

Computerized Voter Registration List

United States v. Alabama

(*W. Keith Watkins, M.D. Ala. 2:06-cv-392*)

Five weeks before Alabama's June 6, 2006, primary election, which included primaries for federal offices, Attorney General Alberto Gonzales filed a federal action seeking enforcement of the Help America Vote Act (HAVA)¹ in the Middle District of Alabama, the district that includes Montgomery, the state's capital.² With the complaint, the government filed a motion for a preliminary injunction.³ On the following day, the court assigned the case to Judge W. Keith Watkins.⁴

Alabama was not in compliance with HAVA's section 303 respecting "computerized statewide voter registration list requirements and requirements for voters who register by mail."⁵ On May 3, the lawsuit's third day, Judge Watkins issued an order to show cause on May 30 why he should not issue a preliminary injunction forbidding failure to comply with HAVA and requiring a plan of compliance.⁶ Judge Watkins issued the order on papers alone, without a proceeding, as a way to get the case moving.⁷

At the May 30 hearing, Judge Watkins issued preliminary injunction instructions orally.⁸ A written order followed one week later, the day after the primary election.⁹

The preliminary injunction required Alabama to present a compliance plan by June 29, to be reviewed at a July 20 hearing.¹⁰ At the hearing, Judge

1. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145 (2014). *See generally* Marie Leary & Robert Timothy Reagan, The Help America Vote Act (Federal Judicial Center 2012); Symposium, *HAVA @ 10*, 12 Election L.J. 111 (2013).

2. Complaint, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. May 1, 2006), D.E. 1; *see* Mary Orndorff, *U.S. Sues State Over Voter Database*, Birmingham News, May 3, 2006, at 6C.

3. Preliminary Injunction Brief, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. May 1, 2006), D.E. 3; Preliminary Injunction Motion, *id.* (May 1, 2006), D.E. 2.

4. Docket Sheet, *id.* (May 1, 2006).

Tim Reagan interviewed Judge Watkins for this report by telephone on June 6, 2012.

5. Preliminary Injunction at 2, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. June 7, 2006), D.E. 16, 2006 WL 1598839; *see* HAVA § 303, 52 U.S.C. § 21083 (2014); *see also* Transcript at 10, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. May 30, 2006, filed June 30, 2006), D.E. 26 ("The State has admitted to an actual violation . . .").

6. Order to Show Cause, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. May 3, 2006), D.E. 4.

7. Interview with Hon. W. Keith Watkins, June 6, 2012.

8. Transcript, *supra* note 5, at 36–40; Minute Entry, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. May 30, 2006), D.E. 14.

9. Preliminary Injunction, *supra* note 5.

10. *Id.* at 11; Transcript, *supra* note 5, at 39.

Watkins ordered compliance by August 31, 2007, in time for the 2008 primary.¹¹

Because Alabama's secretary of state said that she could not ensure compliance with the court's order, Judge Watkins appointed Alabama's governor as a special master to supervise compliance.¹² Before he appointed the governor, Judge Watkins consulted with a former secretary of state, who told the judge that only the governor had the authority to achieve HAVA compliance.¹³ Anyone else would have to seek numerous compliance orders from the judge.¹⁴

Over the couple of weeks following the July 20 hearing, the chair of Alabama's Democratic Party¹⁵ and the chair of the Alabama Democratic Conference¹⁶ moved to intervene to challenge appointment of the Republican governor as the special master. Judge Watkins held a public hearing on the motions;¹⁷ he thought it was important to hear the concerns in open court.¹⁸ He held, however, that the motions were not timely.¹⁹

On October 24, 2007, Judge Watkins determined that Alabama was in compliance with HAVA.²⁰ Governor Bob Riley submitted his twenty-first and final status report on August 22, 2008.²¹ The court entered a final order and judgment on September 18.²² The governor's special-master work was considerably more successful than Judge Watkins even imagined it would be.²³

In resolving this case, Judge Watkins was mindful that political considerations should not have anything to do with how a federal judge resolves an election case, and this was much more about technology than it was about policy.²⁴

In 2006, Attorney General Gonzales also filed a HAVA action against New York in the Northern District of New York.²⁵ Three weeks later, Judge Gary L.

11. Order at 4, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. July 21, 2006), D.E. 38 [hereinafter July 21, 2006, Order].

12. Special Master Order, *id.* (Aug. 8, 2006), D.E. 64; July 21, 2006, Order, *supra* note 11, at 4–5.

13. Interview with Hon. W. Keith Watkins, June 6, 2012.

14. *Id.*

15. Motion to Intervene, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. July 27, 2006), D.E. 42

16. Motion to Intervene, *id.* (Aug. 1, 2006), D.E. 56.

17. Minutes, *id.* (Aug. 2, 2006), D.E. 59.

18. Interview with Hon. W. Keith Watkins, June 6, 2012.

19. Opinion at 12–17 & n.14, *United States v. Alabama*, No. 2:06-cv-392 (M.D. Ala. Aug. 8, 2006), D.E. 63, 2006 WL 2290726.

20. Final Order and Judgment at 2, *id.* (Sept. 18, 2008), D.E. 160.

21. Final Special Master Status Report, *id.* (Aug. 22, 2008), D.E. 153.

22. Final Order and Judgment, *supra* note 20.

23. Interview with Hon. W. Keith Watkins, June 6, 2012.

24. *Id.*

25. Complaint, *United States v. N.Y. State Bd. of Elections*, No. 1:06-cv-263 (N.D.N.Y. Mar. 1, 2006), D.E. 1; see Michael Cooper, *New York Is Sued by U.S. on Delay of Vote System*, N.Y. Times, Mar. 2, 2006, at A1 (“The first lawsuit the federal government has filed to force a

Sharpe issued a preliminary injunction requiring New York to submit to the court a plan for compliance.²⁶ Court supervision of New York's compliance efforts continued until December 3, 2014.²⁷

state to comply with the voting guidelines enacted by Congress after the 2000 election debacle.”); Michael Cooper, *U.S. Warns Albany of Suit Over Slow Vote Modernization*, N.Y. Times, Jan. 12, 2006, at B1; Orndorff, *supra* note 2.

26. Preliminary Injunction, *N.Y. State Bd. of Elections*, No. 1:06-cv-263 (N.D.N.Y. Mar. 23, 2006), D.E. 38.

27. Docket Sheet, *id.* (Mar. 1, 2006) (D.E. 450); *see* Status Report, *id.* (June 10, 2014), D.E. 444 (183d status report).