



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

March 4, 2005

VIA FACSIMILE

John W. Eads, Esq.
Assistant Secretary of State for Elections
Office of the Secretary of State
P.O. Box 136
Jackson, Mississippi 39205-0136

Dear Mr. Eads:

This letter responds to your email of February 25 to the Civil Rights Division 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").

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 email 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. It must be emphasized, however, that the opinions expressed here are not binding.

Your email reiterates a question which your office posed during a meeting with the Voting Section on February 8, concerning the requirements of Section 301(a)(3) of HAVA, 42 U.S.C. 15481(a)(3), for the accessibility of voting systems and polling places. You have advised that Mississippi is considering a plan for compliance with Section 301(a)(3) which would consist of at least one accessible polling place with one accessible voting system in each of the five supervisor districts in Mississippi's 82 counties. A voter who is physically disabled and whose polling place is not accessible would be allowed to have his or her ballot made available at the nearest polling place which is able to accommodate such elector's physical disability, so long as the voter submits a written request at least 45 days before the election and the registrar verifies the voter's existing polling place is not accessible. This would be a temporary plan in place through July

2007, after which all polling places would be physically accessible with accessible voting systems. Your question seeks our view on whether this plan comports with HAVA.

Section 301(a) of HAVA requires that "each voting system used in an election for federal office" meet certain requirements. Among these requirements is Section 301(a)(3)(A), which provides that the voting system shall "be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters." Section 301(a)(3)(B) provides that States may "satisfy the requirement of [Section 301(a)(3)(A)] through the use of at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." Section 301(d) provides that "[e]ach State and jurisdiction shall be required to comply with the requirements of this section on and after January 1, 2006."

The Department has previously expressed its view on the meaning of Section 301(a)(3) at numerous conferences of state and local election officials around the country. Section 301(a)(3) means what it says – all polling places in the United States which are used for elections for federal office must have at least one voting system which is accessible to persons with disabilities for use in elections for federal office on and after January 1, 2006. As we have expressed, logically, persons with disabilities must be able to gain access to the polling place in order to be able to use the accessible voting system. Having an accessible voting system does little good if voters cannot enter the polling place to use it. Hence, not only must the voting system be accessible to persons with disabilities but also the polling place where the voting system is located.

The only exception to the physical accessibility requirement for polling places might arise if a polling place uses a portable voting system that is accessible to persons with disabilities and can be taken out to a car at the curbside, but only if such system is fully accessible and gives the voter the same opportunity to vote privately and independently as other voters. With respect to the deadline under Section 301(a)(3), the Department has also answered this question at a number of conferences – Congress has set the date for compliance as January 1, 2006, and the Attorney General does not have the legal authority to extend this deadline.

We understand that you are concerned about the practicalities of timely compliance. We recognize that significant effort may have to be expended by states and local jurisdictions to achieve compliance with Section 301(a)(3) of HAVA. However, Congress has made funds available under Sections 101, 102, 251, 261 and 291 of HAVA which can be used to ensure accessibility of polling places and voting systems. With respect to polling place accessibility, the Department has prepared an Americans with Disabilities Act checklist which may be of assistance to you. See <http://www.usdoj.gov/crt/ada/votingck.htm>. It offers practical and effective ways of making polling places accessible. With respect to the accessibility of voting systems, the Election Assistance Commission ("EAC") will be issuing voluntary guidance. 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. See http://www.eac.gov/election_resources/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,

A handwritten signature in black ink, appearing to read "Hans A. von Spakovsky". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Hans A. von Spakovsky
Counsel to the Assistant Attorney General