

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, *et al.*,)
)
Defendants.)

MOTION TO WITHDRAW

Margaret L. Fleming, Winfield J. Sinclair, and Misty S. Fairbanks, Assistant Attorneys General for the State of Alabama (hereinafter, the “undersigned counsel”), in accordance with Rule 1.7 of the Alabama Rules of Professional Conduct, respectfully move the Court for leave to withdraw as counsel for Nancy L. Worley, in her official capacity as Secretary of State, and as grounds therefor, state the following:

1. The undersigned counsel represent both the State of Alabama and the Secretary of State in her official capacity in this litigation.
2. It is in the best interests of the State of Alabama to achieve full compliance with all the provisions of the Help America to Vote Act of 2002 (HAVA) as soon as possible, to comply with all orders of this Court, and to cooperate with the Special Master’s HAVA Implementation Committee.

3. On October 3, 2006, the Special Master's Second (October 2006) Interim Report (doc. 73) was filed. The Report states that the Secretary of State has failed to cooperate fully with the Special Master's HAVA Implementation Committee. Specifically, the Report states that the Secretary has not provided an adequate response to the Committee's request for documents necessary to the Committee's development and implementation of a HAVA-compliant voter registration system.

4. Based on the Special Master's Second (October 2006) Interim Report (doc. 73), subsequent filings of the parties and orders of the Court related thereto, and the status conferences held this week, it appears the Court may be contemplating contempt proceedings against the Secretary of State for her alleged failure to cooperate with the Special Master's HAVA Implementation Committee.

5. The contempt sanctions available to this Court, should it find the Secretary of State in contempt, would include the imposition of fines as well as incarceration.

6. Should this Court hold the Secretary of State in contempt, the primary interest of the State of Alabama would be to protect the State Treasury.

7. Rule 1.7 of the Alabama Rules of Professional Conduct provides that an attorney should not represent a client "if the representation of that client will be

directly adverse to another client” or if the representation “may be materially limited by the lawyer’s responsibilities to another client.”

8. In light of the current posture of this case, both procedurally and factually, we believe the most prudent and appropriate course of action is for the undersigned counsel to withdraw their representation of the Secretary of State.

9. Under Alabama law, “All litigation concerning the interest of the state, or any department of the state, shall be under the direction and control of the Attorney General.” Ala. Code § 36-15-21 (2001).

10. The Secretary of State has recently refused to recognize the statutory authority of the Attorney General to control litigation affecting the interests of the State of Alabama, and she has refused the assistance of the undersigned legal counsel. *See, e.g.*, doc. 75, Exhibit A (“I am NOT represented by the Attorney General’s Office.”).

11. The Attorney General cannot abdicate his statutory responsibility to the people of Alabama to control all litigation affecting their interests. Because of the importance of avoiding the imposition of monetary sanctions against the State Treasury, and in an attempt to make every effort to persuade the Secretary of State to cooperate with the Special Master’s HAVA Implementation Committee, the Attorney General is in the process of appointing another attorney as a Deputy

Attorney General to represent the Secretary of State in her official capacity with regard to the threatened contempt proceedings.

12. The additional expense to the taxpayers of Alabama that will result from the employment of outside legal counsel to represent the Secretary of State in this matter is regrettable; however, it is necessary given (a) the refusal of the Secretary of State to accept representation by the Attorney General's staff *and* (b) the immediate threat of the imposition of fines that could adversely affect the State Treasury if the Secretary of State does not cooperate with the Special Master's HAVA Implementation Committee.

13. The Secretary of State will not be prejudiced by this withdrawal.

Respectfully submitted,

TROY KING
ATTORNEY GENERAL
BY:

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Assistant Attorney General

s/Winfield J. Sinclair
Assistant Attorney General
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CERTIFICATE OF SERVICE

This is to certify that on the 26th day of October, 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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