

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

-Plaintiffs,

Civil Action No.  
06 cv 0263 (GLS)

NEW YORK STATE BOARD OF ELECTIONS,  
TODD D. VALENTINE and ROBERT A. BREHM  
Co-Executive Directors of the New York State Board  
of Elections, in their official capacities; and  
STATE OF NEW YORK,

**ORDER**

-Defendants.

On April 26, 2010, Defendants New York State Board of Elections, Todd D. Valentine and Robert A. Brehm ("SBOE") filed a Proposed Order to Show Cause (Docket No. 353) seeking injunctive relief pursuant to the All Writs Act, 28 U.S.C. 1651, against the COUNTY OF NASSAU, the NASSAU COUNTY BOARD OF ELECTIONS, JOHN A. DEGRACE, in his official capacity as Nassau County Republican Commissioner of Elections, and WILLIAM T. BIAMONTE, in his official capacity as Nassau County Democratic Commissioner of Elections ("Nassau Respondents"), compelling the Nassau Respondents to take action necessary to ensure compliance with this Court's June 2, 2006 Remedial Order, January 16, 2008 Supplemental Remedial Order, and June 4, 2009 Order setting forth revised time lines for the implementation of the State of New York's HAVA Implementation Plan, and more specifically, compelling the Nassau Respondents to:

- 1) Accept the ES&S scanners which have been acceptance tested by the New York State Board of Elections;
- 2) Complete, forthwith, the appropriate receipt tests upon such scanners;
- 3) Train sufficient election personnel on the ES&S voting system so that such

system may be put to county-wide use in the Fall 2010 Primary and General Elections;

- 4) Conduct appropriate public outreach and voter training on such voting system; and
- 5) Implement the new voting system for the Fall 2010 Primary and General Elections on a county-wide basis.

On May 7, 2010, Defendant State of New York filed a response to the SBOE's Motion joining in the SBOE's application for relief under the All Writs Act (Docket No. 357). On May 12, 2010, Plaintiff United States filed a response in support of the SBOE's motion (Docket No. 363).

On April 30, 2010, the Nassau County Attorney filed a letter response (Docket No. 355) on behalf of the Nassau Respondents asserting, among other things, that there was no basis in law or fact for the issuance of the relief sought by the SBOE and seeking additional time to formally respond to the SBOE's application for relief. On May 12, 2010, the Nassau Respondents filed a response in opposition to the SBOE's application for relief consisting of a Memorandum of Law (Docket No. 364), and including a Declaration of John Ciampoli dated May 12, 2010 (Docket No. 365) and Joint Declaration of John A. DeGrace and William T. Biamonte dated May 12, 2010 (Docket No. 366).

On May 17, 2010, this Court held a hearing on the SBOE's All Writs Act application at which all parties and the Nassau Respondents appeared (Docket No. 372). At such hearing, the Court afforded all parties and the Nassau Respondents a full opportunity to be heard on the issues before the Court.

The Court, having carefully considered the filings of the parties and the Nassau Respondents in this matter, the arguments presented at the hearing on May 17, 2010, and the

previous record in this action, has determined that there are no issues of fact or law necessitating any further hearing, evidentiary or otherwise, on the application of the SBOE. Accordingly, the Court makes the following findings:

1) The extensive record in this case, specifically including the United States' Complaint, the United States' Motion for Preliminary Injunction, and this Court's June 2, 2006 Remedial Order, January 16, 2008 Supplemental Remedial Order, and June 4, 2009 Order ("Remedial Orders") and related filings and hearings, make clear that this Court has previously found that lever machines as utilized in the State of New York do not comply with the voting systems requirements of Section 301 of the Help America Vote Act (HAVA), 42 U.S.C. 15481, and that full compliance with HAVA in New York will not be achieved until all lever voting machines in the State are replaced with fully-HAVA-compliant voting systems, consistent with the remedial plan set forth in this Court's Remedial Orders;

2) Consistent with this Court's Remedial Orders, the SBOE has processed Nassau County's order for HAVA-compliant optical scan voting systems previously certified by the State, has expended federal funds for the purchase of such machines, has conducted acceptance testing of such machines, and, on March 19, 2010, has made such machines available for delivery to and acceptance by Nassau County;

3) Nassau County has failed to take delivery of HAVA-compliant optical scan voting systems from the SBOE in a timely manner consistent with compliance with this Court's remedial timetable and plan as reflected in its Remedial Orders;

4) Based on Nassau County's failure to take action consistent with compliance with this Court's Remedial Orders, its longstanding awareness and notice of such Orders and its inconsistent and contradictory filings in this case, as detailed by the SBOE and the United States

in their filings concerning the SBOE's application, the Court finds that Nassau County is interfering with implementation of this Court's lawful Remedial Orders designed to ensure compliance with HAVA;

5) This Court has the authority under the All Writs Act, 28 U.S.C. 1651, to take action, including the issuance of an injunction, to protect its jurisdiction and prevent the frustration of orders it has previously issued, and Nassau County has presented no argument to this Court suggesting that this Court does not have such authority. In addition to its authority under the All Writs Act, the Court possesses inherent equitable authority to enforce its Remedial Orders.

