U.S. Department of Justice

Civil Rights Division

Assistant Attorney General

950 Pennsylvania Avenue, N.W. - MJB
Washington, DC 20530

March 17, 2003

The Honorable Cathy Cox
Secretary of State
State Capitol, Room 214
Atlanta, Georgia 30334

Dear Secretary Cox:

The Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15301-15545 ("HAVA"), was signed into law by the President on October 29, 2002. This landmark legislation, a copy of which is enclosed, seeks to improve the administration of elections throughout the United States.

Under §401 of Title IV, the Attorney General has enforcement authority for the uniform and nondiscriminatory election technology and administration requirements that apply to the States under Sections 301, 302, and 303 of Title III. Responsibility for this task has been delegated to the Civil Rights Division of the Department of Justice, and I have assigned primary responsibility within the Division to the Voting Section, which will coordinate with the Disability Rights Section on HAVA's disability provisions. The Division stands ready to assist you in your efforts to implement HAVA.

Title III of HAVA applies to all 50 States, the District of Columbia, Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands. We are aware that States have been concerned whether federal funding would be available under Titles I and II to assist in complying with Title III. As you are probably aware, Congress passed an omnibus budget bill for fiscal year 2003 on February 13th that included $1.5 billion for election reform. In any event, regardless of whether States choose to accept federal funding when it becomes available, each State must comply with Title III in its entirety, absent a state-specific exemption in the law.

We encourage States to begin their preparations now because several provisions must be implemented by January 1, 2004, when States will begin holding primary elections for federal office. What follows is a brief summary of Title III's provisions, their implementation time line, and their exemptions, as well as several other significant provisions.

Section 301, which applies to all States, establishes standards for voting systems to be used in federal elections, including alternative language accessibility. It is effective on January 1, 2006. Under the Section 301 standards, each voting system must be accessible for persons with disabilities, including persons who are blind or have low vision. Specifically, each polling place must have at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities so that the individuals can vote independently and privately. The Election Assistance Commission ("EAC") set up under HAVA will eventually issue voluntary voting guidelines and guidance as to what constitutes an accessible voting system. Until that guidance is adopted, the voluntary guidance of the Federal Election Commission on Voting System Standards can be used to determine the accessibility of voting machines. (These can be found at www.fec.gov/pages/vss/vss.html at section 2.2.7 of the Voluntary System Standards).

Section 302(a) sets forth standards for provisional voting in federal elections for voters who assert they are registered and eligible voters in the applicable jurisdiction where they are attempting to vote. This requirement applies to all States, but States exempt from the National Voter Registration Act ("NVRA") may comply by using voter registration procedures established under state law. Section 302(b) sets forth standards for voter information to be posted at each polling place for each federal election and also applies to all States. Section 302(c) sets out new rules for all States for voters who cast votes after polls close as a result of Federal or state court or other orders. The effective date of all of these requirements is January 1, 2004.

Section 303(a)(1) requires States to create, for use in federal elections, a single, uniform, centralized, and interactive computerized statewide voter registration list, containing registration information and a unique identifier for every registered voter. This applies to all States, except those that do not presently require voter registration for federal elections. Section 303(a)(2) requires States to maintain the list according to specific standards. For example, names must be removed from the list in accordance with the NVRA (as amended by §903 of HAVA), and the list must be coordinated with State agency records on felony status and death. These requirements apply to all States, except those exempt from the NVRA, which "shall remove the names of ineligible voters from the computerized list in accordance with State law."

Section 303(a)(5) provides that States may not accept or process any type of voter registration application for federal elections unless it includes the applicant's driver license number or, if the applicant has no driver license number, the last four digits of the applicant's social security number. If the applicant has neither, then the State must assign an identifying number. The State must also verify the statewide voter registration database information against state driver license databases and federal social security number databases. These requirements apply to all States, but are optional for States permitted under Section 7 of the Privacy Act (5 U.S.C. 552a note) to ask, and which actually do ask, registrants for a complete social security number on registration applications.

The effective date of all the registration list requirements of Section 303(a) is January 1, 2004, but can be extended until January 1, 2006 if a State certifies to the EAC, when it is constituted, that, for good cause, it cannot meet the original deadline.

