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**FEB 15 2008**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

**FILED**

FEB 15 2008

By *[Signature]*  
DARRYL CREWS, CLERK  
Deputy

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BOLIVAR COUNTY, MISSISSIPPI; )  
 MARILYN KELLY, Bolivar County )  
 Circuit Clerk, in her official capacity; the )  
 BOLIVAR COUNTY ELECTION )  
 COMMISSION; and BOLIVAR COUNTY )  
 ELECTION COMMISSIONERS DAVID )  
 WASHINGTON, DEBBIE DUNCAN, )  
 ROBERT SCOTT, YVONNE HANNAH, )  
 and VICTOR BAIONI, in their official )  
 capacities, )  
 Defendants. )

Civil Action No. 2:08CV33-B-A

**COMPLAINT**

Plaintiff, the United States of America herein, alleges:

1. The Attorney General of the United States hereby files this action on behalf of the United States of America to enforce the requirements of Section 302(a) of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. § 15482, with respect to the conduct of elections for Federal office in Bolivar County, Mississippi.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 15511, and 28 U.S.C. § 2201.

3. Venue for this action is proper in the United States District Court for the Northern District of Mississippi, pursuant to 28 U.S.C. §§ 104 and 1391(b). The events relevant to this

action occurred in Bolivar County, which is located within the jurisdictional territory of the United States District Court for the Northern District of Mississippi, Delta Division.

**PARTIES**

4. Plaintiff United States of America seeks declaratory and injunctive relief pursuant to Section 401 of HAVA, 42 U.S.C. § 15511, which authorizes the Attorney General to bring this suit to enforce HAVA.

5. Defendant BOLIVAR COUNTY is a political and geographical subdivision of the State of Mississippi.

6. Defendant MARILYN KELLY is the Bolivar County Circuit Clerk and is, in that capacity, responsible for conducting elections in Bolivar County. As a matter of practice, the County Circuit Clerk functions as the chief election official responsible, *inter alia*, for conducting canvasses during elections for Federal office. Ms. Kelly is sued in her official capacity.

7. Defendant BOLIVAR COUNTY ELECTION COMMISSION is, along with the Circuit Clerk, responsible for conducting elections in Bolivar County. The Commission's members, DAVID WASHINGTON, DEBBIE DUNCAN, ROBERT SCOTT, YVONNE HANNAH, and VICTOR BAIONI, are sued in their official capacities.

**HAVA SECTION 302(a) PROVISIONS**

8. Section 302(a) of HAVA requires that jurisdictions conducting elections involving a Federal office must provide a provisional ballot "[i]f an individual declares that such individual is a registered voter in the jurisdiction in which the individual desires to vote and that the individual is eligible to vote in an election for Federal office, but the name of the individual

does not appear on the official list of eligible voters for the polling place or an election official asserts that the individual is not eligible to vote.” 42 U.S.C. § 15482(a).

9. Sections 302(a)(1) and (2) of HAVA provides that prior to the casting of a provisional ballot, an election official at the polling place shall notify the individual that the individual may cast a provisional ballot in that election, and the individual shall execute a written affirmation before an election official at the polling place stating that the individual is a registered voter in the jurisdiction in which the individual desires to vote and is eligible to vote in that election. 42 U.S.C. § 15482(a)(1) and (2).

10. Section 302(a)(3) of HAVA requires that the election official at the polling place shall transmit the provisional ballot cast by the individual or the voter information contained in the written affirmation executed by the individual to an appropriate State or local election official for prompt verification. 42 U.S.C. § 15482(a)(3).

11. Section 302(a)(4) of HAVA requires that “[i]f the appropriate State or local election official to whom the ballot or voter information is transmitted [. . .] determines that the individual is eligible under State law to vote, the individual’s provisional ballot shall be counted as a vote in that election in accordance with State law.” 42 U.S.C. § 15482(a)(4).

12. Section 302(a)(5)(A) of HAVA requires that at the time an individual casts a provisional ballot, the State or local election official shall give the individual written information that states that any individual who casts a provisional ballot will be able to ascertain through a free access system whether the vote was counted, and, if the vote was not counted, the reason that the vote was not counted. 42 U.S.C. § 15482(a)(5)(A).

13. Section 302(a)(5)(B) of HAVA requires that “[t]he appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.” 42 U.S.C. § 15482(a)(5)(B).

14. Each State and jurisdiction must comply with Section 302 of HAVA in any election for Federal office by January 1, 2004. 42 U.S.C. § 15482(a) & (d).

15. For purposes of this Complaint, “affidavit ballots” used by the Defendants and the State of Mississippi pursuant to Mississippi Code Ann. § 23-15-573 are considered “provisional ballots.” See Section 302 of HAVA, 42 U.S.C. § 15482.

#### **CAUSE OF ACTION**

16. Plaintiff hereby re-alleges and incorporates by reference paragraphs one (1) through fifteen (15) above.

17. During the November 7, 2006, general election for Federal office, Defendants failed to establish a free access system to enable a voter who cast a provisional ballot to ascertain whether his or her provisional ballot was counted, and if the ballot was rejected, the reason for the rejection, as required under Section 302(a)(5) of HAVA, 42 U.S.C. § 15482(a)(5)(B).

18. Unless enjoined by this Court, Defendants will continue to violate Section 302(a) of HAVA by failing to establish a free access system for voters to ascertain whether their provisional ballots were counted during elections for Federal office.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America prays that this Court enter an order:

A. Declaring that Defendants have failed to comply with Section 302(a) of HAVA, 42 U.S.C. § 15482(a), with respect to establishing a free access system for a provisional voter to ascertain whether his or her provisional ballot was counted in an election for Federal office, and if not counted, the reason his or her ballot was rejected.

B. Enjoining Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing or refusing to comply with the requirements of Section 302(a) of HAVA;

C. Ordering Defendants, their employees, agents and successors in offices and all persons acting in concert with them, to develop a plan to remedy the demonstrated violations of Section 302(a) of HAVA before the next primary election for Federal office on March 11, 2008.

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Date: 15<sup>th</sup> day of February, 2008

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