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The Honorable Ricardo Martinez

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

WASHINGTON ASSOCIATION OF CHURCHES,
as an organization and representative of its members;
WASHINGTON ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW
(ACORN), as an organization and representative of its
members; ORGANIZATION OF CHINESE-
AMERICANS – GREATER SEATTLE CHAPTER,
as an organization and representative of its members;
CHINESE INFORMATION & SERVICE CENTER,
as an organization and representative of its clients;
FILIPINO AMERICAN POLITICAL ACTION
GROUP OF WASHINGTON, as an organization and
representative of its members; KOREAN
AMERICAN VOTERS ALLIANCE, as an
organization and representative of its members;
SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU) – LOCAL 755, as an organization
and representative of its members; and
WASHINGTON CITIZEN ACTION, as an
organization and representative of its members,
Plaintiff,

v.

SAM REED, in his official capacity as Secretary of
State for the State of Washington,

Defendants.

NO. CV06-0726 RSM

DEFENDANT REED’S
MOTION TO
COMPEL JOINDER
OF UNITED STATES
AS ADDITIONAL
PARTY DEFENDANT

NOTE ON MOTION
CALENDAR:

JUNE 30, 2006

MOTION

Pursuant to Civil Rule 19(a), the Defendant Sam Reed, Washington State Secretary of State, moves the Court for an order compelling the Plaintiffs herein to join the United States of America as an additional party defendant. This Motion is based on the pleadings on file, the Memorandum below, and the documents attached to the Motion.

MEMORANDUM OF AUTHORITIES IN SUPPORT OF MOTION

1. Nature Of The Case

The Plaintiffs in the case are a group of organizations claiming to have a special interest in seeing that eligible voters in Washington are properly registered and allowed to vote. Compl., ¶¶ 15-24. The only named Defendant at this time is the Washington State Secretary of State, Sam Reed. Compl., ¶ 25. The Plaintiffs assert that a Washington state statute, RCW 29A.08.107, enacted in 2005, violates the Help America Vote Act of 2002 (HAVA), and certain other federal statutes and constitutional provisions. Compl., ¶¶ 7, 10, and 72-175. The Plaintiffs' primary contention is that RCW 29A.08.107 is inconsistent with HAVA and therefore preempted by federal law. Compl., ¶¶ 7, 10, and 72-125.

The State's position in this case is that RCW 29A.08.107 was enacted for the specific purpose of assuring that Washington State is in compliance with HAVA. The state statute was enacted after considerable dialogue among the states and between the states and the federal agencies charged with implementing HAVA and enforcing its provisions. A key question addressed in this discussion concerned HAVA's requirement that states registering voters for federal elections obtain from the applicant either (1) where possible, the applicant's valid driver's license number; or (2) if the applicant has no driver's license, the last four digits of the applicant's social security number. HAVA, 42 U.S.C. § 15483(a)(5).¹ After consultation with

¹ If the applicant has no driver's license or social security number, HAVA directs the state to provide a unique identifying number to the applicant. 42 USC § 15483(a)(5).

1 representatives of the federal government responsible for implementing HAVA, Washington State
 2 officials concluded that HAVA requires states to assure that a voter registration applicant's
 3 driver's license number, or social security number, as the case might be, *actually matches* the
 4 appropriate state or federal record concerning the number given.² Attachment A,
 5 Catherine S. Blinn Decl. Accordingly, they recommended the enactment of the statute now
 6 codified as RCW 29A.08.107.

7 2. Nature Of U.S. Government's Interest In The Issues Presented

8 Civil Rule 19(a) provides that:

9 A person who is subject to service of process and whose joinder will not deprive the
 10 court of jurisdiction over the subject matter of the action *shall be joined as a party* in
 11 the action if (1) in the person's absence complete relief cannot be accorded among
 12 those already parties, or (2) the person claims an interest relating to the subject of the
 13 action and is so situated that the disposition of the action in the person's absence
 14 may (i) as a practical matter impair or impede the person's ability to protect that
 15 interest, or (ii) *leave any of the persons already parties subject to a substantial risk
 16 of incurring double, multiple, or otherwise inconsistent obligations by reason of the
 17 claimed interest.*

18 (Italics added.)

