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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil Action No. 2:08cv33-B-A
	)	
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.	)	
_____	)	

CONSENT DECREE, ORDER and JUDGMENT

The United States filed this action pursuant to Section 401 of the Help America Vote Act

of 2002 ("HAVA"), 42 U.S.C. § 15511, alleging that the Defendants violated HAVA by failing

to comply with Section 302(a) of HAVA, 42 U.S.C. § 15482(a). Specifically, the United States

alleged that the Defendants violated Section 302(a)(5)(B) of HAVA, 42 U.S.C. § 15482(a)(5)(B),

by not establishing a free access system that allows an individual voter who cast a provisional

ballot to discover whether his or her ballot was counted and, if the ballot was not counted, the

reason that the ballot was rejected. 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. Venue properly lies in the

Delta Division of Northern District of Mississippi, pursuant to 28 U.S.C. §§ 104 and 1391(b).

The United States and Defendants ("Parties") desire to resolve this matter without the need for litigation. The Parties have engaged in good faith negotiations and have agreed to the terms and requirements of this Consent Decree ("Decree") as an appropriate resolution of all claims alleged in this litigation. The Parties have agreed to waive a hearing. Defendants admit that they have not complied with all of the requirements of Section 302(a) of HAVA. Defendants are, however, committed to fully comply with all of such requirements in future elections for Federal office and stipulate that each provision of the Decree below is appropriate and necessary.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

1.   For purposes of this Decree and Section 302 of HAVA, "affidavit ballots" used by Defendants and the State of Mississippi pursuant to Mississippi Code Ann. § 23-15-573 are considered "provisional ballots," and are referred to as such hereinafter. See Section 302 of HAVA, 42 U.S.C. § 15482.

2.   Defendants, their agents, employees, contractors, successors, and all other persons representing the interests of Defendants are hereby PERMANENTLY ENJOINED from failing to provide a free access system for informing a voter who cast a provisional ballot ("provisional voter") about whether his or her provisional ballot was counted, and if the ballot was rejected, the reason for the rejection. See Section 302(a)(5) of HAVA, 42 U.S.C. § 15482(a)(5)(B).

3.   The terms of this Decree shall apply to all elections for Federal office, including primary elections for Federal office. Defendants have agreed to apply the procedures outlined in this Decree to all other County elections, consistent with the requirements of State law. See Mississippi Code Ann. § 23-15-573. Whenever Defendants enter into an election services contract or agreement with any other entity, political subdivision, or political party to conduct an

election on behalf of that entity, Defendants shall require such entity to agree to abide by the terms of this Decree as if such entity were a party to this Decree with the United States.

Information Relating to Provisional Ballots

4.   Defendants shall make available provisional ballots to County voters when the individual declares that he or she is a registered voter in the jurisdiction and is eligible to vote in an election for Federal office, but when the name of the voter does not appear on the official list of eligible voters for the polling place. 42 U.S.C. § 15482(a).

5.   Defendants shall ensure that poll workers instruct all voters who receive a provisional ballot of any relevant requirements of state law, including any requirement that provisional ballots cast in a precinct other than where the voter resides (i.e., the voter's "home precinct") will not be counted. Defendants shall ensure that poll workers determine by any means possible, including contacting the office of the Circuit Clerk, or consulting maps of voting precincts, whether a voter whose name is not on the precinct's voter registration list is in the appropriate precinct under state law, and if not, to direct that voter to the appropriate precinct. Defendants also shall ensure that poll workers instruct provisional voters to fill out the provisional ballot envelope completely, providing or allowing all necessary information and assistance, and that poll workers review the provisional ballot envelope to ensure that the ballot envelope is completely and properly filled out, and that poll workers mark plainly upon the ballot envelope the name of the person offering to vote. In elections that are administered by party officials, Defendants shall work with the party officials to ensure that poll workers are properly trained on all of these requirements.

6.   Defendants shall ensure that, at the time an individual voter casts a provisional ballot, poll workers shall in all cases provide the individual with written information that states

that the individual will be able to ascertain whether his or her vote was counted, and if the vote

was not counted, the reason the vote was not counted. The written information shall include a

phone number that voters can call, at no cost to the voter, to determine if their provisional ballots

were counted. 42 U.S.C. § 15482(a)(5)(A).

