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May 5, 2014

By e-mail & postal mail

Mark Martin
Arkansas Secretary of State
Main Offices
State Capitol, Rm. 256
Little Rock, Arkansas 72201
arsos@sos.arkansas.gov

Dear Mr. Martin:

On behalf of the Arkansas State Conference of the NAACP, the W. Harold Flowers Law Society, and the Christian Ministerial Alliance of Central Arkansas, the NAACP Legal Defense and Educational Fund, Inc. (LDF)¹ writes to you, in your capacity as the Secretary of State (Secretary), to express our concerns about the implementation of Act 595 of 2013, Arkansas's photo identification (photo ID) law. As part of that implementation, which is now underway for the May 20th primary election,² we urge you to promptly address our concerns related to the inaccessibility of certain government offices that provide photo ID-related services across the State.

In particular, LDF and the undersigned are concerned about the effects of your unconsidered implementation of Act 595 on the disproportionate numbers of Black voters in Arkansas

¹ Since its founding in 1940, LDF has been involved in nearly all of the precedent-setting litigation related to securing voting rights for people of color in Arkansas and across the country. *See, e.g., Shelby County, Alabama v. Holder*, 133 S.Ct. 2612 (2013) (LDF defending Sections 4(b) and 5 of the Voting Rights Act (VRA)); *Texas v. Holder*, 888 F.Supp.2d 113, 141-44 (D.D.C. 2012) (LDF successfully representing defendant-intervenors in a Section 5 of the VRA lawsuit blocking Texas's photo ID law), *vacated on other grounds*, 133 S. Ct. 2886 (2013) (mem.); *Jeffers v. Clinton*, 740 F. Supp. 585 (E.D. Ark. 1990) (LDF successfully "bailing-in" Arkansas for pre-clearance under Section 3(c) of the VRA); *Miss. State Chapter, Operation Push v. Allain* ("Operation Push"), 674 F. Supp. 1245 (N.D. Miss. 1987), *aff'd sub nom.*, 932 F.2d 400 (5th Cir. 1991) (LDF successfully litigating a Section 2 of the VRA challenge to a Mississippi's voter registration system that restricted registration to the offices of county registrars).

LDF's Political Participation Group uses legal, legislative, public education, and advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

² LDF is fully aware of the ongoing lawsuits in the state courts over the constitutionality of Act 595 under Arkansas's Constitution. For now, given the existing stays on the two court orders ruling Act 595 unconstitutional and that early voting under the photo ID law began today, the concerns raised in this letter remain timely. Andrew DeMillo, *Judge Again Finds Arkansas' Voter ID Law Unconstitutional*, The Associated Press, (May. 2, 2014), *available at* <http://www.arkansasbusiness.com/article/98542/arkansas-judge-again-finds-states-voter-id-law-unconstitutional-but-wont-block-it-for-primary>.

who lack the required forms of photo ID.³ As you know, Arkansas’s photo ID law requires a voter (whether casting a ballot in person or absentee by mail) to first present a required form of photo ID.⁴ Under Act 595 and your implementing rules, a person *without* a required photo ID must *either* (a) go to the office of the county clerk *before* the election to obtain a “free” photo ID that will permit her/him to cast a regular ballot;⁵ or (b) cast a provisional ballot during the election, which is counted only if “[t]he voter returns to the county board of election commissioners or the county clerk by 12:00 p.m. on the Monday following the election.”⁶ Once voters who cast provisional ballots complete the often-lengthy trip to the county clerk’s or election commissioners’ office, they then must either: (a) show valid photo ID, which they lacked in the first instance; or (b) swear that they are indigent or have a religious objection to being photographed.⁷ The ballots of people who do not present photo ID during the election or who fail to perfect their provisional ballots before that Monday following the election are discarded. Accordingly, establishing accessible county clerks’ offices—the one place where a person can both get a photo ID and complete her/his provisional ballot⁸—is imperative to ensuring that all voters are casting effective ballots.

