

**IN THE UNITED STATES DISTRICT COURT
FOR NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RICHARD GOODEN, *et al.*,

Plaintiffs,

v.

NANCY WORLEY, *et al.*,

Defendants.

Case No. 2:05-cv-2562

STIPULATION OF UNDISPUTED FACTS

For use in this litigation and for no other purpose, the parties stipulate to the following statement of undisputed facts:

1. Each county in Alabama has a board of three voter registrars, except Jefferson, Barbour, and Talladega counties. Jefferson County has one registrar, and both Talladega County and Barbour County have four. In this Stipulation, the Jefferson County Registrar and the boards of registrars in the other 66 counties will be referenced collectively as “boards of registrars.”

2. In 1995-1996, the Alabama Legislature proposed, and the people ratified, Act 95-443, which proposed a constitutional amendment to repeal Article VIII of the Constitution of Alabama of 1901 regarding voting, and replace it with Section 177.

3. The Alabama Constitution, Article VIII, Section 177 (Recompiled), now provides in pertinent part:

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The

Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

4. The State of Alabama, on April 16, 1996, submitted Act No. 95-443 to the U.S. Attorney General for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, and in a letter dated June 24, 1996, the U.S. Assistant Attorney General for Civil Rights interposed no objection to (and thus “precleared”) Act No. 95-443. *See* Exhibit 1 attached.

5. RICHARD GOODEN is a 64-year-old African American of lawful voting age, a citizen of the United States and a lifetime resident of Birmingham, Alabama. Plaintiff Gooden was registered to vote from the mid-1960s until 2000, when he was convicted of a felony — driving under the influence of alcohol (DUI).

6. ANDREW JONES is a 47-year-old African American of lawful voting age, a citizen of the United States and a resident of Birmingham, Alabama. Mr. Jones was registered to vote from the mid-1970s until the early 1990s, when he was convicted of felony possession of drugs.

7. EKEYESTO DOSS is a 26-year-old African American of lawful voting age, a citizen of the United States and a resident of Dothan, Alabama. Mr. Doss was registered to vote from November 17, 1997 until November 3, 2003, after he was convicted of felony possession of marijuana (in violation of Ala. Code section 13A-12-213) and theft of property in the second degree (in violation of Ala. Code section 13A-08-04).

8. Alabama Code Section 17-4-136 provides as follows: “The Secretary of State may promulgate rules for the receipt of applications for registration and the expedient administration of those applications, but no person shall be registered until a majority of

the board of registrars has passed favorably upon the person's qualifications." Ala. Code §17-4-136 (1995).

9. NELL HUNTER is the Jefferson County Voter Registrar, and, as such, is vested with the authority under Alabama Code Section 17-4-136 to grant or refuse an individual's application to register to vote in Jefferson County.

10. ANITA GIBSON, WALTER LONG, and MOLLY MEADOWS are the Houston County Voter Registrars, and, as such, are vested with the authority under Alabama Code Section 17-4-136 to grant or refuse an individual's application to register to vote in Houston County.

11. No authority is given to the Secretary of State under Alabama law either to register voters or to direct county boards of registrars with respect to the registration of particular voters. However, pursuant to Administrative Code of Alabama, the Secretary of State has removal power over members of boards of registrars.

12. Act No. 78-584, precleared on June 12, 1978, and codified at § 17-4-22 of the Code of Alabama 1975, also provides, in pertinent part, as follows:

. . . In order to aid the registrars to judicially determine if applicants to register have the qualifications to register to vote, each applicant shall be furnished by the board a written application, which shall be uniform in all cases with no discrimination as between applicants, the form and contents of which application shall be prescribed by the Supreme Court of Alabama and be filed by such court with the Secretary of State of the State of Alabama. The application shall be so worded that there will be placed before the registrars information necessary or proper to aid them to pass upon the qualifications of each applicant. . .

Ala. Code § 17-4-22 (1995).