Under Section 303(b), certain categories of individuals who register to vote by mail for the first time must provide specific identification documents or verifying information, either at the time of registration or the first time they vote. It also requires changes in the content of the national NVRA mail-in registration form, including a citizenship question. Individuals who register to vote by mail for federal elections after January 1, 2003 must submit identification materials that meet the new requirements in the first federal primary or general election in which they vote after January 1, 2004. There is information about the effective date of this provision on the Voting Section's website (www.usdoj.gov/crt/voting). I encourage States to take steps now to conform their mail-in forms to Section 303(b) standards, to advise registrants of the new identification requirements, and to verify information for new mail-in registrants, even though these steps are not required until 2004. These efforts will reduce the need for voters to present identification during the 2004 elections.

Section 304 notes that Title III sets "minimum requirements," and that nothing prevents a State from establishing standards that are "more strict" so long as such requirements are not inconsistent with federal law.

Section 305 provides that the specific choices on the methods of complying with Title III shall be left to the discretion of the State.

Section 402(b) requires "nonparticipating" States (i.e., States that do not give notice during 2003 that they intend to seek Title I or II funding) either to certify by January 1, 2004, to the EAC that they have established an administrative grievance procedure under Section 402(a) to hear complaints from private individuals about possible violations of Title III, or to submit a compliance plan to the Department of Justice describing how they intend to comply with Title III. Nonparticipating States that do not do one of the above will be deemed out of compliance with Title III. Because there is little reason, however, for States not to seek funding under HAVA, we do not expect to receive many compliance plans for review.

Section 261 establishes a grant program authorizing the Secretary of Health and Human Services to provide funds for improving physical access to polling places for voters with disabilities, including persons who are blind or have low vision. Funds accepted under Section 261 must be used to make polling places, including the path of travel, entrances, exits, and voting areas of each polling facility, accessible to individuals with disabilities, and to provide individuals with disabilities with information about the accessibility of polling places. In addition, a State may use funds obtained under Section 101(a) of HAVA to improve the accessibility and quantity of polling places, including providing physical access for individuals with disabilities.

Section 906 provides (with one specific exception) that nothing in HAVA may be construed "to authorize or require conduct prohibited under" or "supersede, restrict, or limit the application of" six other laws enforced by the Civil Rights Division.

You should also be aware of the relationship between HAVA and two provisions of the federal Voting Rights Act (VRA). The obligation of state officials to comply with Section 5 of the VRA when implementing HAVA is similar to that of States under the NVRA when it was passed by Congress in the early 1990s. See *Young v. Fordice*, 520 U.S. 273 (1997) (when discretion is granted to state officials in the manner in which they implement federal legislation, covered jurisdictions must comply with preclearance provisions of Section 5). There are 16 states covered at least in part by the preclearance requirement in Section 5. For voting changes occasioned by implementation of HAVA and requiring preclearance, covered jurisdictions should seek Section 5 review as soon as possible from the Attorney General or the U.S. District Court for the District of Columbia, i.e., after the changes are final, but before they are implemented. If you choose to submit changes to the Attorney General rather than to the Court, please include for our reference, if possible, copies of your state plans under Title II, funding applications under Title I, and any information on actions taken on those applications. However, states need not seek preclearance of funding applications or state plans submitted to the GSA or the EAC. Any action taken by other federal agencies on state plans or state funding requests will not affect preclearance review.

There are 31 states covered in full or in part by the minority language assistance provisions in Sections 203 and 4(f)(4) of the VRA. Minority language issues will arise, for example, when designing new voting systems under Section 301, provisional ballots and voter information posters under Section 302, and voter registration and list maintenance materials under Section 303. Covered jurisdictions should bear in mind the continuing need to make these election materials accessible to covered language minorities as required by law.

Should you have any questions concerning HAVA, please contact Hans A. von Spakovsky (202-305-9750), Counsel to the Assistant Attorney General, or Chris Herren (202-514-1416) and Brian Heffernan (202-514-4755), who are attorneys in the Voting Section. If you have any questions about the disability provisions of HAVA, please contact Lucia Blacksher (202-514-1947), an attorney in the Disability Rights Section. In addition, the Voting Section will be posting on its website the names of other staff members who will be acting as points of contact for designated States.

We look forward to working with you as you take steps to implement HAVA.

Sincerely,

Ralph F. Boyd, Jr.
Assistant Attorney General

Enclosure

cc: Governor Sonny Perdue
Attorney General Thurbert E. Baker
Elections Division Director Linda Beazley