court inquires of letter by other counties. Atty. Clines discusses number of vote of their county regarding other counties. Discusses compliance; Discusses causation. Court discusses causation. Atty. Clines discusses legal duty. Court inquires why State Board cant take Nassaus view into consideration. Atty. Clines discusses order and right for a need to appeal. New York state cant thumb nose at HAVA; discusses loss of money for boards; requires to hand up state transcript. Court DENIES request and directs counsel to summarize. Atty. Clines summarizes transcript for the court. Atty. Clines discusses standard met for automatic intervention. Atty. Valentine discuss difference in counties; discusses why counties should now be joined as parties in the litigation. 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. Atty. Valentine states in control of the Comptroller; Discusses need for the counties; discusses why their motion was brought at this time; adopted standards. Court inquires of legal interest of county boards and need to be parties. 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; Court discusses remedial order and have not complied. Cant submit a plan. 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. Court discusses 49 other states have complied. Court discusses issue of New York. Atty. Valentine states enforcement is for basis of motion to join; each county is in a different position. 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; Court states for reasons articulated by the federal government, the motions to intervene and the motion to join is DENIED. Court turns to the enforcement action; Court discusses State Board in regards to prevention under State law; federal law preempts state law; 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. Court

states the State has to resolve the law under HAVA; federal law preempts state law; Atty. Dvorin discusses the purpose of the State Board of Elections. Court discusses states position is to give time to implement. Atty. Dvorin states federal law preempts in this area; Court inquires of State on what enforcement it has if the State Board does not do its job. Atty. Dvorin discusses state board election and appointing process; discusses compliance is not issue; it is when to get in compliance. Court states compliance was January 1, 2006. Atty. Dvorin discusses implementing HAVA; Court discusses compliance, submitting plans and implementing plans. Atty. Dvorin discusses mindful of implementing plan under HAVA; Court inquires who represents the Comptroller. Atty. Dvorin states to an extent represents as through the State as an official. Court inquires from legal standpoint where state board is paralyzed under some obligation. 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. Court takes recess. Atty. Heffernan discusses HAVA non-compliance. Court discusses issue raised regarding appointment of special master. Atty. Heffernan discusses accessibility; Court discusses submission of plan; court inquires of federal government in regards to enforcement. Atty. Heffernan states government has been monitoring. Atty. Valentine states elements of steps not issue but it is the dates. Court inquires of State Board if time requested to submit a plan. 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; Atty. Collins would urge the court to adopt Zalen plan with verification of dates by Atty. Valentine 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; Court will convert Nassau Countys motion to an amicus brief for consideration. Need to move this process forward. Court inquires of Zalen plan from the federal government. Atty. Collins states Zalen plan has time frame for full compliance for 2009. 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. Atty. Heffernan states would like to have a conference. (Court

	Reporter Theresa Casal) Time: 9:00-11:45 a.m. (jel, ) (Entered: 12/20/2007)
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1 MR. CLINES: I will be very brief.

2 THE COURT: You had an opportunity to speak,  
3 I gave it to you, you're done.

4 There's no need for me to summarize what's  
5 already before me in papers. Nothing has changed since my  
6 prior decision. For the reasons articulated by the federal  
7 government in its response to both motions, the motion for  
8 reconsideration on the motion to intervene by Nassau County  
9 and the Nassau County Legislature, the State Board of  
10 Election's motion to join, I adopt the reasoning, the  
11 rationale and the citations to authority provided by the  
12 federal government as consistent entirely with my view of  
13 this case. I deny the motion for reconsideration, I deny  
14 the motion to join the County Boards of Elections.

15 Let's take up the enforcement action. In  
16 part, we've already done that. I want to understand the  
17 State Board of Elections. I'm not happy with the State  
18 Board of Elections. Now, let me say it in this fashion: To  
19 the extent the State Board of Elections points to things in  
20 State Law that have prevented them from doing one thing or  
21 another, a piece of legislation perhaps, or an executive  
22 decision by some other portion of the executive branch, I  
23 understand why somebody in the shoes of the Commissioners of  
24 the State Board of Election find themselves in a catch 22 as  
25 they see it between State Law and federal law. I

Order Forming Basis for Appeal - Text Only Order of the United States District Court,  
Northern District of New York, Judge Gary L. Sharpe, Entered July 19, 2007  
(unnumbered docket entry)

ADR

**U.S. District Court**  
**Northern District of New York - Main Office (Syracuse) [LIVE - Version 3.0.5] (Albany)**  
**CIVIL DOCKET FOR CASE #: 1:06-cv-00263-GLS**

07/19/2007		Text Only Order - On December 22, 2006, the Board of Elections and the Legislature of Nassau County filed a motion to intervene as a defendant in this case. Dkt. No. 100. On March 30, 2007, the County of Suffolk also filed a motion to intervene as a defendant in this case. Dkt. No. 111. For the reasons articulated in the U.S. Government's memorandum of law, Dkt. No. 115, this court declines to permit Nassau and Suffolk County to intervene. Accordingly, the motions to intervene are DENIED. Issued by Judge Gary L. Sharpe on 7/19/2007. (jel, ) (Entered: 07/19/2007)
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and THE NASSAU COUNTY LEGISLATURE,

Defendants-Intervenors-Appellants.

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK )  
COUNTY OF NASSAU ) ss. :

La CHRISTA BROWN, being duly sworn deposes and says that deponent is over twenty-one years of age, not a party to the proceeding herein and resides at Hempstead, New York; that deponent is employed in the Office of Nassau County Attorney; that on the 27<sup>th</sup> day of December, 2007, deponent served the within Amended Notice of Appeal upon:

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Board of Elections, Peter S. Kosinski, and Stanley L. Zalen

By depositing a true copy of the same securely enclosed in a post-paid wrapper in a post office box regularly maintained by the United States Government at the Nassau County Executive Building, Mineola, New York. And via electronic mail.

  
La Christa Brown

Sworn to before me this  
27<sup>th</sup> day of December, 2007

  
Notary Public

**DIANA CATAPANO  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01CA6089854  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES MAR. 31, 2011**