13. By order of the Alabama Supreme Court dated October 22, 1999, two voter registration forms were approved pursuant to Ala. Code § 17-4-22, as set out in the Alabama Code Commissioner's Notes following that section. The first form is entitled

“State of Alabama Agency-Based Voter Registration Form” and is known as “NVRA-1.” The second form is entitled “State of Alabama Postcard Voter Registration Form” and is known as “NVRA-2.” Copies of those forms are attached as Exhibit 2.

14. Form NVRA-2 is published by the Secretary of State on her website (at <http://www.sos.state.al.us/downloads/election/vr/nvra-2.pdf>).

15. The Secretary of State makes Form NVRA-2 available for printing and use as a mail-in application for voter registration.

16. The Secretary of State makes available Form NVRA-1 (A/B) for use by the “voter registration agencies.”

17. The State of Alabama submitted Forms NVRA-1 and NVRA-2 to the U.S. Attorney General for preclearance by letter dated November 10, 1999, a copy of which is attached as Exhibit 3.

18. In a January 14, 2000, letter to Lynda K. Woodall, Alabama Assistant Attorney General, the U.S. Assistant Attorney General for Civil Rights interposed no objection to (and thus “precleared”) Forms NVRA-1 and NVRA-2. A copy of that letter is attached as Exhibit 4.

19. A comparison of the Forms NVRA-1 and NVRA-2 available from the Secretary of State with those Forms NVRA-1 and NVRA-2 precleared on January 14, 2000, reveals only minor, technical revisions (*e.g.*, name change for the Secretary of State, updated Autauga County mailing address).

20. Forms NVRA-1 and NVRA-2 are voter registration applications containing this statement: “To register to vote in the State of Alabama, you must: . . . have not been convicted of a felony, or if you have been convicted, you must have had your civil rights restored.”

21. Registrars throughout the State use Forms NVRA-1 and NVRA-2, last precleared by the U.S. Attorney General on January 14, 2000, or one substantially similar, containing the statement that to be eligible to vote, the applicant must not have been convicted of a felony.

22. The State of Alabama submitted Alabama Act 2003-313 to the U.S. Attorney General for preclearance on September 15, 2003, and received preclearance on November 17, 2003. *See*, Exhibit 5 attached.

23. The Secretary of State adopted regulations on January 10, 2001, regulating voter registration. *See* Ala. Admin. Code Chapter 820-2-2 (<http://www.alabamaadministrativecode.state.al.us/docs/sos/2sos2.htm>). Section 820-2-2-.05 provides that the “voter registration agencies” shall use the voter registration form prescribed by the Secretary of State. The state submitted these regulations to the Justice Department for preclearance and received a “no objection” letter on November 28, 1994. *See* Exhibit 6 attached. The state submitted a reorganization of the regulations to the Justice Department for preclearance on January 30, 2001 and received a “no objection” letter on or about March 21, 2001. *See* Exhibit 7 attached.

24. The term “voter registration agencies” in this Stipulation refers to agencies listed in Ala. Code § 17-4-250.

25. For years prior to 2005, the Jefferson County Registrar and the Houston County Board of Registrars had a practice of denying the voting applications of all persons convicted of felonies, without first seeking to determine whether such felonies had been determined by Alabama courts to “involve moral turpitude,” and instructing felons who sought to register to vote in Alabama to seek a Certificate of Eligibility from the Alabama Board of Pardons and Paroles.

26. It is the current practice of the Jefferson County Registrar to permit felons whose only felony convictions are for crimes that do not involve moral turpitude, as that phrase is defined by the appellate courts of Alabama, to register to vote. To determine whether particular felonies involve moral turpitude under Alabama case law, the Registrar consults both Attorney General's Opinion 2005-092, and attorneys, including staff attorneys employed as Assistant Attorneys General in the Office of the Attorney General, as needed. The Registrar does not consult the Secretary of State, who is not an attorney and who is not qualified to render legal advice.

