

**IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

MARY BETH KUZNIK, JIM FERLO,)	
SALLIE W. BRADLEY, MERLE L. KUZNIK)	No. 18 MAP 2006
CLARE VAILL, TIMOTHY KRUPAR,)	
WILLIAM P. KUZNIK, JEFFREY HAILS,)	
JOHN W. HETLER, CHARLENE MAY HETLER,)	
and MATTHEW HETLER,)	
Appellees)	
)	
v.)	
)	
WESTMORELAND COUNTY BOARD OF)	
COMMISSIONERS; WESTMORELAND COUNTY)	
BOARD OF ELECTIONS; and PEDRO A. CORTÉS,)	
Secretary of the Commonwealth,)	
Appellants)	

**EMERGENCY APPLICATION OF APPELLANT PEDRO A. CORTÉS,
SECRETARY OF THE COMMONWEALTH, TO TAKE JUDICIAL NOTICE OF
OFFICIAL COMMUNICATIONS FROM THE U.S. DEPARTMENT OF JUSTICE**

Pedro A. Cortés, Secretary of the Commonwealth, through his undersigned counsel and acting pursuant to Pa. R.A.P. 123, respectfully asks this Honorable Court, on an emergency basis and in connection with the above-captioned appeal, to take judicial notice of official communications that Secretary Cortés received just yesterday afternoon (February 21, 2006) from Wan J. Kim, the U.S. Assistant Attorney General for Civil Rights.

The correspondence from the Assistant Attorney General, which was directed also to the Attorney General of the Commonwealth and the Solicitor of Westmoreland County, relates

directly to issues that are before this Honorable Court as part of the above-captioned appeal. However, the correspondence is not part of the record in this matter since it was just received. In addition, because he believes that this Court might be ready to consider the appeal as early as this afternoon – after the parties have filed what might be their only briefs in this matter as directed by the Court by order issued Friday, February 17, 2006 – Secretary Cortés respectfully requests, on an emergency basis, that this Court take judicial notice of the correspondence from the U.S. Department of Justice that is attached to this application as Exhibits A and B. The Court might then give the correspondence such consideration and weight as it should deem appropriate.

I. BACKGROUND

1. The Secretary of the Commonwealth’s appeal in this case arises from an action filed in January 2006 by several citizens of Westmoreland County (“Electors”) for declaratory judgment and equitable relief against the Board of Commissioners of Westmoreland County and the Board of Elections of Westmoreland County (collectively, County Respondents), and later against the Secretary of the Commonwealth. The proceedings that followed in Commonwealth Court are described in detail in the application made to this Honorable Court by Secretary Cortés on February 17, 2006, to expedite the above-captioned appeal.

2. After hearing, argument and submission of briefs, Commonwealth Court on February 13, 2006, declared that the federal preemption determination made by the Secretary of the Commonwealth in June 2003 – and upon which the County Respondents and other county boards of elections had relied in proceeding to procure electronic voting systems that comply with section 301 of the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. § 15481 – is legally erroneous. Based on that legal conclusion, the Commonwealth Court proceeded to order the County Respondents and Secretary Cortés *not* to proceed to replace the lever voting

machines used in Westmoreland County or to procure electronic voting machines or devices until the electors of the county approve the use of an electronic voting system through a referendum. The court entered judgment for the Electors accordingly on February 16, 2006; and Respondents immediately appealed to this Court.

3. As a result of Commonwealth Court's decision, the Secretary of the Commonwealth and County Respondents (as well as the other 23 county boards of elections that had been planning to replace their lever voting machines with certified electronic voting systems – systems that meet all of the requirements of section 301 of HAVA, including required accessibility for voters with disabilities) are left with a difficult choice: (a) comply with HAVA as planned by procuring electronic voting systems and proceeding in contradiction to the ruling of Commonwealth Court; or (b) acquiesce in Commonwealth Court's ruling, continuing to use their lever voting machines, violating HAVA, and forcing the Commonwealth under section 102(d) of HAVA, 42 U.S.C. § 15302(d), to return to the EAC nearly \$14 million in funds earmarked to replace the lever voting machines.

4. In seeking expedited consideration of his appeal in this matter, Secretary Cortés on February 17, 2006, asserted:

Only this Court can settle the law in this Commonwealth so that the Westmoreland County Board of Elections (and the 23 other county boards of elections that have heretofore used lever voting machines) might be able either (a) through prompt reversal of Commonwealth Court, to avoid the difficult choice with which Commonwealth Court has presented the county officials; or (b) if this Court were to promptly affirm the Commonwealth Court, to enable the county boards of elections more intelligently and rationally to make the hard choices that Commonwealth Court's decision forces the county boards of elections to make.

