March 24, 2006

Pedro A. Cortés  
Secretary of the Commonwealth  
302 North Office Building  
Harrisburg, Pennsylvania 17120-0029

RE: Verification of Information Regarding HAVA 102 Funding

Dear Secretary Cortés,

Federal records indicate that Pennsylvania received Federal funds pursuant to Section 102 of the Help America Vote Act of 2002 (HAVA) for the replacement of punch card or lever voting machines (42 U.S.C. §15302). This letter seeks to verify certain information your office has previously provided, as an initial step in the U.S. Election Assistance Commission’s (EAC) efforts to determine whether the funds you received were used for the purpose and by the deadlines set forth in HAVA (42 U.S.C. §15302 (a) & (b)).

As a condition of receiving 102 funds, Pennsylvania certified that it would “use the payment... to replace punch card voting systems or lever voting systems (as the case may be) in the qualifying precincts within the state by the deadline prescribed [first election for Federal office held after January 1, 2006].”¹ (42 U.S.C. §15302(b)). Thus, HAVA requires (1) all punch card or lever machines in each qualifying precinct be replaced by the HAVA deadline and (2) that all 102 money be used by this deadline. Failure to meet these requirements may require repayment of 102 funds. Ultimately, the EAC will require Pennsylvania to certify its compliance. Thus, you, as the Chief State Election Official, must ensure records are available and sufficient to make and support such a certification.

Replacement of Voting Systems. In order to avoid repayment of funds, Pennsylvania will be required to certify the total number of qualified precincts (those precincts which used punch card or lever machines to administer the regularly scheduled general election for Federal office held in November of 2000) that have replaced all such machines in time for the first

¹ HAVA initially mandated that the 102 Funds be used to replace voting systems in time for the regularly scheduled general election for Federal office in November 2004. However, the statute provided for the receipt of a waiver extending compliance to the first election for Federal office held after January 1, 2006. (42 USC §15302(a)(3)). Your state requested and received this waiver. HAVA allows no additional waiver or extension of the deadline.
The replacement machines must not use punch cards or levers, meet the requirements of HAVA section 301 (42 U.S.C. §15481) and comply with all other relevant Federal statutory requirements (noted in 42 U.S.C. §15545). Failure to demonstrate compliance will require repayment.

The repayment provisions of HAVA require repayment of funds on a prorated basis. The rate is established by taking the total number of qualifying precincts who have fully met the requirements of HAVA, as a function of the total number of qualifying precincts within the State. (See 42 USC §15302(d)).

**Timely Expenditure of Funds.** All funds must be used for their designated purpose prior to the HAVA deadline. This means that as of the first election for Federal office in 2006, all 102 funds must be obligated. While this does not necessarily require that all 102 funds be "spent" (finally transferred to another party for consideration) by the HAVA deadline, it does require that all funds be obligated in such a way that the state has incurred a legally enforceable liability to another party (such as a local government or contractor) for the full value of its 102 funding. Pennsylvania must be able to document and certify the status of the 102 funding it received. This includes certifying that any 102 funding not expended by the HAVA deadline were properly obligated. In the event Pennsylvania possesses unobligated 102 funds after the first election for Federal office held in 2006, the state will be required to return either an amount equal to the noncompliant precinct percentage, as discussed above, or the total amount of unobligated 102 funds, whichever is greater.

**Verification of EAC Data.** EAC is responsible for administrating the 102 funds granted by HAVA. As we begin this process we would like to verify certain information we have previously gathered. This information is listed below.

- Pennsylvania has 7179 total qualified precincts (precincts which used punch card or lever machines to administer the regularly scheduled general election for Federal office held in November of 2000).
- Pennsylvania has $7,431,483.78 in 102 funds remaining in its election fund.

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2 This means that there may be no punch card or lever voting systems operating in the precinct. Further, these systems may not be transferred for use in a different precinct.
As chief state election official, you must verify the information above. If the information is correct, please note such in writing to the EAC. If the information above is incorrect, either because it was incorrectly reported previously or has changed, please provide the corrected data and explain the basis for the change. All correspondence should be sent to Edgardo Cortés, 102 Funds Verification, 1225 New York Ave., NW, Suite 1100, Washington, D.C. 20005.

Thank you for your attention to this matter. Please provide your response to this letter no later than April 12, 2006. The information you provide will help expedite our review of your HAVA 102 Funds. If you have any questions, please contact Mr. Cortes at (202) 566-3100.

Sincerely,

Thomas Wilkey
Executive Director