27. The current practice of the Houston County Board of Registrars is as follows: When an applicant seeks to register to vote in Houston County, the Board of Registrar's current practice is for the registrar to ask the applicant to fill out the form provided by the Secretary of State which asks whether the applicant has been convicted of a felony. The registrar also runs the applicant's name on a database maintained by the Secretary of State's office. (The database does not identify any felony conviction that might appear there as either a crime of moral turpitude or not). If the applicant admits a felony conviction and/or the database shows a felony conviction, the registrar asks the applicant to produce evidence that either their felony conviction did not involve a crime of moral turpitude or that the applicant's rights have been restored by the Board of Pardons & Parole. To prove that the applicant's felony conviction did not involve a crime of moral turpitude, the applicant may produce either a certified copy of their criminal file from the jurisdiction of conviction or a letter from the Alabama Board of Pardons & Parole stating that their felony conviction did not involve a crime of moral turpitude. To prove that the Board of Pardons and Parole has restored their civil rights, the applicant must produce a Certificate from the Board so stating. If the Applicant either is incapable of producing (or

refuses to produce) evidence that their felony conviction did not involve a crime of moral turpitude, or, the Applicant cannot produce evidence that his rights have been restored by the Board of Pardons and Paroles despite a prior felony conviction of a crime of moral turpitude, the applicant is referred to the procedures for appeal set out in Alabama Code § 17-4-124. Additionally, when the registrar receives the list of felony convictions from the Houston County Circuit Clerk's office, the registrar will inform those listed by certified mail that the convicted felon has thirty days to provide evidence (as described above) that he should be entitled to vote because his felony conviction was not involving a crime of moral turpitude or that, alternatively, that his civil rights have been restored by the Board of Pardons and Paroles. If the convicted felon cannot or will not provide such evidence to the Registrar, his name will be purged from the voting lists and his recourse will be to follow the appeal procedures set out in Alabama Code § 17-4-124.

28. Act 2003-415, codified at § 15-22-36.1 of the Code of Alabama 1975, provides, in pertinent part, as follows:

(a) Any other provision of law notwithstanding, any person, regardless of the date of his or her sentence, may apply to the Board of Pardons and Paroles for a Certificate of Eligibility to Register to Vote if all of the following requirements are met:

(1) The person has lost his or her right to vote by reason of conviction in a state or federal court in any case except those listed in subsection (g).

. . .

(g) A person who has lost his or her right to vote by reason of conviction in a state or federal court for any of the following will not be eligible to apply for a Certificate of Eligibility to Register to Vote under this section: Impeachment, murder, rape in any degree, sodomy in any degree, sexual abuse in any degree, incest, sexual torture, enticing a child to enter a vehicle for immoral purposes, soliciting a child by computer, production of obscene matter involving a minor, production of obscene matter, parents or guardians permitting children to engage in obscene matter, possession of obscene matter, possession with intent to distribute child pornography, or treason.

Ala. Code § 15-22-36.1 (1995).

29. The State of Alabama submitted Alabama Act 2003-415 to the U.S. Attorney General for preclearance on January 16, 2004, and it was precleared March 19, 2004. *See* Exhibit 8 attached.

30. On March 18, 2005, the Alabama Attorney General issued Opinion 2005-092 which explained that a person convicted of a felony not involving moral turpitude remains eligible to vote and is, therefore, ineligible to apply to the Alabama Board of Pardons and Paroles for a Certificate of Eligibility under Ala. Code § 15-22-36.1 (1995). *See* Exhibit 9 attached.

31. After the issuance of Attorney General's opinion 2005-092, the Alabama Board of Pardons and Paroles refused to issue a Certificate of Eligibility to persons who had been convicted of felonies that were specifically identified in Attorney General's opinion 2005-092 as crimes not involving moral turpitude.

32. The Alabama Board of Pardons and Paroles stated, in a May 17, 2005, press release, that people convicted of felony offenses not involving "moral turpitude," such as felony driving under the influence and felony possession of drugs, need not (and, in fact, cannot) apply for a Certificate of Eligibility since such individuals never lost their right to vote. *See* Exhibit 10 attached.

33. On 27 May 2005, Secretary of State Worley sent a letter to each registrar in the State informing them that she had asked for an opinion from the Attorney General about which crimes were disfranchising. *See* Exhibit 11 attached.

