



U. S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 8, 2003

VIA FACSIMILE AND REGULAR MAIL

Mr. R. Doug Lewis
Executive Director
The Election Center
12543 Westella, Suite 100
Houston, Texas 77077

Dear Mr. Lewis:

This is in response to your recent inquiry to me on behalf of local and state election officials concerning the design of statewide computerized voter registration lists under the requirements of 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 of Justice's enforcement responsibilities under Section 401 for the uniform and nondiscriminatory election technology and administration requirements of Sections 301, 302, and 303 of Title III of HAVA. 42 U.S.C. §15511. 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.

Your question is about the design of the computerized statewide voter registration lists outlined in §303(a), 42 U.S.C. §15483. You indicate that some States are planning to "create a single, uniform, database that will be identical both at the state level and within each jurisdiction within the state and that all counties or local governments must input their voter registration records directly into the state's database." The view of certain other States is that it may be permissible to "create a single uniform, statewide voter database that relies on amalgamating data from county and local voter registration databases and uses that accumulation to form the new statewide voter database."

Section 303(a)(1) requires each State, acting through its chief State election official, to implement in a uniform and nondiscriminatory manner, “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level.” The list must include the following:

- (i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.
- (ii) The computerized list contains the name and registration information of every legally registered voter in the State.
- (iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.
- (iv) The computerized list shall be coordinated with other agency databases within the State.
- (v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.
- (vi) All voter registration information obtained by any local election official...shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.
- (vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).
- (viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State.

In addition to general computerized list maintenance and security requirements, §303(a) has minimum accuracy standards that require the database to be updated regularly to remove ineligible registrants and safeguard against removals made in error. Information in the database must be verified and compared with State department of motor vehicles driver’s license records as well as federal social security records and must be compared with State agency records on death and felony status (where required by state law).

The House of Representatives Conference Report on H.R. 3295 (Report No. 107-730) states on page 75 that §303 “requires States to implement and maintain an interactive, centralized, and official Statewide computerized voter registration list accessible to all election officials in the State, and that contains registration information on every registered voter in the State.” Under §301(d)(1), these requirements apply beginning on January 1, 2004 unless a state

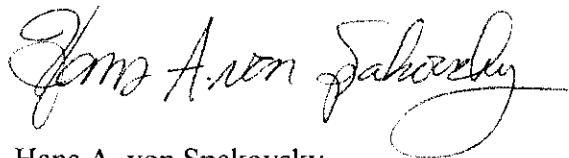
certifies to the Election Assistance Commission by that date that it cannot meet the deadline for good cause, in which case the deadline is delayed until January 1, 2006.

Your question relates to the design architecture of the computer database that will be the official voter registration list. As you are aware, the statute does not provide details of how the architecture of the database must be designed from an information technology standpoint - it does not describe the type of computer hardware or software that is acceptable or complies with the requirements. However, §303(a) does describe in detail the features that the computer database must ultimately have. The official registration list for federal elections must be a single, uniform, centralized, interactive database that is defined, maintained, and administered at the State level. Obviously, we do not have before us the details of any specific registration system and your letter does not provide an in-depth description of the type of database some states are proposing that would be an amalgamation of data from county and local voter registration databases. Whatever the details are of the software and hardware designs for a statewide database, the end result must be a system that meets the description contained in §303(a) and has the capabilities listed in parts (i)-(viii) of §303(a)(1)(A) as well as the maintenance, security, accuracy, and verification standards described in the other parts of the statutory provision. An amalgamated database that does not have these capabilities, does not meet these standards, and is not "defined, maintained, and administered at the State level" would appear to violate the requirements of HAVA.

HAVA does not prohibit local jurisdictions from having a local voter registration database for use in local or state elections or for the other purposes specified in your letter such as tracking voter history, payment of poll workers, etc. Further, there is no expressed prohibition against the uniform, centralized system pulling its voter registration data from a variety of different sources, sources that may be running on different software, into the single centralized registration system. However, this official State registration list must be uniformly defined, administered and maintained by the State, must be used by every jurisdiction in a State for all federal elections, must include and uniquely identify every legally registered voter in the State, and must meet all the §303 standards and requirements. No local list that is separate from the official statewide list can be used for a federal election.

We hope that the above responds to your inquiries and is of assistance in your efforts. Please feel free to contact us if you would like to discuss this matter further.

Sincerely,

A handwritten signature in cursive script, reading "Hans A. von Spakovsky". The signature is written in dark ink and is positioned above the printed name and title.

Hans A. von Spakovsky
Counsel to the Assistant Attorney General