ORIGINAL

AO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

NORTHERN District of NEW YORK

UNITED STATES OF AMERICA

V.

NEW YORK STATE BOARD OF ELECTIONS;
PETER S. KOSINSKI and STANLEY L. ZALEN,
in their official capacities, and STATE OF NY

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 06 -CV- 0263

GLS / RFT

TO: (Name and address of Defendant)

New York State Board of Elections
40 Steuben Street
Albany, NY 12207

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Barbara D. Cottrell, Assistant U.S. Attorney
United States Attorney's Office
James T. Foley U.S. Courthouse
445 Broadway, Room 201
Albany, NY 12207-2924

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

LAWRENCE K. BAERMAN
CLERK

MAR 01 2006
DATE

(By) DEPUTY CLERK

RETURN OF SERVICE

Service of the Summons and complaint was made by me[1]	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served:

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left:

☐ Returned unexecuted:

☐ Other (specify):

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL $0.00

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ _____
Date *Signature of Server*

_____
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

COPY

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

U.S. DISTRICT COURT
N.D. OF N.Y.
ORIGINAL FILED
MAR 01 2006
LAWRENCE K. BAERMAN, CLERK
ALBANY

UNITED STATES OF AMERICA, Plaintiff, v. 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; Defendants.	)	Civil Action No.

06 -CV- 0263
GLS / RFT

COMPLAINT

Plaintiff, the United States of America, alleges:

1. The Attorney General of the United States hereby files this action on behalf of the United States of America to enforce the requirements of Sections 301 and 303(a) of the Help America Vote Act of 2002 ("HAVA"), with respect to the conduct of elections for Federal office in the State of New York. 42 U.S.C. §§ 15481 and 15483(a).

JURISDICTION AND VENUE

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 15511.

3. Venue for this action is proper in the United States District Court for the Northern District of New York, pursuant to 28 U.S.C. §§ 112 and 1391(b).

PARTIES

4. Plaintiff United States of America seeks declaratory and injunctive relief pursuant

to Section 401 of HAVA, 42 U.S.C. § 15511, which authorizes the Attorney General to bring this suit to enforce HAVA.

5. Defendant State of New York is a State of the United States of America and is subject to the requirements of HAVA, including specifically those requirements with respect to voting system standards and a computerized statewide voter registration list in elections for Federal office. 42 U.S.C. §§ 15481, 15483(a), 15541.

6. Defendant New York State Board of Elections (the "SBOE") is a subdivision of the Executive Department of the State of New York and is responsible for, among other things, taking official action on behalf of the State to comply with the requirements of HAVA. N.Y. Election Law §§ 3-100, 102, 104, 107; 2005 N.Y. Laws, Chapters 24 and 181.

7. Defendants Peter S. Kosinski and Stanley L. Zalen are the Co-Executive Directors of the SBOE and each is sued in his official capacity. Defendants Kosinski and Zalen are responsible for coordination of State responsibilities under HAVA. N.Y. Election Law § 3-100.

8. The State of New York is scheduled to conduct two elections for Federal offices in 2006: a primary election for Federal offices in the State on September 12, 2006, and a general election for Federal offices in the State on November 7, 2006.

HAVA'S VOTING SYSTEM AND VOTER REGISTRATION LIST MANDATES

9. On October 29, 2002, HAVA was signed into law by the President. 42 U.S.C. §§ 15301-15545. Title III of HAVA (Sections 301 to 303) includes certain "uniform and nondiscriminatory election technology and administration requirements" which apply in elections for Federal office. 42 U.S.C. §§ 15481-15483.

10. Section 301 of HAVA, entitled "Voting Systems Standards," contains

requirements that "[e]ach voting system used in an election for Federal office" must meet no later than January 1, 2006. Section 301 applies to all States. 42 U.S.C. § 15481.

11. Among other things, Section 301 of HAVA requires that voting systems used in a election for Federal office must:

(a) provide a mechanism for a voter to verify and, where necessary, correct his or her ballot, including notification of, and the opportunity to correct, any overvote, 42 U.S.C. § 15481(a)(1);

(b) produce a permanent paper record with a manual audit capacity, 42 U.S.C. § 15481(a)(2);

(c) provide for accessibility for voters with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters, 42 U.S.C. § 15481(a)(3);

(d) provide for accessibility, consistent with the requirements of the Voting Rights Act of 1965, 42 U.S.C. § 1973 *et seq.*, for voters with alternative language needs, 42 U.S.C. § 15481(a)(4);

(e) meet a specific error rate standard in counting ballots established by the Federal Election Commission, 42 U.S.C. 15481(a)(5); and,

(f) have a uniform and nondiscriminatory definition of what constitutes a vote and will be counted as a vote for each type of voting system, 42 U.S.C. § 15481(a)(6).

