

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-vs.-

NEW YORK STATE BOARD OF ELECTIONS:
PETER S. KOSINSKI and STANLEY L. ZALEN,
Co-Executive Directors of the New York State
Board of Elections, in their official capacities; and
STATE OF NEW YORK,

Defendants.

**AMICUS CURIAE JOINT
DECLARATION OF
WILLIAM W. SCRIBER
AND DONALD M. WART
AS MEMBERS OF THE
ELECTIONS
COMMISSIONERS
ASSOCIATION OF THE
STATE OF NEW YORK**

06 CV-0263 (GLS)

WILLIAM W. SCRIBER and **DONALD M. WART** individually and jointly declare pursuant to 28 U.S.C. §1746, and subject to the penalties of perjury, that the following statements are true:

1. We are Commissioners of Elections in and for the County of Oswego Board of Elections and are also members and officers of the Elections Commissioners Association of the State of New York.
2. We are making this joint declaration in support of the Declaration of Norman P. Green and support the position of the Elections Commissioners Association of the State of New York (ECA).
3. The ECA, comprised of local Commissioners of Elections throughout the state, is well-suited to show this Court the particularized and unique concerns of the various local boards of elections as regards the outcome of this litigation.
4. It is academic that local boards of election are at the forefront of every election held in the State of New York, not the New York State Board of Elections (NYSBOE); it is also understood that rural, upstate boards of elections have different resources and staffing than larger, urban boards of elections.
5. We categorically oppose any requirement for a ballot marking device (BMD) in every polling place for the reasons stated hereinbelow.
6. County of Oswego has approximately 123,000 residents and is 962 square miles in area

consisting of 2 cities (with 13 wards between them) and 22 towns and villages; the county Board of Elections has two Commissioners and a regular staff of eight.

7. Oswego County's population, board staffing and geographic area are very reflective of other upstate New York counties.
8. In preparation for conducting last year's General Election, the Oswego County BOE purchased four (4) BMDs and placed one in each of the four (4) NYS Assembly Districts encompassing the County of Oswego.
9. This board is currently exceeding the state requirement of one (1) BMD per county.
10. Oswego County has approximately 70,000 registered voters; **in 2006, fewer than twenty (20) persons, in total, utilized the county's four (4) BMDs placed in each Assembly District.**
11. We believe that the proposed plan before the Court would require our board to place a BMD in each of the fifty-nine (59) polling places throughout the County of Oswego; at a cost of \$5,000 to \$6,000 per unit (or ranging from \$295,000 to \$354,000 to purchase all necessary BMDs for this county alone).
12. Our board lacks the storage for both that many BMDs and the current voting machines; there is also a significant logistical problem in delivery and setting-up additional machines at every polling place.
13. Should this occur, the County of Oswego will incur additional costs in hiring new staff, training, public education, software licenses, warranties and maintenance contracts for the BMDs.
14. It is also a distinct possibility that many of the current elections inspectors who are intimately familiar with the lever-style machines (and some of which have been working at the same polling place for well over thirty years) may be unwilling to re-train on computerized machines or may not be as computer-savvy as the training will dictate.
15. Given the historically-low utilization rate, we also have significant concerns about the secrecy and sanctity of the ballot should a BMD be required in every polling place; the fewer persons utilizing each machine increases the likelihood that a vote's secrecy can be violated.
16. It is estimated that the Oswego County BOE will have to add approximately 120 additional staff should the one BMD per polling place requirement be imposed; it is important to note that this board has difficulty recruiting, training and retaining adequate numbers of poll workers for elections without the BMDs and was twenty (20) persons staff short-staffed for the 2007 General Election.

17. Intrinsically, a BMD is only a part of a component system and should the NYSBOE certify a different machine than the *Populex* brand BMDs currently used by our county, any BMDs purchased, including *Populex*, could be wholly incompatible with a subsequent optical scanning device certified by NYSBOE.
18. It is patently unfair to penalize local boards such as the Oswego County Board of Elections (and local governments) for the inaction of the NYSBOE and the state legislature in implementing HAVA.
19. BMDs will only be used as a stop-gap measure until such time as the NYSBOE certifies HAVA-compliant systems such as an optical scanning device.
20. Not every BMD is compatible with every HAVA-compliant system as there are a variety of manufacturers, software licensing and system software applications.
21. Hence, requiring counties to place a BMD in every polling place until a HAVA-compliant system is certified by the state may require counties to purchase BMDs that will be functionally-obsolete depending on which system is subsequently certified by NYSBOE; as it is hoped that the state will certify a system next year, the county may only use a BMD for one election cycle before it is obsolete.
22. The NYSBOE is ostensibly holding local boards hostage and will not release HAVA funding unless and until voting systems are first certified by the state.
23. It is apparent to us that the NYSBOE may commit local boards of elections (which are not parties to this action) to unrealistic and expensive goals (such as a BMD in every polling place) to appease the Department of Justice and the Court and to merely get out of this litigation; we believe that this is a disservice to the elective franchise and is too convenient a gesture for NYSBOE which is responsible for the current state of affairs.
24. Frankly, it is our opinion that, given their track record, both the State of New York and NYSBOE need oversight in implementing HAVA on a timely basis; only this Court can provide the oversight and compliance necessary.
25. Monies spent on BMDs could be better utilized to improve poll site access and to enhance public transportation for disabled voters on Election Day.
26. It will be difficult enough for our board to train staff on the workings of a BMD in every polling place not to mention the voter education campaign that must be undertaken in concurrently thereto.
27. New York State has taken far too long to implement HAVA and the requirement of placing BMDs in every polling place is a hollow gesture at full compliance for the reasons stated herein; its complicated election law scheme merely adds to the confusion.


28. Short of joining the ECA and/or every county board in the within litigation, which would only delay matters further, it would seem that consulting a representative sample of county boards of election would be a pragmatic approach in beginning to understand the practical and logistical hurdles encountered by counties across the state; it will also ensure that the elective franchise is not hindered in the implementation of HAVA.
29. We have read the Declaration of Norman P. Green and concur with same.
30. For the foregoing reasons, we hereby oppose any additional requirements that BMDs be placed in every polling place until HAVA complainant voting systems are certified for use in the State of New York.

Dated: December 11, 2007
at Oswego, New York.



WILLIAM W. SCRIBER

Dated: December 11, 2007
at Oswego, New York.



DONALD M. WART