However—because the rules on Act 595 issued by your office fail to address the significant financial, time, material, and other costs that make it nearly impossible for many Black vot-

³ See Jon C. Rogowski & Cathy J. Cohen, *Black and Latino Youth Disproportionately Affected by Voter Identification Laws in the 2012 Election* at 5 (Feb. 28, 2013), <http://research.blackyouthproject.com/files/2013/03/voter-ID-laws-feb28.pdf> (“Over 85 percent of [W]hite youth have a driver’s license, compared with 71.2 percent of Black youth and 67.0 percent of Latino youth.”); Justin Levitt, Brennan Center for Justice, *Fast Facts on the Impact of Photo ID: The Data* at 2, (2008), available at http://www.brennancenter.org/sites/default/files/legacy/Democracy/_%20ID-related%20stats.pdf (summarizing polls showing that 25 percent of Black voting-age citizens, 16 percent of Hispanic voting-age citizens, and only 8 percent of White voting-age citizens nationwide lack a current government issued photo ID).

⁴ An acceptable photo ID must show the voter’s name, be unexpired or expired no more than four years before the date of the election, and be issued by either the U.S. government, Arkansas, or an accredited postsecondary educational institute therein. Ark. Code Ann. §§ 7-1-101(25), 7-5-201(d)(1) (2013).

⁵ The Secretary “shall provide by rule for the issuance of a voter identification card . . .,” *id.* § 7-5-322(a)(1)(A), and the rule must ensure that “[p]rovisions for the proof of identity to be provided by the county clerk.” *Id.* at § 7-5-322(a)(1)(A)(iv).

⁶ *Id.* at § 7-5-321(c)(1).

⁷ *Id.* at §§ 7-5-321(c)(1), (2). Returning voters also must not be challenged on any other basis. *Id.*

⁸ While a voter can go to the board of election commissioners to perfect their provisional ballot, *id.* at § 7-5-321(c)(1), Act 595 states that the county clerks’ offices are the only places where a voter can *both* obtain a photo ID card *and* perfect a provisional ballot. *Id.* at § 7-5-322(a)(1)(A)(iv). Notably, for many Black voters and other individuals without access to vehicles or public transportation, and who have work and family obligations, the option of going to the board of election commissioners to perfect their provisional ballot is not a meaningful one for them. Rather, it would require two trips—first, to get the photo ID at the clerk’s office, then to travel to the election commissioners’ to perfect their provisional ballot.

ers in Arkansas to reach these essential government offices⁹—the purported alternatives offered to people without the required photo ID are insufficient to address the substantial burdens that Act 595 places on most vulnerable voters. Your failure to issue truly ameliorative rules means that local officials maintain the broad discretion to restrict the time for offering photo ID-related services to a few weekdays from about 9:00 a.m. to 4:30 p.m., never on weekends, and to locate their offices solely in the county seats, which, from some parts of the State, are only reachable by driving 60 miles roundtrip.¹⁰ In fact, voters who lack the required photo ID (including a driver’s license) also often lack a reliable mode of transportation, particularly in Arkansas, which spends just \$1.38 per capita on public transportation.¹¹ And, even if a person is able to reach a photo-ID issuing office, she/he often still must pay a \$12.00 fee for a copy of an Arkansas birth certificate and/or the \$10.00 fee for a marriage or divorce record that can be required to get a photo ID.¹² Thus, voters of color, who disproportionately live in Arkansas’s more rural, urban, and/or poverty-stricken counties, must overcome considerable obstacles just to exercise their right to vote.

Thankfully, you, as Secretary, are uniquely empowered to require the county clerks to expand the opportunities for voters to obtain photo IDs or perfect provisional ballots.¹³ For ex-

⁹ See Arkansas Secretary of State, *Rules on Voter Identification* (Aug. 21, 2013), available at www.sos.arkansas.gov/elections/Documents/SOS_Rules_Voter_ID_Final.pdf.

¹⁰ Cotton Plant Township in Woodruff County provides one of many examples of how the great distance between where Black people live in Arkansas and the county clerk offices create unreasonable burdens on voters. The township has a 70 percent Black population, 28.6 percent of households there lack access to a vehicle, and 28.1 percent of the residents live in poverty. American FactFinder, *2008-2012 American Community Survey 5-Year Estimates*, <http://factfinder2.census.gov>. Yet, the distance between Cotton Plant and the Woodruff County seat of Augusta is roughly 60 miles roundtrip; and there is no public transportation available between the two cities. Google Maps, <http://maps.google.com> (last visited March 14, 2014).

