

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO.
v.)	
)	2:06-CV-00392-WKW
STATE OF ALABAMA, et al.,)	
)	
Defendants.)	

RESPONSE TO ORDER TO PRODUCE DOCUMENTS

COMES NOW Nancy L. Worley in her capacity as Secretary of State of Alabama, by and through her attorneys, and files the following Response to this Court’s Order dated November 17, 2006, requiring her to produce documents no later than Wednesday, November 22, 2006, and states as follows:

1. Counsel for Secretary of State Nancy L. Worley (Worley) arranged an appointment at the Office of Secretary of State on Monday, November 20, 2006. Said counsel coordinated with counsel for the Special Master for the purpose of locating and securing HAVA documents. Counsel for the Special Master met with counsel for Worley in the Secretary of State’s office, conferred over the records and agreed on a future date to discuss thoroughness of production compliance.

The Secretary of State’s office was most cooperative. Ms. Worley made several staff members available to assist counsel in locating, retrieving and copying the records. Each office and room of the Secretary of State’s

office was thoroughly examined for the location of HAVA documents. These joint efforts revealed the following:

a. In room E-201, a former attorney's office, some four or five boxes of general records were located. Each box was personally examined by the undersigned attorney. Many of the records consisted of communication and official action taken by Ms. Worley's predecessor. Many other records contained e-mails on various subjects by the attorneys for the Secretary of State on various unrelated matters. Some of the boxes contained personnel matters and litigation matters involving personnel and former personnel of the Secretary of State's office. The undersigned identified approximately two-and-a-half to three boxes that might relate in some way to the HAVA records as ordered produced by the Court. These documents were reduced to two bankers boxes labeled E-201 Boxes 1 & 2 and E-201 Boxes 3 & 4. They contained some RFP material, HAVA legislation and individual county voting matters. These two boxes were hand-carried to counsel for Special Master on Wednesday, November 22, 2006.

b. A four-drawer wooden file cabinet was next examined in the office or anteroom of former counsel. The contents of each drawer were personally examined by the undersigned. Again, any document remotely related to HAVA was extracted from the file cabinet and

produced. An inventory of those labeled folders contained in the wooden file cabinet drawers is marked "Exhibit A", attached hereto and specifically incorporated herein by reference. Some of the labeled files contained no documents. The items relating to HAVA were copied and placed in three separate boxes labeled S-105 Wooden File Cabinet Box 1, Box 2 and Box 3. These boxes were also produced to counsel for the Special Master on November 22, 2006.

c. There is a glass-door cabinet next to the wooden file cabinet in former counsel's anteroom. HAVA-related materials were removed and copied from that storage cabinet and are included in the wooden-file-cabinet boxes.

d. Computer technician, Anthony Powell, examined the hard drive of each computer known by him and staff to have any connection with HAVA. The purpose of this examination was to retrieve any electronic documents or computer-generated documents relating to HAVA. As a result of that search, one CD was reproduced from the hard drives of the computers examined by Mr. Powell. That CD was also produced to counsel for the Special Master on Wednesday, November 22, 2006, along with hard copies of the electronic data produced in the box labeled S-105 Wooden File Cabinet Box 2. The undersigned did not review the content of the CD. E-mails from the computer of Trey Granger were excluded from production until

Anthony Powell reviews all e-mail contents for HAVA-related communications. Said HAVA-related e-mail correspondences are to be produced via CD and hard copy no later than Tuesday, November 28, 2006, as agreed upon between Special Master counsel Scott Rouse and co-counsel for Secretary Worley, Terrie Biggs.

e. Secretary Worley produced from her personal calendar handwritten vendor evaluation totals along with the tally sheets personally prepared by Secretary Worley during the vendor evaluation process. These documents were placed in a manila envelope and produced in a box labeled Room S-105 Wooden File Cabinet, Box 3.

f. An examination was conducted of the Secretary of State's warehouse located at 1409 Highland Avenue in Montgomery, Alabama, on November 21, 2006. The warehouse contains an excess of 20,000 square feet and has been used by various Secretaries of State for storage over the years. I was assisted in the warehouse search by co-counsel Terrie S. Biggs and by Secretary of State employee Barnard McCaster. We located the area in the warehouse used to store records during Ms. Worley's tenure as Secretary of State. Barnard McCaster, who served under Secretaries of State Bennett and Worley, described the warehouse process. The warehouse was well-organized into general ballots, absentee ballots, constitutional amendments, Board of Adjustment, archives and history, foreign and domestic corporations,

limited partnerships, Acts of Alabama, House and Senate journals, UCC and the Alabama Code. Most of the items relating to elections came directly by Federal Express or were hand-delivered by county officials. The boxes containing ballots were marked by county and date.

Barnard had personally searched the entire warehouse for any records relating to HAVA. He found none. He knows of no entries on their inventory list that relate to HAVA. The undersigned could find no documents that related to HAVA.

2. The undersigned again invited counsel for the Special Master to accompany him on a tour of the Secretary of State's office to review any records or documents believed to be related to HAVA. Counsel for the Special Master and Worley agreed that they would confer with the records on Monday with Trey Granger and revisit the question of production after that meeting.

Respectfully submitted this the 22nd day of November, 2006.

Capell & Howard, P.C.

By: /s/ George L. Beck, Jr.
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CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of November, 2006, 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:

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