



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

JAN 10 2006

The Honorable Eliot Spitzer
Attorney General
The Capitol
Albany, New York 12224-0341

Todd Valentine, Esq.
General Counsel
New York State Board of Elections
40 Steuben Street
Albany, New York 12207

Dear Messrs. Spitzer and Valentine:

I have authorized the filing of a lawsuit on behalf of the United States against the State of New York as well as the New York State Board of Elections, *et al*, pursuant to Sections 301 and 303(a) of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§ 15481 and 15483(a). Section 401 of HAVA, 42 U.S.C. § 15511, authorizes the Attorney General to bring an action in federal district court for such declaratory and injunctive relief as is necessary to carry out the requirements of Title III of HAVA.

Section 301 of HAVA, 42 U.S.C. § 15481, sets forth voting systems standards for all states for each voting system used in an election for Federal office. Among other things, Section 301 requires that voting systems provide a mechanism for a voter to verify and, where necessary, correct his or her ballot, notify a voter of an overvote, produce a permanent paper record with a manual audit capacity, comply with federal error rate standards, and provide for accessibility for voters with disabilities or with alternative language needs. Section 301 became effective on January 1, 2006.

Section 303(a) of HAVA, 42 U.S.C. § 15483(a), requires all states except a state which does not maintain voter registration for elections for federal office to implement a single, uniform, official, centralized, interactive computerized statewide voter registration list for use in elections for Federal office. Among other things, this list must be defined, maintained and administered at the state level, must contain the name and registration information of every

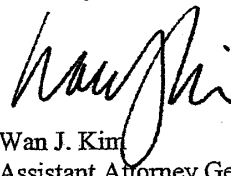
legally registered voter in the state, must have a unique identifier for each voter, must be coordinated with other state databases, must meet list maintenance, technological security and accuracy requirements, and must meet verification requirements for all new registered voters. Section 303(a) became effective in New York on January 1, 2006, since New York applied to the U.S. Election Assistance Commission for a waiver of compliance.

As you are aware, attorneys from the Civil Rights Division have met with the staff of the State Board of Elections, as well as staff from the State Legislature, on several occasions over the last two years to discuss New York's efforts to comply with HAVA's mandates. At those meetings, as well as in numerous telephone conversations, and also in written correspondence, we have expressed our concerns about the lack of progress made by New York in moving toward full HAVA compliance. It is beyond dispute that New York is not now in compliance with either the statewide voter registration list requirements of Section 303(a) of HAVA, or the voting system standards of Section 301 of HAVA. In fact, based on information we received at our most recent meeting on December 2, 2005, it is clear that New York is not close to approaching full HAVA compliance and, in our view, is further behind in that regard than any other state in the country.

We are hopeful that we will be able to resolve this matter through a negotiated consent decree rather than through costly and protracted litigation. We request that you contact us as soon as possible to indicate whether the State is willing to enter into negotiations for a fair and equitable settlement of this matter that will remedy these violations. To that end, we are prepared to meet with the State promptly to discuss terms of a possible consent decree. We are prepared to file a complaint if the matter is not resolved expeditiously.

Please contact Brian Heffernan (202-514-4755) in our Voting Section, concerning the State's intentions or for any questions you may have. We look forward to working with you to achieve a prompt resolution of this matter.

Sincerely,



Wan J. Kim
Assistant Attorney General

cc: Honorable George E. Pataki