¹¹ American Ass’n of State Highway and Transp. Officials, *Survey of State Funding for Public Transportation*, Final Report 2012, 1-16, available at <http://scopt.transportation.org/Documents/SSFP-6.pdf> (reporting per capita investment for each of the fifty states and the District of Columbia).

¹² Arkansas Dep’t of Health, *Vital Records/Statistics*, <http://www.healthy.arkansas.gov/programs/Services/certificatesVitalRecords/Pages/default.aspx>. Costs for similar underlying documents from other states where Arkansas voters may have been born, married, or divorced can exceed these amounts.

The failure to provide such documentation for free potentially means that Act 595 is the equivalent of a poll tax. See *Crawford v. Marion County Elections Bd.*, 553 U.S. 181 (2008) (holding that the ban on poll taxes in *Harper v. Virginia Bd. of Elections*, 383 U. S. 663 (1966) would invalidate Indiana’s photo ID law, but for the fact that the Indiana Bureau of Motor Vehicles provided voters with free photo IDs). In Kansas, for example, voters in need of birth certificates for the purposes of getting voter ID cards can request fee waivers. Kansas Dep’t of Health and Environment, *Birth Certificate and Instructions for Voter ID*, www.kdheks.gov/vital/birth_cert_voter_ID_instructions.htm (last visited April 14, 2014).

¹³ Ark. Code §§ 7-5-322(a)(1)(A)-(B) (“The Secretary of State shall provide by rule for the issuance of a voter identification card The rules shall include, *without limitation*” (emphasis added)).

ample, you can require officials to provide the underlying documents needed to obtain a photo ID at no cost; and to operate mobile units or satellite offices in the evenings and on weekends to make procuring photo ID-related services more convenient to voters. Absent such ameliorative rules from you, however, the burdens of Act 595 likely violate federal civil rights laws.

The Substantial Burdens of Act 595

Pulaski County and the Delta Counties, in particular Chicot, Crittenden, Desha, Jefferson, Lee, Monroe, Phillips, Saint Francis, and Woodruff Counties, contain the largest concentrations of Black voters in Arkansas. More than 268,000 registered voters live in these ten counties, roughly 30 percent of whom are Black, and nearly 40 percent of the Black residents there live in poverty.¹⁴ Households in these counties also are twice as likely as households statewide to lack access to vehicles. Thus, the people in these counties must surmount exceptional hurdles just to reach the county clerks' offices and receive the services needed to meet Act 595's requirements.

For example, from Lake View in Phillips County (91.4 percent Black population, 42.4 percent of residents living in poverty, and 16.6 percent of households lack access to a vehicle), a person must drive 40 miles roundtrip to reach the county clerk; whose office is unreachable by public transportation.¹⁵ Many of the residents of other rural Black communities face comparable difficulties—especially in the many towns and cities that without public transportation systems.¹⁶ Even in those cities where public transportation does exist, however, such as Wrightsville in Pulaski County (62.7 percent Black population), a bus ride can still require a prohibitive roundtrip journey of at least an hour and twenty minutes.

Additionally, to LDF's knowledge, no county clerk's office in the state is open on weekends or past 4:30 p.m. on weekdays. These highly limited hours are difficult for any working voter to negotiate, and are particularly challenging for people in hourly wage work who are unable to take time off from their jobs during the regular office hours of the county clerks. Furthermore, some county clerks restrict their hours for providing ID-related services even further. For

¹⁴ Unless otherwise noted, all of the statistical data referenced herein comes from the 2010 Census, the most recent American Community Survey (ACS), and/or Censusviewer.com, an online repository of statistics from the Census, the ACS, state registered voter files, commercial databases, and other sources.

¹⁵ All of the estimates related to the time, distance, and public transportation options for the travel described herein were determined by searching for the shortest directions between the named city and the county clerk's office in the appropriate county seat. Google Maps, <http://maps.google.com> (last visited March 14, 2014).

