

JENNER & BLOCK

December 5, 2011

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VIA ECF

Hon. Robert M. Levy
Magistrate Judge
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

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Re: ***NAACP New York State Conference v. N.Y.S. Board of Elections,***
No. 10-cv-2950(FB)(RML) (E.D.N.Y.)

Dear Judge Levy,

I write on behalf of Plaintiffs to inform the Court that the Plaintiffs and the State Defendants¹ have reached an “agreement-in-principle” to resolve this lawsuit. As set forth in the Amended Complaint, Plaintiffs brought this action to challenge Defendants’ decision to program New York State’s optical-scan voting machines in a manner that increases the risk that voters will inadvertently cast “overvotes.” An overvote occurs when a voter’s ballot includes more than the permitted number of votes for a particular contest. The result of an overvote is that the voter’s vote is not counted for that contest.

Since the status conference before the Court on November 3, 2010, the parties have worked cooperatively to resolve the case without the need for judicial intervention. Although the parties are still working toward a final agreement, under the agreement-in-principle, Defendant New York State Board of Elections is taking measures to implement a revised, agreed-upon “overvote message” in time for use in the 2012 General Election. This overvote message should significantly reduce the risk that voters mistakenly cast more than the permitted number of votes for a given contest. To give the parties the opportunity to finalize the agreement, Plaintiffs and State Defendants have agreed to take no further action in this litigation until January 25, 2012. The parties expect that, before the expiration of their standstill agreement, they will have reached a final settlement that fully resolves this dispute.

In addition, we would like to notify you that co-counsel for Plaintiffs, the Brennan Center for Justice, plans to publish a report analyzing the overvote data obtained from country boards of

¹ The State Defendants refer to the New York State Board of Elections, as well as its Commissioners, James A. Walsh, Douglas A. Kellner, Evelyn J. Aquila, Gregory P. Peterson, Todd D. Valentine, and Robert A. Brehm.

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elections throughout New York State in connection with this litigation. Defendants have been notified of this report, a draft of which the Brennan Center has shared with them.

We are grateful for the Court's patience as the parties have worked to resolve this case amicably. We are happy to provide any further information the Court requests.

Sincerely,

Michael W. Ross/RTA

Michael W. Ross

cc: counsel of record (via ECF)