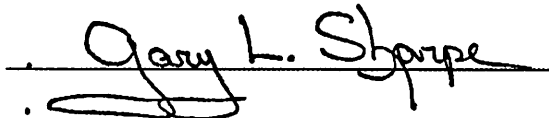
ACCORDINGLY, upon due deliberation, it is hereby ORDERED, ADJUDGED and DECREED that:

1) Pursuant to the Court's authority under the All Writs Act, 28 U.S.C. 1651, and its inherent equitable authority, the COUNTY OF NASSAU, the NASSAU COUNTY BOARD OF ELECTIONS, JOHN A. DEGRACE, in his official capacity as Nassau County Republican Commissioner of Elections, and WILLIAM T. BIAMONTE, in his official capacity as Nassau County Democratic Commissioner of Elections, are hereby enjoined from taking further action interfering with implementation of the previous Remedial Orders of this Court in this case, and are specifically enjoined to take the actions set forth in the attached schedule consistent with the timeline set forth therein and to take such other and further steps as the State Board of Elections deems necessary to implement the new HAVA-compliant voting systems throughout Nassau County for the Fall 2010 elections;

2) This Court shall retain jurisdiction of this matter to deal with any matter of possible noncompliance with the terms of this Order by the Nassau Respondents. Because of the time-sensitive nature of the actions required under this Order, and consistent with Paragraph 6 of this

Court's January 16, 2008 Supplemental Remedial Order, this Court, where possible, will make itself available on short notice by any party, to deal with any issues that may arise that threaten timely compliance with the Orders of this Court.

ORDERED this 20<sup>th</sup> day of May, 2010.

A handwritten signature in black ink, reading "Gary L. Sharpe". The signature is written over a horizontal line.

GARY L. SHARPE

UNITED STATES DISTRICT JUDGE

SCHEDULE OF COMPLIANCE			
By 6/1		Nassau County Board of Elections to provide SBOE with a detailed document setting forth how they logistically intend to effectuate the components contained in this timeline to ensure compliance therewith by the 9/14/10 primary election. This document shall include, but not be limited to, a discussion of poll site logistics, poll worker recruitment, transportation, privacy booths, seals and locks, security packs, secure ballot transport accessories and voter instruction materials for use in poll sites.	
Weekly		NCBOE shall report, in writing, all steps taken towards compliance with the required steps below. Such report shall be e-mailed to the designated staff at the State Board every Wednesday by Noon. SBOE shall have the ability to speak with a bi-partisan team of NCBOE staff every Wednesday 2:30 pm if deemed necessary by the SBOE.	
		<b>Warehouse and Voting System Delivery</b>	
By 6/4		NCBOE shall have moved all DVS ballot marking devices and any lever machines not required for the June village elections to an alternate storage site.	
By 6/11		NCBOE shall have accepted delivery of all (430) AutoMark Ballot Marking Devices from the interim storage location.	
BY 6/18		NCBOE shall have accepted delivery of at least 600 DS 200 scanners from the interim storage location.	
By 6/25		NCBOE shall have accepted delivery of the balance (580) of DS 200 voting systems from the interim storage location.	
Present-7/2		Perform SBOE receipt process on voting systems as they arrive in the warehouse, completing corresponding paperwork and asset management documentation.	
<b>PRIMARY ELECTION</b>		<b>Ballot Creation</b>	
Present-6/25		Conclude building county database portion of ballot template	
7/1-8/2		Build ballots	
8/9-8/9		SBOE certifies the State ballot	
8/10-8/10		NCBOE creates and proofs ballot pdfs and delivers to printer	
8/11-8/11		Initial absentee ballots mailed	
8/31/8/31		Election Day ballots delivered to NCBOE	
Now-Election Day		<b>Training and Outreach</b>	
Complete by 6/30		EMS training (County Board Staff)	
Complete by 6/30		Tech training( County board staff, voting techs and custodians)	

		Pre-election work training ( test decks, hash checks, memory				
		card burning etc...)				
Bulk completed 8/16		Poll worker training				
8/15-9/13		Emergency training and refresher training				
Bulk completed by 8/30		Public outreach and training (includes any public demos)				
Now through 9/13		Continuous public outreach				
		<b>Pre-Qualification Testing</b>				
7/15-7/30		Complete hash check on machines to verify firmware				
by 8/6		Have test deck ballots printed				
By 8/13		Create and proof test decks				
By 8/20		Dry run test deck				
By 8/30		System Demos for candidates w/ appropriate candidate				
		notice				
		<b>Pre-Primary Day Deployment and Post Primary activity</b>				
By 9/7		Seal systems for use in election and log appropriately				
9/7-9/14		Deploy voting systems to poll sites for use in the Primary				
9/14-9/14		Conduct Primary Election using new HAVA compliant voting				
		systems				
9/15-9/16		Transport machines back to warehouse				
		Conduct recanvass and statutorily required 3 % audit of				
		voting systems w/appropriate candidate notices				
<b>GENERAL ELECTION</b>		<b>Ballot Creation</b>				
9/15-9/27		Build ballots				
9/27-9/27		SBOE certifies the State ballot				
9/28-9/28		NCBOE creates and proofs ballot pdfs and delivers to printer				
9/11-9/29		Absentee ballots first mailed				
10/19-10/19		Election Day ballots delivered to NCBOE				
		<b>Pre-Qualification Testing</b>				
9/17-9/30		Hash check machines to verify firmware (if necessary).				
by 10/1		Have test deck ballots printed				
By 10/08		Create and proof test decks				
By 10/15		Dry run test deck				
By 10/26		System Demos for candidates w/ appropriate candidate				
		notice				
		<b>Election Day Deployment and Post Election activity</b>				
By 10/28		Seal systems for use in election and log appropriately				
10/28-11/2		Deploy voting systems to poll sites for use in the election				
11/2-11/2		Conduct General Election using new HAVA compliant voting				
		systems				
11/3-11/4		Transport machines back to warehouse				
		Conduct recanvass and statutorily required 3 % audit of				
		voting systems w/appropriate candidate notices				