¹⁶ For example, from Marvell and Elaine in the Phillips County, both of which have Black populations over 50 percent, the drives are between forty (40) and fifty (50) miles roundtrip, and can take as long as ninety (90) minutes to complete. From the 51.6 percent Black city of Brinkley in Monroe County, where 34.7 percent of residents live in poverty, people must drive over thirty (30) miles roundtrip. Public transportation is not available in any of these three cities and towns.

example, while the Phillips County clerk's office is open every weekday, an official whom LDF spoke to there told us that photo IDs are only issued on Tuesdays, Wednesdays, and Thursdays.¹⁷

LDF also directly telephoned each of the other county clerks' offices in these ten counties, and, in four of these offices, the officials LDF interacted with could *not* correctly describe the complete process or underlying documents required to obtain a photo ID. Indeed, the officials in Desha and Jefferson Counties claimed that a voter must show a Social Security card to receive a photo ID, but Act 595 contains no such requirement. Worse yet, the official in Monroe County refused to provide callers with any information about how to obtain a photo ID over the phone.

Violations of the Voting Rights Act and the United States Constitution

We are closely scrutinizing the possibility that your policy of not making these photo ID-related services more accessible may violate both the Voting Rights Act of 1965 (VRA) and the U.S. Constitution, because it results in Black voters' (and others) not having an equal opportunity to participate in the political process.¹⁸ Congress explicitly designed the VRA, in part, to eliminate the once prevalent practice of states requiring proof of registration (*i.e.*, voter identification) as a prerequisite to voting, but then entrusting local government officials with the discretion to dictate and circumscribe the conditions under which voters can procure such proof.¹⁹ Accordingly, federal courts have consistently held that Section 2 of the VRA is violated where states or local officials discriminate against people of color by restricting the hours and locations set for registering to vote or voting.²⁰ Similarly, because Arkansas was once subject to the Section 3(c)

¹⁷ LDF contacted each of the ten county clerks' offices referenced in this letter about their provision of photo ID cards and hours of operation. All phone calls by LDF were made between 10:00 a.m. and 3:00 p.m. CT on February 20th through the 24th, 2014. Records of these interviews are on file with LDF.

¹⁸ Section 2 of the Voting Rights Act of 1965 prohibits any "voting qualification or prerequisite to voting . . . which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 42 U.S.C. § 1973(a) (2012). A violation of Section 2 is established if, based on the "totality of circumstances," voters of color "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* at § 1973(b).

¹⁹ See Steven L. Lapidus, Note, *Eradicating Racial Discrimination in Voter Registration*, 52 Fordham L. Rev. 93, 110–16 (1983) (describing how state sanctioned limitations on when and where a person can register to vote can violate the VRA); J. Morgan Kousser, *The Shaping of Southern Politics* 48 (1974) ("[T]he key disfranchising features of the southern registration laws were . . . the times and places set for registration, and the requirement that a voter bring his registration certificate to the polling place.").

²⁰ See, e.g., *Spirit Lake Tribe v. Benson County, N.D.*, No. 2:10-cv-095, 2010 WL 4226614, at *2-6 (D. N.D. Oct. 21, 2010) (ordering the continued operation of two polling places in areas close to a Native American community); *Operation Push*, 674 F. Supp. at 1265-69 (holding a state law violative of the VRA because it permitted local officials to discriminatorily set the times and places for registration), *aff'd sub nom.* 932 F.2d 400 (5th Cir. 1991); *Conn. Citizen Action Group v. Pugliese*, No. N 84-431, 1984 U.S. Dist. LEXIS 24869, at **10-13 (D. Conn. Sept. 27, 1984) (requiring local officials to conduct registration drives in communities of color in part because the officials had previously used the discretion afforded to them under state law to refrain from doing so); see also *Bone Shirt v. Hazeltine*, 336 F. Supp. 2d 976, 1024-27 (D. S.D. 2004) (determining that the limits set on opportunities for Native Americans to register

preclearance process, it is important to note that in assessing whether photo ID laws violate Section 5 of the VRA, both the United States Department of Justice and federal courts have consistently found that the accessibility of photo ID-issuing offices are probative in determining whether such laws are discriminatory.²¹ Indeed, LDF successfully sued both Arkansas and Phillips County to stop the State's past failure to provide uniform standards for voter registration, which also had resulted in the county clerks discriminatorily confining registration to their offices in the county seat during limited hours of the day, and being otherwise unresponsive to Black voters.²²