19 In this Motion, the State does not suggest that the United States is a necessary party simply
 20 because interpretation of federal statutes is a question before the Court. As a general matter, the
 21 courts have consistently held otherwise. *Rosado v. Wyman*, 397 U. S. 397, 90 S. Ct. 1207, 25 L.
 22 Ed. 2d 442 (1970).³ This case is an exception to the general rule, however, because (1) HAVA is
 23 a new statute in which federal agencies are playing an active role in implementing and enforcing
 24 its provisions; (2) HAVA specifically assigns an enforcement role to the U.S. Attorney General;
 25 and (3) if the United States is not a party to this case, the State has a substantial risk of "double,
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² The question what constitutes a "match" is the subject of a large portion of the Complaint, but need not be addressed for purposes of this Motion. The issue is whether federal law requires a "match" however defined.

³ *Rosado* involved a claim that provisions of the New York State welfare law were inconsistent with federal law. New York asserted that the U.S. was a necessary party but did not, as here, assert that its state law had been changed for the specific purpose of bringing it into compliance with federal law.

1 multiple, or otherwise inconsistent obligations.” Civil Rule 19(a). HAVA Sec. 401 (42 U.S.C.
 2 § 15511) provides that “the Attorney General may bring a civil action against any State or
 3 jurisdiction in an appropriate United States District Court for such declaratory and injunctive relief
 4 (including a temporary restraining order, a permanent or temporary injunction, or other order) as
 5 may be necessary to carry out the uniform and nondiscriminatory election technology and
 6 administration requirements under sections 301, 302, and 303.”⁴

7 In this case, the Court is asked to determine whether a state statute, RCW 29A.08.107, is
 8 consistent with HAVA, a federal statute enforced by the U.S. Attorney General. If the United
 9 States is not a party, so that the federal government’s views concerning the proper interpretation
 10 of HAVA and related federal statutes are not before the Court, the Court must interpret federal
 11 law without benefit of the best possible source concerning the administrative construction of the
 12 statute before the court.⁵ Furthermore, and going to the heart of the joinder standards established
 13 in Civil Rule 19(a), a judgment in this case would not bind the United States or preclude the
 14 United States from bringing an action against Washington State asserting a different construction
 15 of HAVA or other federal laws than the one reached in this case. The State could find itself
 16 enjoined by one court from taking certain action, while commanded by another court to take the
 17 same action.

18 The U.S. Attorney General has plainly indicated the view that HAVA requires states not
 19 only to obtain identifying numbers for voter registration applicants but to assure that there is a
 20 match between the applicant’s name and the person shown by state or federal records to have the
 21 number in question. In this regard, the state submits the following as examples:

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 23 ⁴ The primary issue in this case is the interpretation of HAVA Sec. 303 (42 U.S.C. § 15483), one of the
 24 sections the Attorney General has express authority to enforce.

25 ⁵ While the State is prepared to argue its best understanding of the interpretation of HAVA and other
 26 federal statutes, the State does not assert any special knowledge as to the meaning of the federal law, or as to the
 statute’s administrative construction. Furthermore, the State’s primary purpose here is to defend its own
 enactments, not those of Congress.

- 1 • Attachment B is a document submitted by the United States in a HAVA
2 enforcement action brought against the state of New York. United States'
3 Response to State of New York's HAVA Remedial Plan, filed in *United States of*
4 *America v. New York State Board of Elections*, United States District Court for the
5 Northern District of New York, Civil Action No. 06-CV-0263. This document
6 illustrates that the Attorney General stands ready and willing to bring cases
7 enforcing HAVA against the states. Furthermore, on page 18 of Attachment B,
8 the U.S. Attorney General notes that New York proposes to transfer and use
9 "statewide voter registration list software from the State of Washington" and
10 observes that "the United States agrees that, upon full implementation of
11 NYSVoter as set forth in the proposed plan, New York should be in full
12 compliance with Section 303(a) of HAVA." It seems unlikely that the Justice
13 Department would have approved New York's proposal to use Washington's
14 statewide voter registration system if the Justice Department thought
15 Washington's system was out of compliance with HAVA.
- 16 • Attachment C is a copy of a letter written by the Department of Justice to an
17 Assistant Attorney General for the state of Maryland, dated September 8, 2003.
18 The letter expresses the view that states are required to verify the identification
19 numbers submitted by voter registration applicants—in other words, to make sure
20 the numbers actually match. The letter states that "it is clear in [HAVA] § 303
21 that Congress intended, absent some exemption, that voter registration applicants
22 for federal elections must provide certain specific information *and States must*
23 *take certain specific steps to verify this information.*" Attach. C at 3. (italics
24 added). Furthermore, the letter states, "a State can neither refuse to consider
25 timely and complete registration applications, nor can the State refuse to
26

