



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

July 26, 2004

Kelly G. Keenan, Esq.
Legal Counsel
Office of the Governor
State of Michigan
P.O. Box 30013
Lansing, Michigan 48909

Dear Ms. Keenan:

This responds to your May 4, 2004 letter concerning implementation of the requirements of the Help America Vote Act of 2002, 42 U.S.C. 15301 to 15545 ("HAVA"). As you know, the Attorney General has assigned to the Civil Rights Division the Department of Justice's enforcement responsibilities under Section 401 for the minimum election technology and administration requirements of Title III of HAVA embodied in Sections 301, 302 and 303. 42 U.S.C. 15111. Several of these Title III requirements took effect on January 1, 2004, while others will take effect on January 1, 2006. Your letter cites a number of these Title III requirements, and essentially asks for our opinion as to whether each these requirements should be codified into Michigan law.

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 you have posed to the extent we can based on the Department's responsibilities to enforce Title III of HAVA and other pertinent federal laws. The opinions expressed in this letter are not binding and would not prevent the Department from taking a different position in any future litigation under HAVA or other federal voting rights statutes.

The basic answer to your question is as follows. All 55 states and territories covered by HAVA must comply with the requirements of Title III of HAVA with respect to all elections for federal office occurring after the relevant effective date of Sections 301, 302 and 303. Under the Supremacy Clause, compliance with this federal law is required for all federal elections, irrespective of any inconsistency with existing state law, and irrespective of whether the state has codified each such federal requirement into state law. Although not required, our experience suggests that State adoption of these requirements into law or administrative rule can promote optimal compliance with federal law. We understand that Michigan has recently adopted several legislative and administrative measures aimed at compliance with HAVA, and that certain other

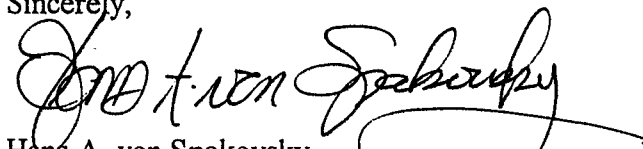
such measures may be planned in advance of this year's federal elections. If the State believes that additional measures need to be adopted to ensure full compliance with HAVA in future federal elections, we would encourage undertaking such measures.

Your letter also raises a question regarding whether the Civil Rights Division has undertaken enforcement activity against states and jurisdictions regarding the Title III requirements. The Division is working informally with a number of States regarding certain concerns we have about their implementation of Title III requirements. The Division has also recently filed a formal enforcement action against San Benito County, California concerning certain of the Title III requirements. A copy of the complaint in that case is attached, and a consent decree was negotiated with the county which is presently pending before the Court. We also note that the Voting Section has posted a significant amount of information regarding HAVA implementation on its webpage. (<http://www.usdoj.gov/crt/voting/hava/hava.html>).

Finally, we note that, pursuant to Section 311 of HAVA, the Election Assistance Commission (EAC) is tasked with the responsibility to adopt voluntary guidance concerning, among other things, the requirements of Title III of HAVA and voting system standards. As you may be aware, since the appointment of the EAC commissioners late last year, the EAC has been moving forward aggressively to carry out its HAVA responsibilities. At its most recent meeting on July 13, the EAC adopted certain guidance regarding HAVA which we expect will be made public soon, and which we expect would be of assistance to you.

We hope that this is responsive to your inquiry. Please feel free to contact us again if you would like to discuss this matter further.

Sincerely,



Hans A. von Spakovsky
Counsel to the Assistant Attorney General

Enclosure

cc: Terri Lynn Land
Michigan Secretary of State

Christopher Thomas
Michigan Director of Elections