We therefore urge you to take steps toward remedying these violations immediately by learning from Arkansas's past and adopting the ameliorative steps taken by other states with new photo ID laws.²³ For example, in Mississippi, although the photo ID law does not go into effect until June, the Secretary there has taken the step of establishing a network of 500 vehicles to provide voters with free rides to the local circuit clerks' offices if they call a hotline.²⁴ In Alabama, where the new law also is not enforceable until this June, the Secretary there has taken the

to vote acted as barriers to equality in political participation), *aff'd* 461 F.3d 1011 (8th Cir. 2006); *Jeffers*, 740 F. Supp. at 595-99 (describing how the inconvenient sites of various polling places impaired the ability of Black people to vote in the Arkansas Delta); *United States v. Dallas County Com'n*, 739 F.2d 1529, 1538-39 (11th Cir. 1984) (finding that a policy of requiring registration in the county seat during unfavorable hours hindered Black voters' access to the political process); *Perkins v. City of West Helena*, 675 F.2d 201, 206-10 & n.7 (8th Cir.), *aff'd mem.*, 459 U.S. 801 (1982) (finding that the polling places nearest to Black people "are not ideal," "inconvenient and overcrowded," and "may discourage some voters").

²¹ See, e.g., *South Carolina v. United States*, 898 F. Supp. 2d 30, 40 (D.D.C. 2012) ("That racial disparity [in photo ID card possession rates], combined with the burdens of time and cost of transportation inherent in obtaining a new photo ID card, might have posed a problem for South Carolina's law under the strict effects test . . . absent the reasonable impediment provision."); *Texas*, 888 F. Supp. 2d at 140-41 (holding that Texas's voter ID law would have a discriminatory effect on Black and Latino voters who were at times required to travel 200 miles to reach photo ID-issuing offices), *vacated on other grounds*, 133 S. Ct. 2886 (2013) (mem.); Letter from Grace Chung Becker, Acting Assistant Attorney Gen., Civil Rights Div., U.S. Dep't of Justice, to Brian DeBano, Chief of Staff and Chief Operating Officer, Mich. Sec'y of State, and Christopher Thomas, Director of Elections, Michigan, Mich. Sec'y of State, (Dec. 26, 2007), available at http://www.justice.gov/crt/about/vot/sec_5/pdfs/l_122607.pdf (objecting to the proposed closure of a photo ID-issuing office located near a community of color).

²² "In Phillips County, Arkansas, prior to an NAACP Legal Defense Fund lawsuit in 1988, registration was conducted only at the county courthouse during business hours. The courthouse was closed at lunchtime and by 4:00 p.m." Lani Guinier, *Keeping the Faith: Black Voters in the Post-Reagan Era*, 24 Harv. C.R.-C.L. L. Rev. 393, 419 n.117 (1989). See Consent Decree, *Ark. Cmty. Org. for Reform Now v. Clinton*, No. 4:84-cv-00808-HW; *Phillips County Ministerial Alliance v. Benz*, No. H-C-84-49 (E.D. Ark. Dec. 28, 1987), ECF No. 87, attached hereto as "Attachment A"; *Jeffers*, 740 F. Supp. at 596 (describing the successful operation of the new registration system resulting from LDF's lawsuit in Phillips County).

²³ See *South Carolina*, 898 F. Supp. 2d at 46 (noting that an ameliorative step that states take to reduce the burdens on voters who lack photo IDs is to "mak[e] the IDs available at convenient locations").

²⁴ See Dennis Turner, *Mississippi Secretary Of State Offers Free Rides To Obtain Voter ID*, WREG Memphis (Mar. 11, 2014, 6:31 PM), <http://wreg.com/2014/03/11/free-rides-for-mississippi-voter-id/>.

step of dispatching mobile photo ID-issuing units in an attempt to reach voters.²⁵ In Tennessee, photo ID-issuing offices at one time offered special Saturday hours to make it easier for working people to obtain photo ID.²⁶ In addition, most of these states have engaged in extensive public education campaigns, and conducted thorough trainings to ensure that the public and election administrators are fully aware of the demands that the new laws place on voters.²⁷ Although none of the examples offered here provide ideal solutions, at a minimum, Arkansas must launch similar statewide programs, including opening satellite offices for the county clerks with hours set in the evenings and on weekends in the weeks before and after an election, to ensure that the important services offered in these county offices are available to voters in every part of the state.