1 undertake the verification process for those applications.” *Id.* Still further, the
 2 letter states that “where the results indicate that the registrant is not eligible, has
 3 provided inaccurate or fraudulent information, or information that cannot be
 4 verified, then the application must be denied.” *Id.* The letter is a clear indication
 5 that, in the view of the U.S. Department of Justice, a state is obligated to obtain
 6 identification numbers from registrants who have them, is obligated to verify the
 7 accuracy of the information and, if the information cannot be verified, is obligated
 8 to reject the application. The position appears sharply at odds with the reading of
 9 HAVA advanced by the Plaintiffs in their Complaint in this case.

- 10 • Attachment D, E and F are examples of letters written by the Department of
 11 Justice to the chief election officers of, respectively, Alabama, Alaska, and
 12 American Samoa. The letters are substantially similar to one another, and all
 13 contain language citing Section 303(a)(5)(A) of HAVA and specifically asking
 14 whether the recipients have entered into agreements with the Social Security
 15 Administration concerning the verification of the last four digits of voter
 16 registration applicants’ social security numbers. The clear implication of these
 17 letters is that states are obligated to verify the numbers in question. If, as the
 18 Plaintiffs here appear to contend, HAVA requires states to register applicants
 19 whose numbers cannot be matched, the SSA verification agreements amount to
 20 meaningless “busywork.” Again, it seems clear that the Justice Department
 21 considers verification (matching) to be required by HAVA.

22 3. Other Federal Statutes

23 In their Complaint, the Plaintiffs assert that RCW 29A.08.170 violates certain other
 24 federal statutes as well as HAVA. Compl., ¶¶ 147-175. These sections of the Complaint raise
 25 questions as to how HAVA should be interpreted in light of other federal election statutes. On
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1 such issues, the participation of the United States in this case is crucial, and would greatly assist
2 the Court in harmonizing the various statutory provisions on the subject.

3 **4. Authority Of Court To Join United States**

4 Given the importance of the United States to the proper resolution of this case, Civil Rule
5 19(a) provides that the Court should require joinder of the federal government. The United States
6 is, of course, subject to service of process and its joinder would not jeopardize this court's subject
7 matter jurisdiction. The United States clearly claims an interest in the enforcement of HAVA as
8 well as other statutes. Failure to join the United States would, as noted above, subject the State to
9 possibly inconsistent obligations, given the Justice Department's role in enforcing HAVA.
10 Furthermore, the absence of the United States frustrates the ability of the parties now before the
11 Court to craft a compromise or settlement of the claims raised, to the extent such a settlement
12 would otherwise be advisable. The State has little or no room to agree to actions (or to refrain
13 from taking actions) if the State is subject to enforcement action from a non-party on the items
14 contained in the agreement.

15 The Court may order the joinder of an additional party if the conditions set forth in Civil
16 Rule 19(a) are met. *In the Matter of the Complaint of Seaspan Int'l, Ltd.*, 172 F. Supp.2d 1314
17 (W.D. Wash. 2001). *See also Mould v. Saxon Mortgage Servs., Inc.*, 2005 WL 1950268 (W.D.
18 Wash. 2005); *Patterson v. Winthrop-Breon Lab.*, 115 F.R.D. 478 (E.D. Wash. 1987).

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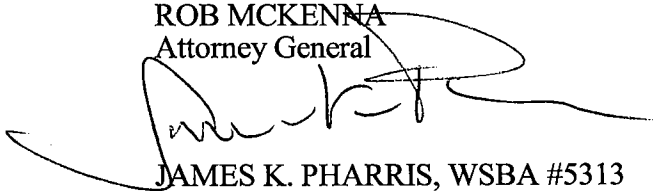
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CONCLUSION

For the reasons discussed above, the Court should require the Plaintiffs to join the United States to this action as a necessary party, and should make any adjustments to the schedule of discovery and other proceedings to accommodate the newly joined party's interests.

DATED this 12th day of June, 2006.

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