

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
-Plaintiff,
-against-

**SUPPLEMENTAL
REMEDIAL ORDER**

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

06 CIV 0263 (GLS/RFT)

On November 5, 2007, plaintiff United States filed a Motion to Enforce this Court's June 2, 2006 Remedial Order, alleging defendants' continuing noncompliance with the Remedial Order and the Help America Vote Act, 42 U.S.C. 15301 et seq. ("HAVA") (Docket # 134). Following the defendants' filing of responses to the United States' Motion (Docket ## 151, 153-157), this Court held a hearing on December 20, 2007 (Docket ## 175, 176), at which arguments of the parties were heard. Pursuant to this Court's directive at that hearing, on January 4, 2008, the New York State Board of Elections ("the SBOE") filed with the Court a revised HAVA implementation plan (Docket # 179). On January 11, 2008, the SBOE supplemented this plan (Docket #180). On January 11, 2008, the United States responded to these submissions of the SBOE in a letter to the Court and submitted to the Court a proposed Order. The Court now enters this Supplemental Remedial Order, which, in conjunction with this Court's previous June 2, 2006 Remedial Order, is intended to direct the remedial course of this litigation in the future.

This Court, having carefully considered the filings of the parties in this matter, and the extensive arguments heard at the December 20, 2007 hearing, finds as follows:

1) This Court agrees with the United States and finds that the defendants have failed substantially to comply with the voting systems requirements of this Court's Remedial Order and that New York remains in noncompliance with the voting systems requirements of Section 301 of HAVA, 42 U.S.C. 15481;

2) As this Court made clear at the December 20, 2007 hearing, noncompliance with HAVA is not an option for defendants;

3) This Court recognizes that the defendants' delays in meeting the voting systems requirements of HAVA that became effective January 1, 2006, has made full compliance with these HAVA requirements in time for New York's February 2008 presidential preference primary, and for the September 2008 federal primary election and November 2008 federal general election, not currently possible;

4) This Court finds, based on the filings and arguments of the parties and consistent with the January 4, 2008 submission of the SBOE (Docket #179), and having considered relevant submissions of amicus curiae, that partial compliance with HAVA's voting systems requirements, in the form of ballot marking devices and/or voting systems accessible to persons with disabilities available for use in every polling place in the State of New York during the fall 2008 federal primary and general elections, is possible and must be accomplished;

5) This Court finds, based on the filings and arguments of the parties and consistent with the January 4, 2008 and January 11, 2008 submissions of the SBOE (Docket ##179, 180), and