*

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In light of the above, please address *in writing*: (1) whether you will issue rules or take other affirmative steps to require that the county clerks and election commissioners are made more available and accessible to voters; and (2) a description of those proposed rules. Please respond by **Monday May 12, 2014**, so that LDF, the other signatories, and the public in general will have an opportunity to comment on those rules before the May 20, 2014 primary election. It is our sincere desire to assist you in avoiding the costly and time consuming litigation²⁸ that may be required to guarantee the State of Arkansas's compliance with the VRA and the Constitution.

We welcome the opportunity to work with you to resolve this important matter amicably and in advance of the May primary election. Please feel free to contact to us with any questions.

²⁵ See, e.g., Mobile ID Locations, *Alabama Photo Voter Identification*, <http://www.alabamavoterid.com/mobileLocations.aspx> (last visited April 6, 2014) (announcing the hours and sites of mobile ID units).

²⁶ See, e.g., News Release, Tennessee Department of Safety and Homeland Security, *Department of Safety & Homeland Security to Hold Special Saturday Hours to Issue Voter Photo Identification* (Sept. 6, 2012), <http://news.tn.gov/node/9523> (announcing Saturday hours for voters in need of photo ID).

²⁷ See, e.g., Deborah Barfield Berry, *Mississippi preparing to use new voter ID law*, Clarion-Ledger, Apr. 8, 2014, available at <http://www.clarionledger.com/article/20140408/NEWS01/304080033/Miss-preparing-use-new-voter-ID-law> ("The state has spent about \$400,000 to implement and publicize the law via an ad campaign and about 1.5 million pamphlets. . . . [The Secretary of State's] office has trained 105 poll workers and will continue training through May.").

²⁸ See Federal Judicial Center, *2003-2004 District Court Case-Weighting Study*, Table 1 (2005) (finding that voting cases consume the sixth most judicial resources out of sixty-three types of cases analyzed); *Voting Rights Act: Section 5 of the Act – History, Scope, and Purpose: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 92 (2005) ("Two to five years is a rough average" for the length of Section 2 lawsuits).



Sincerely,

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Tim Humphries, Legal Counsel, Board of Election Commissioners

Paula Brown, Crittenden County Clerk
Larry Crane, Pulaski County Clerk
Pam Donaldson, Chicot County Clerk
Valerie Donaldson, Desha County Clerk
Emily R. Holley, St. Francis County Clerk
Patricia Johnson, Jefferson County Clerk
Kelly Peebles, Woodruff County Clerk
Lynsey Russell, Lee County Clerk
Linda White, Phillips County Clerk
Tina Wofford, Monroe County Clerk

Arkie Byrd, Partner, Mays Byrd & Associates, P.A.
Dale Charles, President, Arkansas State Conference of the NAACP
Hon. John W. Walker, Arkansas House of Representatives

[Attachment]

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN AND EASTERN DIVISIONS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

DEC 28 1987

By: Carol L. Evans, CLERK
DEP. CLERK

ARKANSAS COMMUNITY ORGANIZATION
FOR REFORM NOW; VOTER EDUCATION
PROJECT; NAACP-ARKANSAS CONFERENCE,
with six individuals on behalf of
themselves and all others similarly
situated,

PLAINTIFFS

V.

Civil Action
NO. LR-C-84-808
Class Action

BILL CLINTON, Governor of the
State of Arkansas; other State
constitutional officers; and
seven County Clerks on behalf of
themselves and others similarly
situated,

DEFENDANTS

PHILLIPS COUNTY MINISTERIAL ALLIANCE

PLAINTIFF

V.