12. Section 303(a) of HAVA, entitled "Computerized Statewide Voter Registration List Requirements," requires that "each State, acting through the chief State election official, shall implement in a uniform and nondiscriminatory manner, a single, uniform, official,

centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level." Section 303(a) applies to all States that require voter registration for elections for Federal office. 42 U.S.C. § 15483(a).

13. Among the requirements of Section 303(a) of HAVA for the statewide voter registration list are the following:

(a) The list shall serve as the single system for storing and managing the official list of registered voters throughout the State, 42 U.S.C. § 15483(a)(1)(A)(i);

(b) The list must contain the name and registration information of, and must assign a unique identifier to, each legally registered voter in the State, 42 U.S.C. § 15483(a)(1)(A)(ii)-(iii);

(c) The list must be coordinated with other agency databases within the State, 42 U.S.C. § 15483(a)(1)(A)(iv);

(d) Any election official in the State, including any local election official, must be able to obtain immediate electronic access to the information contained in the list, and all voter registration information obtained by any local election official must be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official 42 U.S.C. §§ 15483(a)(1)(A)(v)-(vi);

(e) The State must provide the necessary support so that local election officials are able to enter voter registration information on an expedited basis, 42 U.S.C. § 15483(a)(1)(A)(vii);

(f) The list must serve as the official voter registration list for the conduct of all elections for Federal office in the State, 42 U.S.C. § 15483(a)(1)(A)(viii);

(g) Election officials shall perform list maintenance with respect to the computerized list on a regular basis, 42 U.S.C. §§ 15483(a)(2) and 15483(a)(4);

(h) The State must coordinate the list with State agency records on felony status (where required by State law) and death, 42 U.S.C. § 15483(a)(2)(A)(ii);

(i) The State must ensure that the name of each registered voter appears on the list, only voters who are not registered or not eligible are removed from the list, duplicate names are eliminated from the list, and eligible voters are not removed from the list in error, 42 U.S.C. §§ 15483(a)(2)(B) and 15483(a)(4);

(j) The list must provide that no application for voter registration shall be accepted or processed unless it includes a driver's license number, for persons who have a driver's license number, or the last four digits of the social security number, for persons who do not have a driver's license number. For persons who do not have these numbers, the State must assign a unique identifier, 42 U.S.C. § 15483(a)(5)(A);

(k) The State must enter into agreements to match information from the list against the State motor vehicle authority database, and the federal social security number database, 42 U.S.C. § 15483(a)(5)(B).

14. New York is covered by and was required to comply with the requirements of Sections 301 and 303(a) of HAVA with respect to elections for Federal office on and after January 1, 2006. 42 U.S.C. §§ 15481(d), 15483(d)(1)(B), 15541.

15. The State of New York has recognized that it has not taken the actions necessary to achieve timely compliance with the requirements of Sections 301 and 303(a) of HAVA, for example, in reports issued by the State chief law enforcement officer. See Voting Matters II, No

Time to Waste, A Report from the New York State Attorney General's Office, available at http://www.oag.state.ny.us/press/2005/feb/feb07a_05.html.

FEDERAL FUNDING PROVISIONS OF HAVA

16. Pursuant to HAVA, the federal government for the first time in our Nation's history provided federal funding to State governments for the conduct of elections for Federal office.

17. The State of New York has received roughly 221 million dollars in federal funds under HAVA. This funding includes the following:

(a) $16,494,325 pursuant to Section 101 of HAVA, 42 U.S.C. § 15301, for activities to improve the administration of elections;

(b) $49,603,917 pursuant to Section 102 of HAVA, 42 U.S.C. § 15302, for the replacement of punchcard or lever voting machines;

(c) $153,414,430 pursuant to Section 251 of HAVA, 42 U.S.C. § 15401, for meeting the requirements of Title III of HAVA;

(d) $1,354,703 pursuant to Section 261 of HAVA, 42 U.S.C. § 15421, for assuring access to the voting process for individuals with disabilities; and,

(e) $161,597 pursuant to Section 291 of HAVA, 42 U.S.C. § 15461, for assuring access to the voting process for individuals with disabilities;

18. Pursuant to Section 102(d) of HAVA, if the State of New York fails to replace some or all of the punchcard or lever voting machines in the State in time for the primary election for Federal office in September 2006, HAVA contemplates that the State must return some or all of the $49,603,917 in federal funding received pursuant to Section 102, to the extent

of the non-compliance with that provision. 42 U.S.C. § 15302(d).

FIRST CAUSE OF ACTION - SECTION 301 OF HAVA

19. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 18 of this Complaint.

20. The State of New York presently does not have voting systems in place for the conduct of elections for Federal office which comply with all of the voting system standards set forth in Section 301(a)(1)-(a)(6) of HAVA, 42 U.S.C. § 15481, including a uniform and non-discriminatory definition of what constitutes a vote for each category of voting system used in the State.

21. The State of New York's existing voting systems for use in elections for Federal office do not comply with Section 301 of HAVA in several respects, including but not limited to, the requirement that voting systems provide accessibility for persons with disabilities, and the requirement that voting systems produce a permanent paper record with a manual audit capacity.