5. In his application for expedited consideration of his appeal, Secretary Cortés also said:

Were Respondents required to comply with Commonwealth Court's order, the Westmoreland County Board of Elections (and possibly the other boards of elections that have used lever voting machines) would be required – with just over two months' warning – to prepare to conduct the General Primary Election using two different systems simultaneously, including in most cases the use of systems that County Respondents (and other counties) had not planned to procure, develop or use in the May 16, 2006 General Primary Election. Any county board of elections attempting such a task in such a short time frame – and without any statutory guidance to follow to assure uniformity throughout the county, much less the Commonwealth – would be at a loss in how to conduct the primary election in compliance with federal and state laws.

6. Finally, in his application for expedited consideration, Secretary Cortés averred:

Absent prompt guidance from this Court, the county boards of elections might well choose different options – some choosing to violate HAVA by using their lever voting machines for all elections (including elections for federal office), while other boards might choose to comply with HAVA in contravention of the ruling of Commonwealth Court in this case. Only a few boards – *and perhaps none* – are likely to attempt to conduct the primary election using a dual system as the Commonwealth Court suggested in its memorandum opinion.

7. This Honorable Court on February 17, 2006, in part granted the application of Secretary Cortés for expedited consideration of his appeal. The Court directed the parties each to file a brief no later than 2:00 P.M. on Wednesday, February 22, 2006. However, the Court in its order made no mention of further briefing or whether it would entertain oral argument during the week of February 27, 2006, as Secretary Cortés (joined by the other parties) had requested in the application for expedited consideration.

8. Counsel for Secretary Cortés has proceeded expeditiously to prepare a brief of appellant and reproduced record for filing by 2:00 P.M. today – February 22, 2006; and counsel presume that the other parties have expeditiously prepared their briefs for timely filing.

II. OFFICIAL COMMUNICATION FROM THE U.S. DEPARTMENT OF JUSTICE

9. Late yesterday afternoon (February 21, 2006), counsel for Secretary Cortés received from the U.S. Department of Justice (via electronic mail) a letter from Wan J. Kim, the U.S. Assistant Attorney General for Civil Rights. A true and correct copy of the letter from Mr. Kim is attached hereto as Exhibit A.

10. The Attorney General of the United States has delegated to the Assistant Attorney General for Civil Rights the power and duty of the DOJ to enforce all Federal statutes affecting civil rights (including those pertaining to elections and voting), and to authorize litigation in such enforcement (including civil actions and proceedings on behalf of the Government). *See* 28 C.F.R. § 0.50(a). Among the laws that the Assistant Attorney General for Civil Rights is empowered to enforce – acting pursuant to DOJ’s authority under section 401 of HAVA, 42 U.S.C. § 15511 – are the requirements imposed upon the States by Title III of HAVA, including section 301.

11. In his letter, Mr. Kim has informed Pennsylvania Attorney General Tom Corbett, the Chief Counsel of the Pennsylvania Department of State, and the Solicitor of Westmoreland County, that he has authorized the filing of a lawsuit against the Commonwealth of Pennsylvania, Secretary Cortés and Westmoreland County to assure Pennsylvania’s compliance with the voting system standards required by section 301 of HAVA in time for the General Primary Election scheduled for May 16, 2006.

12. Mr. Kim also invited the recipients of the letter to consider agreeing to a consent decree, to be issued by the U.S. District Court for the Middle District of Pennsylvania, under which the Commonwealth and Westmoreland County would be obliged, notwithstanding any possible impediments under State law (including rulings or orders of Pennsylvania’s courts), to

comply fully with the requirements of section 301 of HAVA in time for the May 16 General Primary Election. A true and correct copy of the draft consent decree is attached hereto as Exhibit B.