NO. H-C-84-49
Civil Action

KAY BENZ, County Clerk of
Phillips County

DEFENDANT

CONSENT DECREE

INTRODUCTION

These are consolidated voting rights cases filed on September 12, 1984 (No. LR-C-84-808), and April 20, 1984 (No. H-C-84-49), alleging violations of the First, Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitutions; 42 U.S.C. §1983; and the Voting Rights Act of 1965, as amended, 42 U.S.C. §§1971, 1973 (1982). The Court has jurisdiction over these actions pursuant to 42 U.S.C. §§1971d, 1973j(f) and 28 U.S.C. §§1331, 1343, 2201 and 2202.

Plaintiffs in number LR-C-84-808 are three organizations active in communities throughout the State of Arkansas -- the Arkansas Community Organization for Reform Now, the Voter Education Project, and the Arkansas Conference of the National Association for the Advancement of Colored People -- and six black individuals on behalf of themselves and all persons similarly situated. Plaintiff in number H-C-84-49 is the Phillips County Ministerial Alliance, a not-for-profit organization of black ministers in Phillips County, Arkansas. They allege that various voter registration practices and procedures operate as barriers to registration in Arkansas, that these barriers are vestiges of prior discrimination which the State has failed to remove, and that the State has breached its duty to register all eligible Arkansans.

Defendants are all members of the State Board of Election Commissioners, the chairpersons of the State Democratic and Republican Parties, and eight individual county clerks who were sued on behalf of themselves and all other county clerks. They have denied all substantive elements of the Complaint.

On February 5, 1986, upon the stipulation of the parties, the Court granted permission for this case to proceed as a class action under Rule 23(a) and (b) of the Federal Rules of Civil Procedure. The classes are defined as follows:

1. A plaintiff class of all citizens of the United States and of Arkansas who are eligible but not registered to vote;
2. A plaintiff class of all black citizens of the United States and of Arkansas who are registered to vote; and
3. A defendant class of all County Clerks in the State of Arkansas.

Discovery in this action has proceeded intermittently with some activity soon after the complaints were filed, followed by a year-long hiatus while the parties attempted to settle some of their differences, followed in turn by active discovery from February through April of 1986. By the Court's order of November 8, 1985, the time for discovery ended on May 1, 1986.

Plaintiffs alleged inter alia the following: County Clerks in Arkansas do not perform their duty to register

citizens to vote in a uniform manner. Some County Clerks do not deputize volunteer voter registrars. Some do not conduct registration at sites outside their offices or do so irregularly. Some confine voter registration to their normal office hours or to limited periods during such hours, while others open their offices on weekends irregularly and for limited hours. Few make use of the mails or methods of door-to-door canvassing to register voters. Others are unresponsive to the needs of disabled or elderly citizens who cannot leave their homes to register. In addition, pursuant to Amendment 51 to the Arkansas Constitution, all County Clerks annually revoke the voter registration of any person who has not voted in the previous four years. No prior notice is sent. The combined effect of these circumstances is unlawfully to encumber plaintiffs' constitutional right to vote.

Defendants denied many of these factual allegations and denied that these and other allegations have any unlawful results.

The parties acknowledge that, during the course of this litigation, legislation was proposed to the Arkansas legislature which in large part addressed the issues raised by this litigation. The parties agreed to suspend the litigation while the legislature considered these proposals. Act No. 799 and Act No. 800 were signed into law by the Governor on April 8, 1987. As a consequence, the parties desire to settle their differences without further

protracted litigation. Therefore, on behalf of both the individual and class plaintiffs and defendants, the parties consent to the entry of this Decree as final and binding.

Consistent with all of the foregoing, and the Court being fully apprised, it is ORDERED, ADJUDGED and DECREED as follows:

I. GENERAL

A. Purpose. The purpose of this Decree is to provide improved and equal access to voter registration by all eligible citizens of Arkansas, to enhance the political participation and awareness of all citizens in Arkansas, and to assure compliance with 1987 Ark. Acts Nos. 799 and 800.

B. Voting Rights. Voting is a right inherent in citizenship in the State of Arkansas and in the United States. Defendants, including their officers, agents, employees, successors in office, and all those acting in concert with them or at their direction or control, shall not engage in any practice or policy unlawfully encumbering the franchise of any Arkansas citizen eligible to vote under the Constitution and laws of the United States.

