

Segregating Ballots Because of Questionable Registrations

Atsaves v. Helander
(*Virginia M. Kendall, N.D. Ill. 1:08-cv-6199*)

A voter-registration team removed from state court an action seeking to segregate votes by voters registered by the team for investigation of improper registration. The district judge determined that the case did not present a federal question because the Help America Vote Act did not afford private rights of action, and relief from section 1983 requires willful and wanton conduct, which the plaintiffs had not alleged.

Subject: Registration procedures. *Topics:* Help America Vote Act (HAVA); 42 U.S.C. § 1983; registration procedures; intervention; removal; matters for state courts.

One week before the 2008 general election, the Republican Party, a candidate, and two voters filed a complaint in Illinois's circuit court for Lake County, seeking to have voter-registration applications filed by a specific voter-registration team segregated for investigation of improper registration.¹ The team removed the action to the U.S. District Court for the Northern District of Illinois on the following day.² The other defendant was Lake County's clerk.³ Another two days later, on Friday, the plaintiffs filed in the federal court a motion for a temporary restraining order or a preliminary injunction.⁴

Also on Friday, the Democratic Party and a voter moved to intervene in support of the defendants.⁵

Judge Virginia M. Kendall heard the matter on Friday, October 31.⁶ At the hearing, the county clerk both consented to removal⁷ and argued that the case did not belong in federal court.⁸ At the conclusion of the hearing, Judge Kendall ruled that the case did not present a federal question because the Help America Vote Act does not afford private rights of action, and relief from section 1983 requires willful and wanton conduct, which the plaintiffs had not alleged.⁹ She denied the motions to intervene as moot and remanded the case to state court.¹⁰

1. Complaint, *Atsaves v. Helander*, No. 08 CH 4132 (Ill. Cir. Ct. Lake Cty. Oct. 28, 2008), attached to Notice of Removal, *Atsaves v. Helander*, No. 1:08-cv-6199 (N.D. Ill. Oct. 29, 2008), D.E. 1; see Russell Lissau, *Suing Over the Ballots*, Chi. Daily Herald, Oct. 29, 2008, at 1.

2. Notice of Removal, *supra* note 1.

3. Complaint, *supra* note 1.

4. Motion, *Atsaves*, No. 1:08-cv-6199 (N.D. Ill. Oct. 31, 2008), D.E. 9.

5. Intervention Motion, *id.* (Oct. 31, 2008), D.E. 15; Intervention Motion, *id.* (Oct. 31, 2008), D.E. 13.

6. Minutes, *id.* (Oct. 31, 2008), D.E. 14.

7. Transcript at 6–7, *id.* (Oct. 31, 2008, filed June 8, 2011), D.E. 18.

8. *Id.* at 11–14.

9. Minutes, *supra* note 6; Transcript, *supra* note 7, at 44–47; see 42 U.S.C. § 1983; Help

The state court declined to hear the case before election day.¹¹

America Vote Act, Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145; Marie Leary & Robert Timothy Reagan, *The Help America Vote Act* (Federal Judicial Center 2012); Symposium, *HAVA @ 10*, 12 Election L.J. 111 (2013); *see also* Mick Zawislak, *GOP Suit Back in Lower Court*, Chi. Daily Herald, Nov. 1, 2008, at 1.

10. Minutes, *supra* note 6; Notice, *Atsaves*, No. 1:08-cv-6199 (N.D. Ill. Nov. 5, 2008), D.E. 16.

11. *See* Russell Lissau, *Republicans Say Suit Not Dead Yet*, Chi. Daily Herald, Nov. 4, 2008, at 1