13. In his letter, Mr. Kim made specific reference to the Commonwealth Court's Memorandum Opinion and Order issued February 13, 2006, in *Kuznik v. Westmoreland County Board of Commissioners*, No. 18 M.D. 2006. Mr. Kim observed regarding the opinion in *Kuznik*:

We believe the [Commonwealth] Court's opinion, which purports to require [Westmoreland] County to employ a dual system involving paper ballots for elections for Federal office and lever machines for elections for state and local offices, would effectively preclude the County from complying with the accessibility requirements of Section 301(a)(3) of HAVA. Neither paper ballots, nor lever machines, provide accessibility for voters with disabilities in the manner required by Section 301(a)(3)(A) of HAVA, and the failure to provide for at least one accessible machine in each polling place for use in an election for Federal office violates Section 301(a)(3)(B) of HAVA. Where there is a conflict between federal and state law, the State is bound to resolve such conflict in favor of compliance with federal law.

14. Mr. Kim also noted in his letter the obligation of the Commonwealth of Pennsylvania under section 102 of HAVA, 42 U.S.C. § 15302, to replace *all* of its lever voting machines with a HAVA-compliant voting system in time for use in the May 16, 2006 General Primary Election and the consequent loss of millions of dollars in Federal funds should the Commonwealth fail to meet its obligations under section 102 of HAVA.

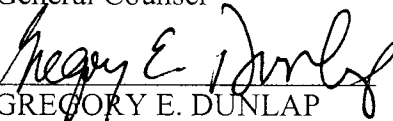
15. Because Exhibits A and B of this application are true and correct copies of official communications received by Secretary Cortés from the DOJ official authorized by law to enforce HAVA and reveal that agency's official enforcement position respecting the effect that the Memorandum Opinion and Order issued by Commonwealth Court and the Pennsylvania laws cited therein is likely to have on Pennsylvania's ability to comply with HAVA, Secretary Cortés

respectfully requests this Honorable Court to take judicial notice of this official communication and to give it due weight as it considers Secretary Cortés's appeal (joined by County Respondents) from the Opinion and Order and judgment of the Commonwealth Court entered in this case.

WHEREFORE, Appellant Pedro A. Cortés, Secretary of the Commonwealth, respectfully requests this Honorable Court, in connection with its consideration of Secretary Cortés's above-captioned appeal, to take judicial notice of the official communications received from the U.S. Assistant Attorney General for Civil Rights that is reflected in Exhibits A and B of this application.

Respectfully submitted,

BARBARA ADAMS
General Counsel

By: 
GREGORY E. DUNLAP
Deputy General Counsel
Attorney ID No. 38785

Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17120
(717) 783-6563

*Counsel for Appellant Pedro A. Cortés,
Secretary of the Commonwealth*

Of Counsel:

Mark A. Aronchick, Esquire
Alan C. Promer, Esquire
Shawn A. Weede, Esquire
HANGLEY ARONCHICK SEGAL & PUDLIN
One Logan Square
18th & Cherry Street, 27th Floor
Philadelphia, PA 19103-6933
(215) 568-6200

DATE: February 22, 2006

EXHIBIT A



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

February 21, 2006

The Honorable Tom Corbett
Attorney General
Strawberry Square, 16th Floor
Harrisburg, Pennsylvania 17120

Albert H. Masland, Esq.
Chief Counsel
Department of State
One Penn Center
2601 North 3rd Street
Harrisburg, Pennsylvania 17110

R. Mark Gesalman, Esq.
County Solicitor
2 N. Main Street, Suite 103
Greensburg, Pennsylvania 15601

Dear Messrs. Corbett, Masland and Gesalman:

I have authorized the filing of a lawsuit on behalf of the United States against the Commonwealth of Pennsylvania, the Pennsylvania Secretary of the Commonwealth in his official capacity as head of the Department of State, and Westmoreland County, pursuant to Section 301 of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15481. Section 401 of HAVA, 42 U.S.C. § 15511, authorizes the Attorney General to bring an action in federal district court for such declaratory and injunctive relief as is necessary to carry out the requirements of Title III of HAVA.

Section 301 of HAVA, which went into effect on January 1, 2006, sets forth standards for all states for each voting system used in an election for Federal office. Among other things, Section 301 requires that voting systems provide a mechanism for a voter to verify and, where necessary, correct his or her ballot, notify a voter of an overvote, produce a permanent paper record with a manual audit capacity, comply with federal error rate standards, and provide for accessibility for voters with disabilities or with alternative language needs. In particular, Section 301(a)(3)(A) requires that voting systems used in an election for Federal office "shall be accessible for individuals with disabilities ... in a manner that provides the same opportunity for

access and participation (including privacy and independence) as for other voters." 42 U.S.C. § 15481(a)(3)(A). States must comply with the accessibility requirements of Section 301(a)(3)(A) through use of "at least one direct recording electronic voting system or other voting system equipped for individuals with disabilities at each polling place." 42 U.S.C. § 15482(a)(3)(B).