C. Retaliation Prohibited. Defendants shall not discriminate or retaliate against any citizen of Arkansas or any organization in Arkansas because he, she or it has opposed any prior voting or registration practices or has made a charge, testified, assisted or participated in any

manner in any investigation, proceeding or hearing relating to this action.

II. VOLUNTEER DEPUTY VOTER REGISTRARS

The goal of all County Clerks, in their state constitutional capacities as Permanent Voter Registrars, is to register every citizen eligible and wishing to vote who resides in every county in Arkansas. In furtherance of that goal, the County Clerks of each county in Arkansas shall appoint volunteer Deputy Registrars to register voters throughout the county in accordance with 1987 Ark. Acts No. 799 and the provisions of this Decree. The County Clerks shall appoint deputies in a manner reasonably calculated to enhance the performance of their duty, pursuant to section 8 of Act No. 799, and to register as many unregistered, eligible residents as possible.

III. REGISTRATION THROUGH STATE AGENCIES

In addition to appointments made pursuant to 1987 Ark. Acts No. 799, the Permanent Registrars shall appoint as Deputy Registrars designated state employees in each county office of the Department of Human Services that provides services directly to the public. The office manager of each such state office shall designate for appointment by the Permanent Registrar such employees to serve as Deputy Registrars, to the end that at least one such employee shall be available at all times during regular office hours to

register or to update the registration of all eligible citizens who have business in such offices. The employees so designated shall possess the qualifications required of Deputy Registrars pursuant to Act 799, and shall be subject to all provisions of Act 799, including, but not limited to, training as a Deputy Registrar. The terms of such Deputies shall be conterminous with the term in office of the appointing County Clerk or with the term of such Deputies' employment in such office, whichever period is shorter. While such Deputies shall make every reasonable effort to register eligible citizens who have business in such offices, the registration of voters shall be a secondary responsibility of such Deputies while on duty as employees of the Department. Each such state office shall have a clearly visible sign stating that an eligible citizen may register to vote in that office and directing such person to the Deputy Voter Registrar on duty. All employees in each such state office shall, as a regular duty of employment, direct interested persons to the Deputy Voter Registrar on duty.

IV. PURGING OF REGISTRATION LISTS

The Permanent Registrars shall not cancel the registration of any citizen currently registered to vote on the basis of that citizen's failure to vote in the previous four years except by prior written notice as provided in 1987 Ark. Acts No. 800, §1(f). Notice by mail shall be the preferred, but not mandatory, method of notice.

In addition, defendants shall advise the Attorney General within ten days when any volunteer Deputy Registrar is terminated or when any request for appointment by prospective volunteer Deputy Registrars is refused. The Attorney General shall in turn advise plaintiffs' counsel within three (3) days thereafter.

3. Counsel for the parties agree to confer with each other in good faith on the terms and purposes of this Decree or on any modification of this Decree as the necessity arises in advance of petitioning the Court for relief from or modification of this Decree.

VII. JURISDICTION

The Court shall retain jurisdiction of this action to supervise performance of the terms of this Decree, and to grant such supplemental or corrective relief as may be necessary or appropriate. However, the parties shall endeavor to resolve any differences arising under this Decree themselves before applying to this Court.

Provided the defendants comply in timely fashion with their duties under this Decree, the defendants, individually or jointly, may petition the Court after January 15, 1991, for an end to the Court's jurisdiction over this case.

VIII. APPROVAL BY PARTIES

The parties agree to entry of this Decree subject to the final approval of the Court.

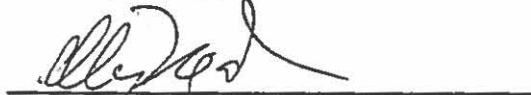


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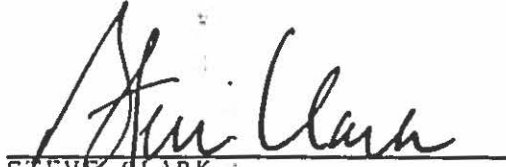
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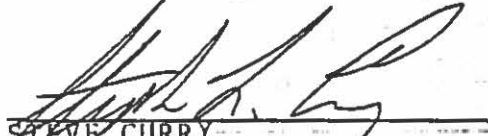
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