

## Replacing Mechanical Voting Machines with Electronic Voting Machines

*Taylor v. Onorato*

(*Gary L. Lancaster, W.D. Pa. 2:06-cv-481*)

Approximately five weeks before a primary election, voters and a public-interest group filed a federal suit to enjoin replacement of mechanical voting machines with electronic voting machines, relying on the Help America Vote Act (HAVA). On the case's second day, the plaintiffs moved for a preliminary injunction. At the end of the case's first week, the district judge held an informal in-chambers status conference, from which news media were excluded. After a three-day evidentiary hearing beginning a week later, the district judge determined that HAVA did not afford the plaintiffs a private right of action.

*Subject:* Voting procedures. *Topics:* Voting technology; Help America Vote Act (HAVA); news media.

On April 12, 2006, People for the American Way and seven voters filed a federal complaint in the Western District of Pennsylvania to enjoin Allegheny County's planned replacement of mechanical voting machines with electronic voting machines in the May 16 primary election.<sup>1</sup> The plaintiffs' allegations included a charge that the new machines were not in compliance with the Help America Vote Act (HAVA).<sup>2</sup> Defendants included county, state, and federal officials.<sup>3</sup> On the following day, the plaintiffs filed a motion for a preliminary injunction.<sup>4</sup>

The court assigned the case to Judge Gary L. Lancaster, who set a status conference for April 18.<sup>5</sup> He denied a request by news media to attend.<sup>6</sup> He wanted an informal, open discussion of what the case was about and what the parties wanted from him.<sup>7</sup> He found this to be an absolutely vital step in

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1. Complaint, *Taylor v. Onorato*, No. 2:06-cv-481 (W.D. Pa. Apr. 12, 2006), D.E. 1; *Taylor v. Onorato*, 428 F. Supp. 2d 384, 385 (W.D. Pa. 2006); see Ryan Haggerty, *Voters Try to Bar New Machines*, Pittsburgh Post-Gazette, Apr. 13, 2006, at A1; Glenn May, *Suit Would Ban New Voting Machines*, Pittsburgh Trib. Rev., Apr. 13, 2006.

2. Complaint, *supra* note 1; *Taylor*, 428 F. Supp. 2d at 385–86; see Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145. 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).

3. Complaint, *supra* note 1; *Taylor*, 428 F. Supp. 2d at 385; see May, *supra* note 1.

4. Preliminary-Injunction Motion, *Taylor*, No. 2:06-cv-481 (W.D. Pa. Apr. 13, 2006), D.E. 2.

5. Order, *id.* (Apr. 13, 2006), D.E. 10.

Tim Reagan interviewed Judge Lancaster for this report by telephone on October 18, 2012. Judge Lancaster died on April 24, 2013. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

6. See Jason Cato, *Hearing to Decide Voting Machines' Fate*, Pittsburgh Trib. Rev., Apr. 19, 2006.

7. Interview with Hon. Gary L. Lancaster, Oct. 18, 2012.

presiding over the case.<sup>8</sup> At the conclusion of the conference, Judge Lancaster invited the parties to use his conference room for what turned out to be unsuccessful settlement discussions.<sup>9</sup>

Judge Lancaster ordered an evidentiary hearing set for April 25.<sup>10</sup> The defendants presented un rebutted evidence that switching back to the old machines would not be feasible for the next election.<sup>11</sup> The issues in the case, however, were primarily legal.<sup>12</sup> After a three-day hearing, Judge Lancaster denied the injunction.<sup>13</sup> He determined that HAVA does not afford private rights of action and the plaintiffs had not proved that the new machines would be sufficiently less reliable than the old machines to merit relief.<sup>14</sup>

The *Pittsburgh Post-Gazette* reported that the new machines were a somewhat flawed success:

Yes, there were glitches, particularly with getting the new electronic voting machines started. In some cases, machines arrived at polling places with cracked screens. And the vote took much longer to count than in past elections, leaving some outcomes hanging into the wee hours.

But all in all, Allegheny County officials were pleased with Tuesday's debut of electronic touch-screen voting, even as they look for ways to eliminate glitches and speed vote counting before November's general election.<sup>15</sup>

A couple of weeks later, the newspaper reported that advocacy groups were still dissatisfied with the new technology.<sup>16</sup>

The plaintiffs voluntarily dismissed the action on June 5.<sup>17</sup>

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8. *Id.*

9. *Id.*

10. Minutes, *Taylor*, No. 2:06-cv-481 (W.D. Pa. Apr. 13, 2006), D.E. 10.

11. Interview with Hon. Gary L. Lancaster, Oct. 18, 2012.

12. *Id.*

13. *Taylor v. Onorato*, 428 F. Supp. 2d 384 (W.D. Pa. 2006); Order, *Taylor*, No. 2:06-cv-481 (W.D. Pa. Apr. 28, 2006), D.E. 80; see Jason Cato, *Judge Denies Injunction in Vote Suit*, *Pittsburgh Trib. Rev.*, Apr. 28, 2006; Paula Reed Ward, *County Voting Machines OK'd*, *Pittsburgh Post-Gazette*, Apr. 29, 2006, at B1.

14. *Taylor*, 428 F. Supp. 2d 384; see Jason Cato, *Judge Clears Way for Voting Machines*, *Pittsburgh Trib. Rev.*, Apr. 29, 2006; Daniel P. Tokaji, *HAVA in Court: A Summary and Analysis of Litigation*, 12 *Election L.J.* 203, 206 (2013); see also Daniel P. Tokaji, *Public Rights and Private Rights of Action: The Enforcement of Federal Election Laws*, 44 *Ind. L. Rev.* 113, 118, 144 n.246 (2010) (concluding that Judge Lancaster applied the wrong legal test: "plaintiffs are *not* required to demonstrate that Congress intended to create a private *remedy* but rather to show that it created an individual right").

15. Mark Belko, *County Gives Good Grade to New Voting Machines*, *Pittsburgh Post-Gazette*, May 18, 2006, at A1.

16. Moustafa Ayad, *Groups Cite Flaws in Electronic Voting*, *Pittsburgh Post-Gazette*, June 2, 2006, at B1.

17. Dismissal, *Taylor*, No. 2:06-cv-481 (W.D. Pa. June 5, 2006), D.E. 87.