As of the January 1, 2006, effective date of Section 301, numerous Pennsylvania counties continued to use voting systems which did not comply with HAVA, e.g., by not providing accessibility for voters with disabilities required by Section 301(a)(3). A number of these counties now appear to be in serious jeopardy of not having HAVA-compliant voting systems in each polling place by the time of the first election for Federal office in the Commonwealth on May 16, 2006. Accordingly, the Commonwealth is not in compliance with Section 301 of HAVA.

Further, we have noted the opinion of the Commonwealth Court of Pennsylvania enjoining Westmoreland County's use of HAVA-complaint electronic voting machines unless and until such machines are approved by in a referendum election. Kuznik v. Westmoreland County Bd. of Comm'rs, No. 18 M.D. (Pa. Commw. February 13, 2006). We believe the Court's opinion, which purports to require the County to employ a dual system involving paper ballots for elections for Federal office and lever machines for elections for state and local offices, would effectively preclude the County from complying with the accessibility requirements of Section 301(a)(3) of HAVA. Neither paper ballots, nor lever machines, provide accessibility for voters with disabilities in the manner required by Section 301(a)(3)(A) of HAVA, and the failure to provide for at least one accessible machine in each polling place for use in an election for Federal office violates Section 301(a)(3)(B) of HAVA. Where there is a conflict between federal and state law, the State is bound to resolve such conflict in favor of compliance with federal law.

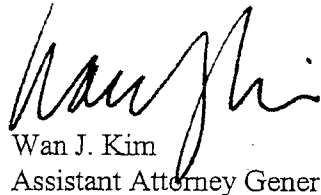
Finally, we note that the Commonwealth has accepted nearly 23 million dollars in federal funds under Section 102 of HAVA, 42 U.S.C. § 15302, for replacement of its existing lever and punch card voting systems. Section 102 provides that failure to replace these systems by the time of the May 16, 2006 primary election for federal office will result in the Commonwealth losing the federal funds received under that replacement program, to the extent of the non-compliance.

We hope to resolve this matter through a negotiated consent decree rather than through costly and protracted litigation. We request that you contact us as soon as possible to indicate whether you are willing to enter into negotiations for a fair and equitable settlement of this matter that will remedy these violations. To that end, we are prepared to meet with you promptly to discuss terms of a possible consent decree to be filed along with the complaint. We will in any event file that complaint within 10 days.

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Please contact trial attorney Richard Dellheim (202-305-1734) in our Voting Section, concerning your intentions or for any questions you may have. We look forward to working with you to resolve this matter promptly.

Sincerely,

A handwritten signature in black ink, appearing to read "Wan J. Kim". The signature is fluid and cursive, with the first name "Wan" being the most prominent.

Wan J. Kim
Assistant Attorney General

cc: Honorable Edward G. Rendell

EXHIBIT B

DRAFT – FOR DISCUSSION PURPOSES ONLY

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Civil Action No.
)
 COMMONWEALTH OF PENNSYLVANIA;)
 PEDRO A. CORTÉS, Secretary of)
 the Commonwealth of Pennsylvania, in his)
 official capacity as head of the Department of State;)
 and, WESTMORELAND COUNTY,)
 PENNSYLVANIA,)
)
 Defendants.)
 _____)

CONSENT DECREE

The United States filed its Complaint in this action on this date pursuant to Section 401 of the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. § 15511, alleging that the defendants have failed to comply with Section 301 of HAVA, 42 U.S.C. § 15481. Specifically, the United States alleges that the defendants have violated HAVA by not having in place on January 1, 2006, voting systems for use in elections for Federal office that comply with the voting system standards set forth in Section 301. Defendants admit that they have not complied with HAVA’s voting system standards.

The parties desire to resolve this matter without the need for litigation. Accordingly, they have engaged in extensive good faith negotiations and have agreed to the terms of this Consent Decree as an appropriate resolution of all claims alleged in this litigation.

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This Court has jurisdiction over the parties and the subject matter of this litigation. This agreement is final and binding between the parties, their successors in office, and their agents regarding the claims raised in this action.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED that:

1. Defendants are enjoined to take the actions specified below to comply fully with Section 301 of the Help America Vote Act, 42 U.S.C. § 15481.