22. Pursuant to New York State law, the SBOE has a number of specific responsibilities regarding voting systems used in the State. This includes, but is not limited to, responsibilities for: examination and approval of voting systems, promulgation of regulations regarding voting systems, contracting for acquisition of voting systems, review of the choice of voting systems by local jurisdictions, calculation of the distribution of federal funds under HAVA for purchase of voting systems, and notification to the state comptroller to release funds for payment of purchase contracts for voting systems. 2005 N.Y. Laws, Chapter 181.

23. Defendants have failed to take the actions necessary for the State to meet the requirements of Section 301 of HAVA in a timely manner. These failures include, but are not

limited to, the following:

(a) The SBOE has not approved for use in the State, as required by State law, any voting system which complies with the requirements of Section 301 of HAVA;

(b) The SBOE has not promulgated, as required by State law, any final rules and regulations which govern voting systems in the State; and,

(c) The SBOE has not contracted or allowed, as required by State law, for procurement of any voting systems in the State which comply with the requirements of Section 301 of HAVA.

24. As a result of the failure of the Defendants to take the actions necessary for approval and acquisition of voting systems, as set forth in Paragraphs 22-23 above, no voting system is available for purchase or lease and use in each polling place in each local jurisdiction in the State of New York which conducts elections for Federal office that meets the requirements of Section 301 of HAVA.

25. The failure of defendants to take the actions necessary for approval and acquisition of voting systems, as set forth above, constitutes a violation of Section 301 of the HAVA, 42 U.S.C. §15481.

26. Unless and until ordered to do so by this Court, Defendants will not take timely actions necessary to ensure that voting systems meeting the standards set forth in Section 301 of HAVA will be available and used in all jurisdictions in the State of New York by the time of the first election for Federal office in the State in 2006.

SECOND CAUSE OF ACTION - SECTION 303(a) OF HAVA

27. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 18

of this Complaint.

28. Pursuant to New York State law, the SBOE is responsible for the development and implementation of the statewide voter registration list as mandated by Section 303(a) of HAVA, 42 U.S.C. § 15483(a).

29. Defendants have failed to take the actions necessary for the State to meet the requirements of Section 303(a) of HAVA in a timely manner. These failures include, but are not limited to, the following:

(a) Defendants have not published rules and regulations, required by State law, governing the implementation and operation of the statewide voter registration list;

(b) Defendants have not issued the Request for Proposals (RFP) or other document necessary under State law for contracting with an entity or entities to develop and implement a statewide voter registration list;

(c) Defendants have not established the technical requirements, or built the technical infrastructure, necessary for implementation of the statewide voter registration list; and,

(d) Defendants have not entered into an agreement with the federal Social Security Administration and established the necessary infrastructure to match information from the statewide voter registration list against the federal social security number database.

30. As a result of the failure of the Defendants to take actions as set forth in Paragraph 29 above, there is no statewide voter registration list in the State of New York which complies with the requirements of Section 303(a) of HAVA.

31. The failure of the Defendants to take the actions necessary for the development and implementation of a statewide voter registration list in the State of New York, as set forth

above, constitutes a violation of Section 303(a) of HAVA.

32. Unless and until ordered to do so by this Court, the Defendants will not take timely actions necessary to ensure that a statewide voter registration list meeting the requirements of Section 303(a) of HAVA is operational throughout the State of New York.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

A. Declare that the Defendants are not in compliance with Sections 301 and 303(a) of HAVA, 42 U.S.C. §§ 15481 and 15483(a), with respect to implementation of HAVA's voting system standards and computerized statewide voter registration requirements in elections for Federal office;

B. Enjoin the Defendants, their agents and successors in office, and all persons acting in concert with any of them from failing or refusing promptly to comply with the requirements of Sections 301 and 303(a) of HAVA;

C. Order the Defendants, their agents and successors in office and all persons acting in concert with any of them promptly to develop a plan, within 30 days of this Court's order, to remedy the demonstrated violations of Sections 301 and 303(a) of HAVA, fully and completely in time for the first election for Federal office in 2006.

Plaintiff further prays that this Court order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

Dated: ~~February~~ MARCH 1, 2006

ALBERTO GONZALES
Attorney General

By:

WAN J. KIM
Assistant Attorney General
Civil Rights Division

GLENN T. SUDDABY
United States Attorney

By:

BARBARA D. COTTRELL
Assistant United States Attorney
James T. Foley U.S. Courthouse
445 Broadway, Room 218
Albany, NY 12207-2924
(518) 431-0247 (telephone)
(518) 431-0429 (facsimile)
Bar Roll No. 101411

JOHN K. TANNER
Chief, Voting Section

T. CHRISTIAN HERREN JR
chris.herren@usdoj.gov
BRIAN F. HEFFERNAN
brian.f.heffernan@usdoj.gov
Room 7254--NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 514-4755 (telephone)
(202) 307-3961 (facsimile)