UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

**BAY COUNTY DEMOCRATIC PARTY and MICHIGAN DEMOCRATIC PARTY,**

**Plaintiffs - Appellees,**

**v.**

**TERRI LYNN LAND, Michigan Secretary of State, and CHRISTOPHER M. THOMAS, Michigan Director of Elections, in their official capacities,**

**Defendants - Appellants (04-2307),**

**and**

**MICHIGAN STATE CONFERENCE OF NAACP BRANCHES; ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW; and PROJECT VOTE,**

**Plaintiffs - Appellees,**

**v.**

**TERRY LYNN LAND, Michigan Secretary of State, and CHRISTOPHER M. THOMAS, Michigan Director of Elections, in their official capacities,**

**Defendants - Appellants (04-2307)**

**MICHAEL F. WALSH, in his individual capacity; DANIEL C. KRUEGER, in his individual capacity and as Clerk of the County of Ottawa; LINDA S. COBURN, in her individual capacity and as Clerk of the County of Grand Traverse; JANICE A. VEDDER, in her individual capacity and as Clerk of the Charter Township of Delta; and DIANE K. MOSIER, in her individual capacity and as Clerk of the Charter Township of DeWitt,**

**Proposed Intervening Defendants - Appellants (04-2318)**

**BRIEF OF THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS - APPELLANTS**

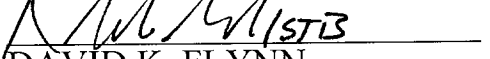
On October 23, 2004, a panel of this Court granted the motion of defendants - appellants to consolidate this case with *Sandusky County Democratic Party* v. *Blackwell*, No. 04-4265/4266 (6th Cir. Oct. 22, 2004), because the issues in the above-captioned suit and *Sandusky County Democratic Party* were identical; namely, whether the Help America Vote Act (HAVA), 42 U.S.C. 15301 *et seq.* provides for a private right of action under 42 U.S.C. 1983 and whether HAVA precludes the States from choosing precinct-based voting systems. In this respect, the United States filed an *amicus* brief in *Sandusky County Democratic Party* asserting that HAVA provides no private right of action under 42 U.S.C. 1983, nor does HAVA bar the states from establishing precinct-based voting systems. In *Sandusky County Democratic Party*, the United States requested that this Court reverse the district court's contrary holdings and vacate the preliminary injunction regarding the HAVA claims.

Also on October 23, 2004, another panel of this Court reversed, in part, the judgment of the district court in *Sandusky County Democratic Party*, thereby ruling in part in favor of defendants - appellants. This second panel held that the district court erred in various rulings regarding HAVA. The brief that the United States filed in *Sandusky County Democratic Party* reflects the position of the United States in the above-captioned lawsuit, and the United States therefore requests that this Court accept the brief of the United States in *Sandusky County*

*Democratic Party* as applying here as well. Consequently, pursuant to this Court's ruling in *Sandusky County Democratic Party,* the United States respectfully requests that this Court reverse the judgment of the district court regarding the HAVA claims and vacate the preliminary injunction.

Respectfully submitted,

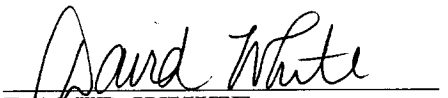
R. ALEXANDER ACOSTA
Assistant Attorney General



DAVID K. FLYNN
DAVID WHITE
Attorneys
U.S. Department of Justice
Civil Rights Division - Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-9405

## CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type volume limitation imposed by Federal Rule of Appellate Procedure 32(a)(7)(B). The brief was prepared using WordPerfect 9.0 and contains no more than 500 words of proportionally spaced text. The type is Times New Roman, 14-point font.



DAVID WHITE
Attorney

October 26, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2004, a copy of the foregoing Brief Of the United States as Amicus Curiae In Support of Defendants-Appellants (along with a copy of the amicus brief that the United States filed in *Sandusky County Democratic Party* v. *Blackwell*, No. 04-4265/4266) was served by electronic mail or facsimile transmission, in accordance with the Court's previous order, on the following counsel of record:

Michael L. Pitt
Pitt, Dowty, McGehee, Mirer & Palmer
117 W. Fourth Street
Suite 200
Royal Oak, MI 48067-3804

Samuel Bagenstos
1 Brookings Drive Suite 1120
St. Louis, MO 63130

Amos E. Williams
615 Griswold
Suite 1115
Detroit, MI 48226-3998

Wendy R. Weiser
Brennan Center for Justice at NYU School of Law
161 Avenue of the Americas
12th Floor
New York, NY 10013

Heather S. Meingast
Suite 1
Michigan Department of Attorney General
Public Employment and Elections Division
P.O. Box 30736
Lansing, MI 48909

Gary P. Gordon
Office of the Attorney General
Public Employment and Elections Division
525 West Ottawa, Suite 640
G. Mennen Williams Building
P.O. Box 30212
Lansing, MI 48909

Peter H. Ellesworth
Dickinson Wright
215 S. Washington Square
Suite 200
Lansing, MI 48933-1888

DAVID WHITE
Attorney