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Deletions are shown with the following attributes and color:
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The document was marked with 43 Deletions, 45 Insertions, 0 Moves.

~~IN THE~~ UNITED STATES DISTRICT COURT
~~FOR THE~~ NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,~~))~~

Plaintiff,~~)~~

SUPPLEMENTAL REMEDIAL ORDER

- against -

~~)~~
~~v.) Civil Action No. 06-CV-0263~~
~~) (GLS)~~
NEW YORK STATE BOARD OF ~~)~~
ELECTIONS; PETER S. KOSINSKI ~~)~~
and STANLEY L. ZALEN~~, Co-Executive)~~
~~Directors of the New York State Board of)~~
~~Elections~~, in their official capacities~~;~~, and~~,)~~
STATE OF NEW YORK~~,)~~,
~~)~~

06-CV-0263

(GLS)

Defendants.~~)~~
~~)~~

On November 5, 2007, plaintiff United States filed a Motion to Enforce this Court's June 2, 2006 Remedial Order, alleging defendants' continuing noncompliance with the Remedial Order and the Help America Vote Act, 42 U.S.C. 15301 et seq. ("HAVA") (Docket # 134). Following the defendants' filing of responses to the United States' Motion (Docket ## 151, 153-157), this Court held a hearing on December 20, 2007 (Docket ## 175, 176), at which arguments of the parties were heard. Pursuant to this Court's directive at that hearing, on January 4, 2008, the ~~defendants~~New York State Board of Elections ("the SBOE") filed with the Court a revised HAVA implementation plan (Docket # 179). On January 11, 2008, the ~~defendants~~SBOE supplemented this plan (Docket #180). On January 11, 2008, the United States responded to these submissions of the ~~defendants~~SBOE in a letter to the Court and submitted to the Court a proposed Order. The Court now enters this Supplemental Remedial Order, which, in conjunction with this Court's previous June 2, 2006 Remedial Order, is intended to direct the remedial course

of this litigation in the future.

This Court, having carefully considered the filings of the parties in this matter, and the extensive arguments heard at the December 20, 2007 hearing, finds as follows:

1) This Court agrees ~~fully~~ with the United States and finds that the defendants ~~have failed substantially to comply~~are not in compliance with the voting systems requirements of this Court's Remedial Order and that ~~New York~~the SBOE remains in noncompliance with the voting systems requirements of Section 301 of HAVA, 42 U.S.C. 15481;

~~2) As this Court made clear at the December 20, 2007 hearing, noncompliance with HAVA is not an option for defendants and, to the extent that State law and procedure stands in conflict with full compliance with HAVA's federal law mandates, such State law and procedure must give way to federal law requirements;~~

~~3) This Court finds that the defendants' unacceptable and continual delays in meeting~~ 2) This Court recognizes that the State of New York will be unable to fully meet the voting systems requirements of HAVA that became effective January 1, 2006~~, has made full compliance with these HAVA requirements~~ in time for New York's February 2008 presidential preference primary, and for the September 2008 federal primary election and November 2008 federal general election~~, not currently possible~~;

~~4~~ 3) This Court finds, based on the filings and arguments of the parties and consistent with

the January 4, 2008 submission of ~~defendants~~the SBOE (Docket #179), and having considered relevant submissions of amicus curiae, that partial compliance with HAVA's voting systems requirements, in the form of ballot marking devices and/or voting systems accessible to persons with disabilities available for use in every polling place in the State of New York during the fall 2008 federal primary and general elections, is possible and must be accomplished;

~~5~~ 4) This Court finds, based on the filings and arguments of the parties and consistent with the January 4, 2008 and January 11, 2008 submissions of ~~defendants~~the SBOE (Docket ##179, 180), and having considered relevant submissions of amicus curiae, that full compliance with HAVA's voting systems requirements, and the replacement of all lever voting machines in the State of New York, must be accomplished as soon as possible but in no event later than in time for use of fully HAVA-compliant voting systems during the fall 2009 State primary and general elections.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that:

1. The United States Motion to Enforce is hereby GRANTED, as set forth below;

2. The ~~defendants'~~SBOE's Plan B for the deployment of ballot marking devices accessible to persons with disabilities in every polling place in the State for use in the fall 2008 federal primary and general elections, as set forth in the ~~defendants'~~SBOE's January 4, 2008 filing with the Court and according to the specific timetable set forth in Exhibit C to that filing (Docket # 179), shall be implemented in full by the ~~Defendants~~SBOE;

3. The ~~defendants'~~SBOE's Plan A for the deployment of fully HAVA-compliant voting systems throughout the State of New York, specifically including the replacement of all lever voting machines in the State, by the fall 2009 State primary and general elections, as set forth in the ~~defendants'~~SBOE's January 4 filing, as revised by the ~~defendants'~~SBOE's January 11, 2008 filing and according to the specific timetable set forth in the January 11, 2008 filing (Docket #180), shall be implemented in full by the ~~Defendants~~SBOE, subject to the following:

a) Consistent with the January 11, 2008 submission of ~~defendants~~the SBOE (Docket #180), the ~~defendants~~SBOE shall carry out certification of Plan A voting systems concurrently with certification of Plan B ballot marking devices;

b) It is the clear intent and Order of this Court that, where possible, New York counties be able to utilize, for the fall 2008 federal elections, voting systems that are fully compliant with HAVA. Accordingly, consistent with ~~defendants'~~the SBOE's January 11, 2008 submission (Docket #180), the ~~defendants~~SBOE shall make all possible efforts to provide for certification of a Plan A voting system(s) in time for use of such system(s) in the fall 2008 federal primary and general elections by such counties as wish to utilize fully HAVA-compliant voting systems in such elections;

4. Beginning on the first Friday following the entry of this Supplemental Order, and continuing thereafter on each subsequent Friday until further order of this Court or by agreement of the United States and the SBOE, the ~~defendants~~SBOE shall file with this Court, and shall submit by electronic mail to counsel for the United States, a detailed report concerning the

previous week's progress in implementing the terms of this Court's Orders;

5. The defendants shall provide immediate notice, by filing with this Court, and by electronic mail to counsel for the United States, concerning any deviation, no matter how minimal, from Plan A and/or Plan B as ordered implemented by this Court, including any deviation from the specific timelines set forth by ~~defendants~~the SBOE for those plans, such notice to include the nature and causes of such deviation, and the immediate steps the defendants propose to take to resolve the possible delay caused by such deviation and ensure that such delay does not recur in any part of the State of New York;

6. Time is of the essence in carrying out this remedial process. Accordingly, 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;

~~7~~ 7. The provisions of this Supplemental remedial Order and of the June 2, 2006 Remedial Order shall expire on January 1, 2010, absent further extension for good cause shown.

8. Unless superseded by more specific terms in this Order, all provisions of this Court's June 2, 2006 Remedial Order are incorporated herein and shall be in effect until further order of this Court. Moreover, this Court retains jurisdiction to take any and all other actions~~, including specifically the appointment of a special master or other entity~~ as necessary to ensure that the obligations imposed upon the defendants by HAVA and by this Court's Orders are carried out forthwith.

ENTERED this _____ day of January, 2008, at Albany, New York.

_____
GARY L. SHARPE
UNITED STATES DISTRICT JUDGE