



U.S. Department of Justice

Civil Rights Division

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Voting Section – Room 7254 NWB  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530

January 11, 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, NY 12207

Re: *United States v. New York State Board of Elections, et al.*  
Civil Action No. 06-CV-0263 (GLS)

Dear Judge Sharpe:

The United States submits this letter in response to the remedial filings of the defendants pursuant to the Court's directive at the December 20, 2007 hearing in this case; namely, the Defendants' revised Plan A and Plan B filed on January 4, 2008 (Docket #179), and the Revised Summary and Plan A timeline filed on January 11, 2008 (Docket #180).

Following review of the defendants' January 4, 2008 filing, counsel for the United States engaged in several discussions with counsel for defendants with regard to the defendants' proposal. As a result of those discussions, on January 11, 2008, the defendants filed certain revisions to their initial proposal. The United States has carefully reviewed the defendants' filings, and responds as follows:

1. The United States submits that defendants' Plan B for the deployment of ballot marking devices accessible to persons with disabilities in every polling place in the State for use in the fall 2008 federal primary and general elections, as set forth in the defendants' January 4, 2008 filing with the Court and according to the specific timetable set forth in Exhibit C to that filing (Docket # 179), should be implemented in full by the defendants and that the Court should so order;
2. The United States submits that defendants' Plan A for the deployment of fully HAVA-compliant voting systems throughout the State of New York, specifically including the replacement of all lever voting machines in the State, by the fall 2009 State elections, as set forth in the defendants' January 4, 2008 filing (Docket #179), as revised by the defendants' January 11, 2008 filing and according to the specific timetable set forth in the Revised Plan A Timeline

that is part of the January 11, 2008 filing (Docket #180), should be implemented in full by the defendants, subject to the following:

a) Consistent with the January 11, 2008 submission of defendants (Docket #180), the defendants should carry out certification of Plan A voting systems concurrently with certification of Plan B ballot marking devices;

b) Where possible, New York counties should be able to utilize for the fall 2008 federal elections, voting systems that are fully compliant with HAVA. Accordingly, consistent with defendants' January 11, 2008 submission (Docket #180), the defendants should make all possible efforts to provide for certification of a Plan A voting system(s) in time for use of such system(s) in the fall 2008 federal primary and general elections by such counties as wish to utilize fully HAVA-compliant voting systems in such elections.

The United States is submitting with this response a proposed Order for the Court's consideration consistent with the above. In addition to ordering implementation of Plan A and Plan B as set forth above, the proposed Order, among other things, provides for written reports by defendants to the Court and the United States concerning compliance progress and for access to the Court concerning time-sensitive compliance issues.

We respectfully submit that the Court should enter the attached proposed Order. In the interest of timely remedial implementation, we would request that the Court require the defendants to file a response to the proposed Order by noon on Monday, January 14, 2008.

Thank you for your consideration of this request.

Sincerely,

/s/

Brian F. Heffernan  
Attorney, Voting Section  
Bar No. 513721

cc: All Counsel