2. In order to bring the Commonwealth of Pennsylvania into compliance with the voting system standards set forth in Section 301 of HAVA, the defendants shall take the following actions according to the prescribed timetable:

(a) HAVA-Compliant Voting Systems: Defendants shall ensure that any voting systems in use in elections for Federal office in the Commonwealth beginning with the May 16, 2006 primary election for Federal office shall comply fully with the voting system standards set forth in Section 301 of HAVA, 42 U.S.C. § 15481. In particular, Defendants shall ensure that each polling place in the Commonwealth, including polling places in Westmoreland County, is equipped with at least one voting system which complies with the accessibility requirements found in Section 301(a)(3) of HAVA, 42 U.S.C. § 15481(a)(3), in elections for Federal office starting with the next election for Federal office in the Commonwealth on May 16, 2006;

(b) Contracts: To effectuate the obligations set forth in paragraph 2(a), the Defendants shall enter into purchase or lease contracts for voting systems with appropriate vendors no later than March 14, 2006. In contracting for purchase or lease of voting systems,

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such contracts shall provide first for the delivery of voting systems such that, by April 3, 2006, there shall have been delivered to local jurisdictions for placement in each polling place in the Commonwealth, at least one voting system which complies with the accessibility requirements found in Section 301(a)(3) of HAVA, 42 U.S.C. § 15481(a)(3). Such contracts shall further provide: 1) for delivery of additional HAVA-compliant voting systems as necessary to ensure that all polling locations in the Commonwealth are equipped with HAVA-compliant voting systems by the time of the first election for federal office in the Commonwealth on May 16, 2006; and 2) for delivery of one (or more, as appropriate) applicable voting system(s) to each local jurisdiction as is necessary to implement the training set forth in Paragraph (e) below;

(c) Uniform Process for Local Purchase or Lease of Voting Systems: Within one (1) business day of entry of this Order, the defendants shall notify all local jurisdictions currently not in compliance with Section 301 of HAVA of the details of the Commonwealth-run process for purchase or lease of voting systems to be used beginning with the May 16, 2006, primary election for Federal office;

(d) County Choice of Voting Systems: Local jurisdictions shall be required to notify the Secretary of their voting systems purchase or lease choice by no later than March 6, 2006; if local jurisdictions fail to make their purchase or lease choices known by that date, the Secretary shall determine the HAVA-compliant voting system to be used in that jurisdiction;

(e) Training of Local Election Officials: Defendants shall develop, and begin to implement by April 3, 2006, a comprehensive training program for elections staff in each local

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jurisdiction on the proper use of appropriate new voting systems. Such training shall be conducted by the Secretary's staff and appropriate vendor staff up to the time of the May 16, 2006 primary election for Federal office and shall continue as necessary through the November 2006 general election for Federal office. No later than March 31, 2006, the Secretary shall provide the Department of Justice with a detailed draft description of such training program.

(f) Voter Education Program: The Secretary shall develop, and begin to implement by April 17, 2006, a comprehensive education program for voters on the proper use of appropriate new voting systems. Such training shall be conducted by the Secretary's staff, with the assistance of local election officials where possible, and shall be implemented until the time of the May 16, 2006 primary election for Federal office and shall continue as necessary until the November 2006 general election for Federal office. In developing such program, the Secretary shall consider, among other things, voter education classes, the use of direct mail, public service announcements on television and radio and local community public appearances and events. The Secretary shall also conduct voter education outreach efforts directed to local community groups and disability groups. No later than April 14, 2006, the Secretary shall provide the Department of Justice with a detailed draft description of such training program.

COMPLIANCE MONITORING AND RECORDKEEPING

3. Defendants shall take the following actions to advise the United States of the Commonwealth's progress in carrying out the terms of this Decree:

(a) Report to the United States on a weekly basis, in writing (by e-mail or

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overnight delivery) or through personal report from the Secretary's staff, concerning progress in implementing the terms of this Decree;

(b) Advise the United States within 24 hours in writing (by e-mail or overnight delivery) as well as by personal contact, of any occurrence which may give rise to noncompliance with any term of this Decree.

4. Defendants shall retain any and all records concerning the subject matter of this Decree during the term of this Decree. The United States shall have access to all such records within a reasonable period of time, but no later than 3 days after request. Defendants shall make appropriate Commonwealth personnel available to the United States at any and all reasonable times in order to answer questions and provide information concerning compliance issues which arise during the term of this Decree.

