



P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

J.B. VAN HOLLEN
ATTORNEY GENERAL

PROTECTING THE RIGHT TO VOTE

On September 10, 2008, I made the difficult decision to bring legal action against the Government Accountability Board to enforce state and federal law designed to ensure election integrity. My decision has sparked considerable public debate, both complimentary and critical of the lawsuit. Public debate is part of a healthy democracy. And part of a healthy debate is to engage it; to counter critics by emphasizing what the lawsuit is about and to respond to positions that are based on misunderstandings or hyperbole.

The suit I filed is about making sure this law is followed. Compliance with the law isn't merely an option to be considered. It is a mandate.

In the wake of the 2000 election, Congress passed the Help America Vote Act of 2002 (HAVA). This law was passed to ensure that all eligible voters are able to cast a vote and have that vote count. Since January 1, 2006, HAVA has been the law in Wisconsin. Today, the Government Accountability Board is charged with carrying out HAVA's requirements. Among HAVA's mandates is that each state maintain an accurate and regularly updated statewide computerized voter registration system that is coordinated with other government databases. By requiring an accurate statewide voter list, HAVA seeks to ensure individuals who are not eligible to vote are kept off the list.

Tellingly, critics are not arguing that the law *is* being followed. Instead, they argue that following the law may create difficulties on Election Day. Some even suggest disenfranchisement.

I am deeply concerned with the rights of every eligible citizen to cast a vote and have it count. That's why I have brought this suit. The law does not impede the right to vote. It protects it. Our law creates safeguards to ensure that *every eligible voter can cast a ballot on Election Day and have it count.*

But disenfranchisement can occur by *not* following the law. The right to vote includes the right to have one's vote protected from being diminished and diluted by ineligible, illegal, or fraudulent votes. Every unlawful vote disenfranchises those entitled to vote by making lawful votes count less than they should. HAVA is one attempt to protect the right to vote against unlawful voting.

Some have defended the Government Accountability Board's refusal to implement HAVA, saying their decision properly balances the ability to vote easily with concerns about election integrity. This is a strawman. First, it isn't difficult to vote in Wisconsin. HAVA and other safeguards, such as same-day registration and provisional balloting, ensure that every eligible voter who shows up to the proper polling place can vote. Second, this balance has been carefully considered by the Congress and the State Legislature, who made HAVA the law of the land. Government agencies may not substitute their judgment for that of the law. In fact, enabling our democratically elected legislators to weigh public interests, make policy determinations, and turn those policy decisions into legislation carrying the force of law is exactly why we have elections to begin with.

Not only do the safeguards in the law fully counter concerns about the potential disenfranchisement of eligible voters, but examining what the lawsuit's critics are saying reveals they don't, for a second, honestly believe that HAVA compliance will disenfranchise eligible voters. I've heard no one say that the Government Accountability Board is disenfranchising voters now by requiring HAVA checks to be performed on those registering after August 6, 2008. All I am asking is that the Government Accountability Board treat registering voters in a non-discriminatory fashion, as the law requires. Maintaining an accurate statewide voter list disenfranchises no one.

There is one class of people that vigorous HAVA implementation will keep out of the polls: those that don't have the right to vote. Although some have argued that fraud is rare, *every* ineligible vote, whether through fraud or mistake, disenfranchises citizens. Every vote counts, and the defense of eligible voters' right to vote should be vigilantly protected.

Moreover, one need look no further than recent newspaper reports of fraudulent registrations and the Milwaukee Police Department's Special Investigations Unit report on the November 2004 election to know that unlawful voting, whether through fraud or mistake, is real. A handful of votes can change the outcome of an election.

That is why this lawsuit does not cast a cloud over the election. Indeed, it is the failure to follow the law that might do so. As the United States Supreme Court stated earlier this year, the "electoral system cannot inspire confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters."

As Attorney General, it is my job to enforce the law. Some of the critics in this case object to my action because they disagree with the law's mandate. But if the critics don't like this law, their argument rests with lawmakers, not law enforcers.

I recognize that following the law will require additional work to be done. But no effort is too great to protect our most fundamental political freedom.

###