

10-2320-cv
U.S. v. Nassau County Board of Elections

1 **UNITED STATES COURT OF APPEALS**
2
3 **FOR THE SECOND CIRCUIT**
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6 At a stated term of the United States Court of Appeals for the Second
7 Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500
8 Pearl Street, in the City of New York, on the 7th day of September, two
9 thousand ten.

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11 **BEFORE: DENNIS JACOBS,**
12 **Chief Judge,**
13 **REENA RAGGI,**
14 **Circuit Judge,**
15 **JED S. RAKOFF,**
16 **District Judge.**
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18 - - - - -X
19 UNITED STATES OF AMERICA,
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21 Plaintiff-Appellee,
22

23 - v.- 10-2320-cv

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25 NASSAU COUNTY BOARD OF ELECTIONS, NASSAU
26 COUNTY BOARD OF ELECTIONS AND NASSAU
27 COUNTY LEGISLATURE,
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29 Intervenors-Defendants-Appellants,
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31 NASSAU COUNTY LEGISLATURE,
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33 Cross-Claimant,
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35 THE CATSKILL CENTER FOR INDEPENDENCE,

*District Judge Jed S. Rakoff, of the United States District Court for the Southern District of New York, sitting by designation.

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Defendant,

LARRY ROCKEFELLER, STEPHEN DEWITT,
HENRY J. NICOLS, LIONEL LOGAN, BO
LIPARI, NEW YORKERS FOR VERIFIED
VOTING, THE LEAGUE FOR WOMEN VOTERS
OF NEW YORK STATE, COUNTY OF SUFFOLK,

Intervenors-Defendants,

and

NEW YORK STATE BOARD OF ELECTIONS, TODD
D. VALENTINE, CO-EXECUTIVE-DIRECTORS OF
THE NEW YORK STATE BOARD OF ELECTIONS,
IN THEIR OFFICIAL CAPACITIES; AND STATE OF
NEW YORK,

Defendants-Cross-Defendants.

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ORDER


The Nassau County Board of Elections and Nassau County
Legislature ("Nassau") appeal from an injunction entered by
the United States District Court for the Northern District
of New York (Sharpe, J.), compelling Nassau to take all
action necessary to ensure compliance with that court's
orders of June 2, 2006; January 16, 2008; and June 4, 2009,
setting forth the timeline for the State of New York to
comply with the so-called Help America Vote Act ("HAVA").
Help America Vote Act of 2002, Pub. L. No. 107-252, 166

1 Stat. 1666 (codified in scattered sections of 42 U.S.C.).

2 We hereby **AFFIRM** the injunction.

3 We see no abuse of discretion by the district court in
4 issuing the injunction. Furthermore, by virtue of the New
5 York State Election Reform and Modernization Act ("ERMA"),
6 Nassau County would be required to replace their lever
7 voting machines with optical scanner voting machines even if
8 the injunction were lifted or stayed, and regardless of
9 whether the lever voting machines comply with HAVA. Nassau
10 has commenced litigation in state court challenging the
11 constitutionality of ERMA under the constitution of New York
12 State. Nothing is preventing Nassau from pursuing that
13 litigation. And, in the event Nassau prevails in state
14 court, there is nothing to prevent it from filing suit in
15 federal district court to dispute whether its lever voting
16 machines are HAVA-compliant. These circumstances militate
17 against the relief that Nassau seeks on this appeal.

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19 FOR THE COURT:
20 CATHERINE O'HAGAN WOLFE, CLERK
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Catherine O'Hagan Wolfe