



U.S. Department of Justice

Civil Rights Division

*Voting Section - Room 7254 NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

May 20, 2003

VIA FACSIMILE

Ms. Ann McGeehan
Director of Elections
Office of the Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060

Dear Ms. McGeehan:

This letter responds to your letter of April 2 to the Voting Section, requesting a formal opinion from the Department of Justice ("the Department") on certain issues concerning the Help America Vote Act of 2002, 42 U.S.C. §§ 15301-15545 ("HAVA"). I apologize for the delay in this response.

The Attorney General has assigned to the Civil Rights Division the Department's enforcement responsibilities under Section 401 of HAVA. Although the Department states its formal positions with respect to statutes it enforces only through case-by-case litigation, the Department does on occasion offer its general views on the manner in which it intends to enforce a particular statute or set of laws. Therefore, while we cannot issue a formal advisory opinion, we will attempt to answer the questions posed in your letter to the extent we can based on our responsibilities to enforce Title III of HAVA, which imposes uniform and nondiscriminatory election technology and administration requirements on the 55 States and Territories.

Your letter reiterates a question posed in a telephone inquiry which your office made to the Voting Section on March 19-20, concerning the effect of Section 301(a)(3)(B) of HAVA in political subdivisions which use hand-counted paper ballots. At that time, we returned the telephone call and responded to the question.

At the outset, we note that the requirements of Section 301 of HAVA apply only to an "election for Federal office," and as such, they apply only to political subdivisions, such as counties, which actually conduct federal elections. Section 301, by its terms, does not apply to jurisdictions, such as school districts, cities or special districts which do not conduct federal elections. Section 301 requires "[e]ach voting system used in an election for Federal office" to meet certain specified uniform and non-discriminatory standards as of January 1, 2006. We understand Section 301 is intended to embrace every voting system currently in use in the United

States for conducting federal elections, including hand-counted paper ballots. There are three specific references to “paper ballots” in Section 301, most significantly in the definition of “voting system” in Section 301(b)(2)(E). This definition of “voting system” includes “the practices and associated documentation used...to make available any materials to the voter (such as notices, instructions, forms, *or paper ballots*)” (emphasis added).

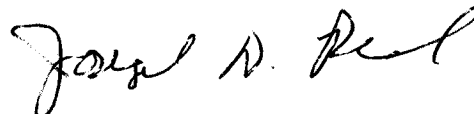
While certain protections for paper ballot voting systems are built into Section 301(a)(1)(B) and Section 301(c), these protections only reinforce our view that Congress intended to include all paper ballot systems in the definition of voting systems in Section 301. These protections do not provide a general exemption for paper ballot systems from the Section 301 standards. See also H.R.Conf.Rep. No. 107-730, at 74 (2002).

Specifically, your question is directed to Section 301(a)(3)(A) of HAVA, which requires that each voting system used in federal elections must be accessible for persons with disabilities, including persons who are blind or have low vision. This requirement can be met through the use of at least one direct recording electronic (“DRE”) voting system or other voting system equipped for individuals with disabilities at each polling place so that the individuals can vote independently and privately. We construe Section 301(a)(3)(B) to require, for federal elections, every polling place in the United States to have at least one DRE or other voting system accessible to individuals with disabilities, including polling places in counties which presently have hand-counted paper ballots. We note that, given current technology, there is little reason to differentiate between different types of paper ballot voting systems from a disability access standpoint – paper ballots generally present the same accessibility problems for voters with disabilities whether they are counted by hand or by a scanner.

The Election Assistance Commission (“EAC”) will eventually issue voluntary guidance as to what constitutes an accessible voting system. Until the EAC guidance is adopted, the voluntary guidance of the Federal Election Commission (“FEC”) can be used to determine the accessibility of voting machines. (These can be found at www.fec.gov/pages/vss/vss.html at section 2.2.7 of the Voting System Standards).

We hope that this is responsive to your questions. If you have any additional questions or concerns, please do not hesitate to contact us.

Sincerely,



Joseph D. Rich
Chief, Voting Section