



U.S. Department of Justice

Civil Rights Division

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

January 13, 2003

Ms. Donna Kelly
Senior Deputy Attorney General
Office of the Attorney General
P.O. Box 080
Trenton, New Jersey 08625-0080

Re: Help America Vote Act of 2002, H.R. 3295

Dear Ms. Kelly:

On November 19, 2002 you contacted the Voting Section of the Civil Rights Division of the Department of Justice with an inquiry regarding the effective date of the provisions of §303(b) of the new Help America Vote Act of 2002 ("HAVA"). Your specific question was whether States such as New Jersey are required to request identification at polling sites as of January 1, 2003. We apologize for the delay in this response.

The Department of Justice has been given enforcement authority for certain specified provisions of HAVA under §401. As you are aware, §303(d)(2) provides the effective dates for the identification requirements for mail-in registration outlined in §303(b): §303(d)(2)(A) specifies that each State and jurisdiction shall "comply with the requirements of subsection (b) [Requirements For Voters Who Register By Mail] on or after January 1, 2004, and shall be prepared to receive registration materials submitted by individuals described in subparagraph (B) on and after the date described in such subparagraph." Subparagraph (B) specifies that "the provisions of subsection (b) shall apply to any individual who registers to vote on or after January 1, 2003."

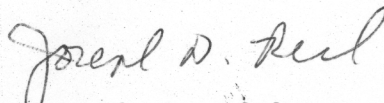
Page 76 of the House of Representatives Conference Report on HAVA (Report 107-730, October 8, 2002) provides that States and localities must "comply with provisions on mail registration beginning January 1, 2004, except that they must be prepared to receive stipulated mail-in registration materials beginning January 1, 2003."

It is the Department's view that §303(d)(2) does not require New Jersey to request identification at polling sites as of January 1, 2003. New Jersey will have to comply with the requirements of §303(b) as of January 1, 2004, in all federal elections held after that date, including requesting identification at polls when required under §303(b). As of January 1, 2003, New Jersey must be prepared to receive any mail-in voter registration materials that comply with the requirements of §303(b) for any voter who is registering to vote in any upcoming federal elections. Therefore, under the combined effective dates of subparagraphs (A) and (B) of §303(d)(2), the identification requirements for mail-in registrants will have to be applied by New Jersey beginning in 2004 to any individuals who registered to vote on or after January 1, 2003, and who will be voting in any federal election held after January 1, 2004.

Obviously, if during 2003 States are able to verify the identities of mail-in registrants by matching their driver's license numbers or the last four digits of their social security numbers under the procedures outlined in §303(b)(3), that will clearly reduce the need to request identification materials at the polls during the 2004 elections. However, HAVA does not require States to do such matching until 2004. We certainly urge all States to begin implementing these matching procedures as soon as possible even though they will not be legally required to do so until 2004.

I trust this response answers your inquiry. If you have any further questions regarding this matter, please contact us again.

Sincerely,

A handwritten signature in cursive script, appearing to read "Joseph D. Rich".

Joseph D. Rich
Chief
Voting Section