34. After Attorney General's opinion 2005-092 was issued, in response to questions from various boards of registrars, the Secretary of State advised the registrars to continue their long-standing practices and not to make any changes to their practices until

the Attorney General issues a response to legal questions posed by the Secretary of State and all the legal and administrative issues can properly be resolved.

35. In November 2005, Secretary of State Worley had a series of regional meetings with registrars around the state. In those meetings she distributed an agenda a copy of which is attached as Exhibit 12.

36. On January 10, 2006, Alabama Attorney General's opinion 2005-092 was distributed by the office of the Attorney General to all the county boards of registrars in Alabama by facsimile and by U.S. Mail, and county boards of registrars were invited to seek the opinion of the Alabama Attorney General if they need legal assistance in determining whether a particular felony involves moral turpitude.

37. At the time of the enactment of Act 95-443, which repealed Article VIII of the Constitution of Alabama of 1901 regarding voting, replacing it with Section 177, until June 2003, the Office of Voter Registration was a separate and distinct state agency that was not under the umbrella of the Office of Secretary of State. After June 2003, when the Office of Voter Registration was fused into the Office of Secretary of State, until her resignation in 2004, Anita Tatum, the former Director of the Alabama Office of Voter Registration, served as the Supervisor of the Voter Registration Division of the Office of Secretary of State. From 1996 through 2004, Anita Tatum and her staff provided all training to the county boards of registrars, and no other training was provided by the Office of Secretary of State.

38. Notwithstanding the ratification by the people of Alabama of the constitutional amendment narrowing the scope of the State's felon disfranchisement law to felons who have committed crimes of moral turpitude, the Attorney General's Opinion, and the press release issued by the Board of Pardons and Paroles, Plaintiff Gooden was

instructed by Defendant Jefferson County Registrar to apply to the Board of Pardons and Paroles for a Certificate of Eligibility.

39. An employee of the Board of Pardons and Paroles telephoned Defendant Jefferson County Registrar on September 21, 2005, and explained that Plaintiff Gooden was not disqualified from voting since his felony conviction did not involve moral turpitude, and, therefore, that a Certificate of Eligibility was not necessary for him to register to vote.

40. Defendant Jefferson County Registrar informed the Board of Pardons and Paroles that the Defendant Secretary of State had advised them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, without regard to whether or not such felony convictions involved moral turpitude.

41. In a June 20, 2005 letter to Plaintiff Jones, the Board of Pardons and Paroles explained that after reviewing his “application for a Certificate of Eligibility to Register to Vote, we have determined that you were convicted of possession of a controlled substance,” which is a felony “that does not appear to this agency to involve moral turpitude.” The Board of Pardons and Paroles determined that, according to Amendment 579 of the Alabama Constitution, Mr. Jones’ “conviction does not disqualify [him] from voting.” The Board of Pardons and Paroles, therefore, asserted that “we are closing our file on your application, as you do not need a certificate in order to be eligible to register.”

42. Defendant Jefferson County Registrar, in a June 30, 2005, letter to Plaintiff Jones, stated that his Voter Registration Form could not be processed because “a person convicted of a felony offense is barred from voting, unless there has been a reinstatement of voting rights.”

43. Defendant Jefferson County Registrar referred Plaintiff Jones to the Board of Pardons and Paroles to “get [his] voting rights restored.” “If you have already done this,” the letter concluded, “mail a copy of your Certificate of Pardon or Certificate of Registration of Voter Rights to the Jefferson County Board of Registrars.”

44. The preceding paragraph notwithstanding, prior to his filing this lawsuit on December 19, 2005, Plaintiff Jones received a Voter Registration Card. The card instructed Jones as to his polling place for “all elections — except municipal.” The card Jones received was a standard card issued by the Jefferson County Registrar to all voters. The “except municipal” designation did not limit Jones’ right to vote but was instead intended to alert Jones that his polling place for municipal elections was in a different location from that shown on the card.

