



U.S. Department of Justice

Civil Rights Division

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*Voting Section - NWB.  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530*

JDR:RJW:SBP:baw  
DJ 166-36-0

February 11, 2004

The Honorable William F. Galvin  
Secretary of the Commonwealth  
of Massachusetts  
State House  
Boston, Massachusetts 01233

Dear Secretary Galvin:

Your letter of February 2, 2004, to Hans von Spakovsky, has been forwarded to the Voting Section for response. In that correspondence, you raised concerns regarding the implementation in Massachusetts of the voter identification requirements of Section 303(b) of the Help America Vote Act of 2002, 42 U.S.C. § 15483(b) ("HAVA"). You also seek clarification of certain comments by the Department of Justice's Voting Section as to the propriety of possible identification procedures in the City of Lawrence.

Section 303(b) applies to persons registering for the first time to vote in federal elections, who apply to register by mail after January 1, 2003 and who do not come within a Section 303(b)(3) exemption. If such persons do not include with their registration applications a copy of one of several forms of identification set forth in the statute, they must either show the requisite identification at the polls when voting in person, or include a copy of such identification with their ballot if voting by mail.

Under Section 303(b)(1), these requirements must be administered to all voters in a uniform and nondiscriminatory manner, and do not vary with the demographic makeup of a State or its sub-jurisdictions. Section 304 also specifies that these are "minimum requirements" and thus nothing prevents a State from establishing stricter requirements. The Justice Department has

worked with States to implement all of HAVA's requirements for federal elections, including those of Section 303(b), and has the authority under Section 401 of HAVA to bring federal civil actions for declaratory and injunctive relief against jurisdictions that fail to carry out the requirements of the statute.

With specific regard to the City of Lawrence, your letter mentions a private, pre-HAVA lawsuit filed in November 2001 (on the eve of municipal elections) that sought to enjoin the city's plans to require all in-person voters to show personal identification at the polls. See Morris v. City of Lawrence, No. 01-11889 (D. Mass.). The city had adopted this new identification requirement just before the election, and the court enjoined its implementation. Critically, however, the Justice Department did not participate in any way in that litigation, nor was it consulted by the court. Although the Justice Department had negotiated a consent decree with the city in a separate pre-HAVA lawsuit involving claims of insufficient assistance offered by the city to Spanish-speaking voters, see United States v. City of Lawrence, No. 98-12256 (D. Mass.), at no time did the Department ever suggest that the city's voter identification procedure would violate any provision of the Voting Rights Act.

You also reference in your correspondence an October 24, 2001, letter sent to the city by a Voting Section attorney in which he expresses his concerns regarding the possible impact of the city's then-new identification procedures on the city's compliance with the consent decree in United States v. City of Lawrence. But the Department did not object to the city's voter identification procedures per se, and its letter should not be read in any way to have done so. The problem, as outlined in our letter, was the inadequate time the city had to implement these new requirements and train pollworkers in the new procedures.

As noted above, the Department of Justice has been given the responsibility by Congress to enforce HAVA, including the voter identification procedures. The Department has made it clear that these requirements do not violate the Voting Rights Act of 1965 on several occasions:

1) in a February 26, 2002, letter to U.S. Senator Christopher S. Bond, [www.usdoj.gov/crt/voting/hava/bond\\_ltr.pdf](http://www.usdoj.gov/crt/voting/hava/bond_ltr.pdf);

2) in a question and answer posted on the Voting Section's website, [www.usdoj.gov/crt/voting/misc/faq.htm#faq27](http://www.usdoj.gov/crt/voting/misc/faq.htm#faq27); and

3) by preclearing under Section 5 of the Voting Rights Act voter identification laws submitted by various states, including the State of Alabama, which implemented the HAVA identification requirements and expanded them to apply to all voters, not just first-time registrants.

We understand that the implementation of HAVA is a complex undertaking for the States. Since its passage, we have been working with state election officials as closely as possible to deal with these issues and to help States address whatever practical concerns arise. We look forward to working with you and your office to make HAVA implementation a success for all of Massachusetts' voters.

Thank you again for writing.

Sincerely,

Joseph D. Rich  
Chief  
Voting Section