7.   Defendants shall establish a free access system (such as a toll-free number) 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.

Processing of Provisional Ballots

8.   During the canvass of provisional ballots, Defendants and all those acting in

concert with them shall create a list of every voter who casts a provisional ballot. Such list shall

indicate whether each provisional ballot was counted, and if the ballot was rejected, the reason

for the rejection. Defendants shall maintain a copy of that list in the Circuit Clerk's office, which

can be used to answer questions of provisional voters who contact Defendants regarding the

disposition of their provisional ballot.

9.   During the canvass of provisional ballots, the Defendants and all those acting in

concert with them promptly shall verify information contained on the provisional ballot

envelope, by reference to hard copy registration records and any other relevant records.

Defendants shall ensure that the verification and processing of provisional ballots shall be in an

open forum, where the public is able to view the process.

10.   Within 21 calendar days of an election for Federal office, Defendants shall send a

letter to each individual who casts a provisional ballot in the election, and shall inform each

individual whether his or her provisional ballot was counted, and, if not, the reason the

provisional ballot was rejected. If the provisional ballot was rejected because the voter was not

registered in the County, Defendants shall also send the voter a registration form and a return

envelope. If a voter is not eligible to become a registered voter in the County, Defendants shall

specify the reasons for ineligibility in the letter.

11.   Defendants shall verify and use all information submitted by provisional voters

along with their provisional ballot envelopes to update voter records, where applicable. If

Defendants require more information from the individual to complete the update, Defendants

shall contact the voter to obtain that information.

Record Keeping

12.   Throughout the duration of this Decree, Defendants shall make and maintain

written records of all actions taken pursuant to this Decree and shall produce copies of such

documents, lists, and records to the United States upon its request.

13.   Throughout the duration of this Decree, within 21 days after each election for

Federal office, Defendants shall provide to counsel for the United States: (a) the names of each

voter who cast a provisional ballot; (b) information on whether each voter's provisional ballot

was counted, and if not, the reason the provisional ballot was rejected; (c) information on what

steps Defendants have taken or will take to update the voter registration list in light of

information contained on each provisional ballot envelope. The Defendants shall send this

information, and any updates regarding this information, to counsel for the United States, by

express mail or electronically to the following address:

> United States Department of Justice
> Civil Rights Division, Voting Section
> 1800 G Street, N.W., Room NWB-7254
> Washington, D.C. 20006
> Facsimile: (202) 307-3961
> john.russ@usdoj.gov
> t.russell.nobile@usdoj.gov

Other Provisions

14.   This Decree is final and binding between the parties and their successors in office regarding the claims raised in this action. It shall remain in effect through January 31, 2012.

15.   The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary to effectuate the terms of this Decree and to ensure compliance with Section 302(a) of HAVA. This matter shall be placed on the Court's inactive docket, and the Court shall retain jurisdiction, through the expiration of this Decree.

16.   Each party shall bear its own costs and fees.

Agreed to this 15th day of February, 2008

AGREED AND CONSENTED TO:

For Plaintiff: For Defendants:

MICHAEL B. MUKASEY
Attorney General

/s/ Grace Chung Becker   /s/ Ellis Turnage
_____   _____
GRACE CHUNG BECKER   ELLIS TURNAGE, Esq.
Acting Assistant Attorney General   Bolivar County Election Commission
Civil Rights Division   Attorney

/s/ Christopher Coates   /s/ Linda F. Coleman
_____   _____
CHRISTOPHER COATES   LINDA COLEMAN, Esq.
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JUDGMENT AND ORDER

This Court, having considered the United States' claim under Section 302(a) of the Help America Vote Act of 2002, 42 U.S.C. § 15482(a), and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, and hereby enters the relief set forth above and incorporates those terms herein. The provisions of this Decree shall expire on January 31, 2012. This Court retains jurisdiction of this action to enforce the terms of this Decree during the effective period of this Decree.

ENTERED and ORDERED this 27th day of February, 2008.

/s/ Neal Biggers

_____

UNITED STATES DISTRICT JUDGE