45. Plaintiff Doss informed via certified mail that due to his conviction his name was to be purged from the voting rolls by Defendant Houston County Registrar and that his remedy was to appear at the Registrar’s office and contest the purging of his name. The letter also requested that Doss produce a certificate of eligibility from the Board of Pardons if his voting civil rights had been restored. Doss never contested the purging of his name or provided a certificate of eligibility.

46. Act No. 78-584, codified at § 17-4-124 of the Code of Alabama 1975, provides, in pertinent part, as follows:

Any person to whom [voter] registration is denied shall have the right of appeal, without giving security for costs, within 30 days after such denial, by filing a petition in the circuit court in the county in which he or she seeks to register, alleging that he or she is a citizen of the United States over the age of 18 years having the qualifications as to residence prescribed by law and entitled to register to vote under the provisions of the Constitution of Alabama, as amended. Upon the filing of the petition, the clerk of the court shall give notice thereof to the district attorney authorized to represent the state in said county, who shall appear and defend against the petition on behalf of the state. The issues shall be tried

in the same manner and under the same rules that other cases are tried in such court and by a jury, if the petitioner demands it. The registrars shall not be made parties and shall not be liable for costs. An appeal will lie to the Supreme Court in favor of the petitioner if taken within 42 days from the date of the judgment. Final judgment in favor of the petitioner shall entitle him or her to registration as of the date of his or her application to the registrars.

Ala. Code § 17-4-124 (1995).

47. The State of Alabama submitted Act No. 78-584 to the U.S. Attorney General for preclearance pursuant to Section 5 of the Voting Rights Act of 1965, and Act No. 78-584 was precleared by the Assistant U.S. Attorney General for Civil Rights on June 12, 1978. *See* Exhibit 13 attached.

48. The docket fee for a complaint or petition in the Circuit Court under Ala. Code § 17-4-124 is set by Ala. Code § 12-19-71.

49. Pursuant to Ala. Code § 12-19-70, the docket fee set by Ala. Code § 12-19-71 “may be waived initially and taxed as costs at the conclusion of the case if the court finds that payment of the fee will constitute a substantial hardship.”

50. Under Alabama Rule of Civil Procedure 54(d), court costs, including the docket fee for a complaint, “shall be allowed as of course to the prevailing party unless the court otherwise directs.”

51. Plaintiffs’ claims are the subject of an ongoing state court proceeding.

52. On September 29, 2005, Plaintiff Richard Gooden filed a complaint in the Circuit Court for Jefferson County, Alabama, Civil Action Number CV 05-5778 (the “state court action”) “on behalf of himself and all others similarly situated.” A copy of the initial complaint (without exhibits) in the state court action is attached as Exhibit 14.

53. In Count Three of his complaint in the state court action, the Plaintiff Gooden appealed the decision of the Jefferson County Registrar denying him the right to vote, pursuant to Ala. Code § 17-4-124. Exhibit 14 at ¶ 26.

54. In the state court action, Plaintiff Gooden requested “an order under Ala. Code § 17-4-124 reversing the refusal of the Jefferson County Registrar to register him.” Exhibit 14 at ¶ 30.

55. The next day, on September 30, 2005, after conferring with counsel for the Plaintiff and the Defendant Jefferson County Registrar, the Jefferson County Circuit Court entered the following order:

The parties having agreed that the relief requested in Count Three is due to be granted, IT IS HEREBY ORDERED that Nell Hunter, in her capacity as Jefferson County Voter Registrar, shall forthwith and upon a new application by plaintiff Richard Gooden register him as a voter as provided in Ala. Code § 17-4-124. This relief is interim relief only, does not constitute final relief in the case, and shall be without prejudice to any other claims made in the complaint, or any defenses to those claims that may be duly raised.

A copy of the Circuit Judge’s order in the state court action is attached as Exhibit 15.

56. On November 23rd, the State of Alabama moved to intervene as a party in the state court action and filed an answer confessing judgment as to the relief requested by the Plaintiff Gooden in Count Three of his complaint. The State of Alabama’s motion to intervene was granted.