5. If at any time the United States obtains information that the defendants are or are about to be in breach of any of the terms of this Decree, the United States shall advise defendants in writing by notice sent to the Secretary by e-mail or overnight delivery, and facsimile. The defendants shall have two (2) business days following transmission of such notice to respond in writing (by e-mail or overnight delivery, and facsimile) to the United States. The parties shall thereafter immediately attempt to resolve any issue of potential noncompliance. If the parties are unable to agree on a resolution of the issue, either party may bring the matter before the Court for appropriate resolution. Nothing in this Agreement shall otherwise prevent the United States from taking any actions required to enforce any and all provisions of HAVA other than those which

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are the subject of this action.

6. Any notices sent by the respective parties pursuant to provisions of this Decree shall be sent to:

For the United States (overnight mail only):

Chief
Voting Section
Civil Rights Division
U.S. Department of Justice
1800 G Street, N.W.
Room 7254
Washington, D.C. 20530
Phone: (800) 253-3931
Fax: (202) 307-3961
Email: richard.dellheim@usdoj.gov
Email: chris.herren@usdoj.gov


For the Defendants:

The provisions of this Decree shall expire on December 31, 2008. The Court retains jurisdiction of this action to enforce the terms of this Decree during the effective period of this Decree.

Entered this day of , 2006.

VERIFICATION

I, Gregory E. Dunlap, in my capacity as Deputy General Counsel for the Commonwealth of Pennsylvania, do hereby verify that the factual averments set forth in the Application of Appellant Pedro A. Cortés, Secretary of the Commonwealth, to Take Judicial Notice of Official Communication from the U.S. Department of Justice, are true and correct to the best of my knowledge, information and belief. I make this verification subject to the penalties prescribed by 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Gregory E. Dunlap
Deputy General Counsel
Commonwealth of Pennsylvania

DATE: February 22, 2006

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

MARY BETH KUZNIK, *et al.*) No. 18 MAP 2006
Appellees)
)
v.)
)
WESTMORELAND COUNTY BOARD OF)
COMMISSIONERS, *et al.*,)
Appellants)

CERTIFICATE OF SERVICE

I, GREGORY E. DUNLAP, Deputy General Counsel, hereby certify that on this date I have caused to be served a copy of the foregoing Application of Appellant Pedro A. Cortés, Secretary of the Commonwealth, to Take Judicial Notice of Official Communication from the U.S. Department of Justice, in the manner indicated below, which service satisfies the requirements of Pa.R.A.P. 121:

Service by Electronic Mail and First Class U.S. Mail:

Charles A. Pascal, Jr., Esquire
123 Siberian Avenue
Leechburg, PA 15656
Telephone: (724) 845-8340
attorney.pascal@gmail.com
Counsel for Appellees

Eugene A. Ferace, Deputy Solicitor
County of Westmoreland
Two North Main Street, Suite 103
Greensburg, PA 15601
Telephone: (724) 830-3560
mgesalma@co.westmoreland.pa.us
Counsel for Appellants
Westmoreland County Board of
Commissioners and Westmoreland
County Board of Elections



GREGORY E. DUNLAP, Deputy General Counsel
Attorney ID No. 38785
Office of General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17120
(717) 783-6563
Counsel for Appellant Pedro A. Cortés, Secretary of
the Commonwealth

DATE: February 22, 2006



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF GENERAL COUNSEL
333 MARKET STREET, 17TH FLOOR
HARRISBURG, PA 17101
(717) 783-6563

February 22, 2006

VIA HAND DELIVERY

Irene M. Bizzoso, Deputy Prothonotary
Supreme Court of Pennsylvania
Middle District
Office of the Prothonotary
434 Main Capitol Building
Harrisburg, PA 17108

Re: *Mary Beth Kuznik, et al. v. Westmoreland Co. Board of Commissioners*
No. 18 MAP 2006

Dear Ms. Bizzoso:

Enclosed for filing in the above case are an original and eight (8) copies of an Emergency Application of Appellant Pedro A. Cortés, Secretary of the Commonwealth, to Take Judicial Notice of Official Communications from the U.S. Department of Justice. Please time stamp the additional copy provided and return it to me with our messenger.

Thank you.

Respectfully submitted,

Gregory E. Dunlap
Deputy General Counsel

GED:gkd
Enclosure

cc: Charles A. Pascal, Jr., Esquire (w/enc.)
Eugene A. Ferace, Deputy Solicitor, County of Westmoreland (w/enc.)