

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
) Civil Action Number:
 v.)
) 2:06-CV-00392-WKW
 STATE OF ALABAMA, and)
 BETH CHAPMAN, Secretary of State,)
 in her official capacity,)
)
 Defendants.)

RESPONSE TO ORDER (Doc. 130)

By Order dated October 12, 2007, the Court ordered the parties to “confer regarding the confirmation of HAVA compliance” and to “file notice of the issues to be heard at the October 24, 2007 hearing.” (Doc. 130). In compliance with that Order, a telephone conference was held this morning.¹

Pursuant to the Court’s earlier instructions, the exclusive focus of the upcoming hearing is HAVA compliance. Mr. Wallis stated that he will call two witnesses at the hearing to testify that the State of Alabama’s voter registration system (ALVRS) is now in full compliance with HAVA. Those witnesses will be Bill English, Judge of Probate for Lee County and Chairman of the Special Master’s HAVA Implementation Committee, and Shannon Curtis. Mr. Wallis further stated that the Alabama Probate Judges Association has indicated that it may wish to call a judge of probate to testify. The State and the Secretary of State have no objection, so long as the scope of said

¹ Present were: Ken Wallis, the Special Master’s representative; Robert D. Popper and Donald Palmer, counsel for the United States of America; Winfield J. Sinclair and Misty S. Fairbanks, counsel for the State of Alabama and Secretary of State Chapman; Jean Brown, Secretary Chapman’s Chief Legal Advisor; Adam Thompson, Secretary Chapman’s Director of Special Projects; and Shannon Curtis, ES&S Project Manager.

testimony is limited to the issue of HAVA compliance. As the Court has previously indicated, ancillary issues will be addressed at a later time.

The issue of verification of new registrants continues to be the only issue identified by the parties as relevant to the focus of the upcoming hearing. (Doc. 130). ES&S reported that ALVRS can identify voters who have registered since January 1, 2006. Thereafter, it would be necessary for Registrars to manually check each identified voter against the now operational Department of Public Safety interface. ES&S will work to determine the number of voters who have registered since January 1, 2006, as well as the number of voters who have registered since the registration cut-off for the November 2006 general election, in order to determine the magnitude and feasibility of this project.

Counsel for the United States of America stated that it believes that it is within the power of this Honorable Court to order the State of Alabama to perform the above-stated validation, given that the statutory deadline for compliance with HAVA was January 1, 2006.

While recognizing the benefit of performing the above-stated validation for all registered voters in the State of Alabama, or a subset thereof, it is the position of the State of Alabama and the Secretary of State that only prospective injunctive relief is appropriately ordered. Moreover, the State of Alabama and the Secretary of State are concerned about the magnitude of the project, the most time-consuming portion of which would fall on Registrars.

Counsel for the United States of America have reviewed this filing, and believes that it states the issues discussed during the telephone conference, such that an additional filing is unnecessary.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL
BY:

s/ Winfield J. Sinclair
Winfield J. Sinclair (SIN006)
Assistant Attorney General

s/ Misty S. Fairbanks
Misty S. Fairbanks (FAI005)
Assistant Attorney General

Attorneys for the State of Alabama &
Secretary of State Beth Chapman

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of October, 2007, a copy of the foregoing has been electronically filed with the Clerk of the Court using the CM/ECF system, which will electronically send a copy of the same to the following:

Kenneth D. Wallis, II, Esq.
Scott L. Rouse, Esq.
Office of the Governor
State Capitol
600 Dexter Avenue, Suite NB-05
Montgomery, Alabama 36104

Robert D. Popper, Esq.
Christy A. McCormick, Esq.
Donald Palmer, Esq.
United States Department of Justice
1800 G Street, Room 7270
Washington, D.C. 20006

R. Randolph Neeley, Esq.
United States Attorney's Office
Post Office Box 197
Montgomery, Alabama 36101-0197

Algert Swanson Agricola, Jr., Esq.
Gary R. (Rick) Trawick, Esq.
Slaten & O'Connor, P.C.
Post Office Box 1110
Montgomery, Alabama 36101-1110

Dorman Walker, Esq.
Balch & Bingham
Post Office Box 78
2 Dexter Avenue
Montgomery, Alabama 36101-0078

Frank C. Ellis, Jr., Esq.
Wallace, Ellis, Fowler & Head
Post Office Box 587
Columbiana, Alabama 35051

Michael W. Robinson, Esq.
Alabama Dept. of Public Safety
Legal Unit
P.O. Box 1511
Montgomery, Alabama 36102-1511

And by first class mail, postage prepaid, to the following:

Rena J. Comisac, Esq.
Acting Assistant Attorney General
Civil Rights Division
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

John K. Tanner, Esq.
United States Department of Justice
Chief, Voting Section
Civil Rights Division
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

s/Misty S. Fairbanks
Misty S. Fairbanks
Assistant Attorney General

Address of Counsel:

Office of the Attorney General
11 South Union Street, 3rd Floor
Montgomery, Alabama 36130
TEL: 334-353-8674
FAX: 334-353-8440
E-mail: mfairbanks@ago.state.al.us