57. On December 19, 2005, Plaintiffs Andrew Jones and Ekeyesto Doss moved to intervene as plaintiffs in the state court action.

58. On December 19, 2005, Plaintiffs Gooden, Jones and Doss filed their First Amended Complaint in the state court action and also filed their Complaint in this action. A copy of the First Amended Complaint (without exhibits) is attached as Exhibit 16.

59. On December 19, 2005, when their complaint in this case was filed and when the First Amended Complaint was filed in the state court action, the Circuit Court of Jefferson County had already entered an order compelling the Jefferson County Registrar to register the Plaintiff Richard Gooden to vote.

60. On December 19, 2005, when this case was commenced and when the First Amended Complaint was filed in the state court action, the Plaintiff Andrew Jones had already been registered to vote by the Jefferson County Registrar. See Voter Registration Card, attached as Exhibit G to the First Amended Complaint and attached to this Stipulation as Exhibit 17.

61. The Plaintiff Doss, whose application to vote was denied by the Houston County Board of Registrars, has never filed an appeal in the Circuit Court for Houston County, pursuant to Ala. Code § 17-4-124, to challenge that decision.

62. According to the Fiscal Year 2004-2005 Annual Report (page 35) of the Alabama Board of Pardons and Paroles, there were 469 “pardons w/ restoration of civil & political rights granted” and 1,233 “voters [sic] rights restored.” The report is available at <http://www.pardons.state.al.us/alabpp/main/ALABPP%20MAIN.htm> by clicking on the “Statistics” link.

63. Alabama statutes require that the Alabama Board of Pardons and Paroles (the "Agency") entertain applications for Certificates of Restoration of Voter Registration Rights and either issue the certificate or respond to the applicant why the certificate could not be issued. The Agency conducts an investigation concerning each application to determine if the applicant is eligible under the law to receive the certificate. If so, the certificate is issued. If the applicant is not eligible to receive the certificate, a letter is sent to the applicant stating the reasons he is not eligible. If the applicant's convictions are not convictions that disenfranchised the applicant from voting, a letter is issued to the applicant so stating, in the same format as the letter attached as Exhibit 18.

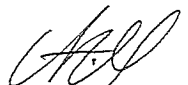
64. To date, approximately 330 letters in the format attached as Exhibit 18 have been sent by the Agency.

65. On March 29, 2006, the Secretary of State issued a letter to Alabama Voter Registrars that included the following statement: “The felon voter registration case is currently in Federal Court; therefore, our office cannot comment on this issue other than to say we continue to await guidance from the Courts or the Attorney General's Office on this matter before we give you any further information or advice.”

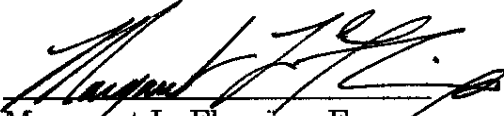
66. The Secretary of State submitted proposed voter registration forms to the Alabama Supreme Court on March 15, 2006. See Exhibit 19. As of the date of filing of these stipulations of undisputed facts, the Supreme Court had not yet acted to adopt the forms.

67. In *Gooden v. Worley*, pending in Jefferson County Circuit Court, the plaintiffs served discovery on all defendants. The defendant Nell Hunter has answered the interrogatories and attached, among other items, a transcript of a recording made by her agents at a meeting of the Secretary of State with a group of registrars on November 9, 2005. See Exhibit 20 attached.

The parties agree to the above stipulations of agreed facts.

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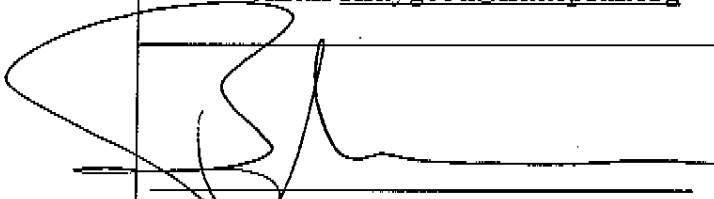
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