

November 1, 2016

VIA EMAIL

Honorable John Merrill
Alabama Secretary of State
P.O. Box 5616
Montgomery, AL 36103-5616

Dear Mr. Merrill:

I write to express my concern about the possibility of voter intimidation in Alabama on November 8, 2016, and to encourage you to reach out to county election officials in advance of Election Day to ensure that every poll worker and all Election Day personnel are properly trained on the relevant laws governing voters and the rights of voters and poll watchers.

As you know, voter intimidation is prohibited by federal law. In particular, the Voting Rights Act of 1965 provides that:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 10302(a), 10305, 10306, or 10308(e) of this title or section 1973d or 1973g of Title 42¹

Violations of this provision may result in federal criminal prosecution. In recent weeks, media reports have suggested that many citizens may choose to engage in poll watching activities, as is their right. However, many of these poll watchers may not be properly trained or educated about the relevant laws that protect voters and that govern polling sites in your states. It is critical that you prepare for potential incidents of inappropriate and perhaps illegal conduct at polling sites. Indeed, media reports suggests that some who plan to engage in poll watching activities are unaware that actions taken to intimidate voters are illegal.

I am also concerned that personnel assigned to work at the polls on Election Day may engage in inappropriate conduct. The recent experience of one of our own attorneys may be instructive. On March 1, 2016, several attorneys from our office were engaged in our usual practice of non-partisan poll watching in Alabama on Primary Election Day. In the past few years, we have had no difficulties engaging in this non-partisan activity. We are trained to know and respect all Alabama state laws governing the integrity of polling places on Election Day.²

Nevertheless, one of our attorneys was intimidated on Primary Election Day this year, and felt compelled to leave the polling place where she was engaged in legal, non-partisan poll watching. The

¹ 52 U.S.C.A. § 10307 (b).

² Our poll watching activities are undertaken in accordance with Alabama Code § 17-9-50.

incident took place at the polling site at the All Nations Church, 3614 Drake Avenue SW in Huntsville. A woman identifying herself as an “Inspector” as well as Ms. Deborah Jones Brown, the Administrative Assistant at the church, exhibited verbally and physically threatening conduct, questioning our attorney’s right to be at the polling place and demanding that she leave. At one point, Ms. Brown even grabbed the clipboard and voter education materials from the hands of our attorney and took the materials into the church (she later returned the materials). Our attorney was positioned more than thirty feet away from the polling place, was not campaigning, and only spoke to voters who had exited the polling place. She asked voters whether they had any problems voting. Voters answered pleasantly and without incident. Nevertheless, the poll workers repeatedly told our attorney “we don’t want you here.” She was treated with hostility and suspicion by both Ms. Jones and the “Inspector.” As they made a scene, some voters wandered over. One stated, “She’s probably trying to get the Mexican vote.” The attorney is Latina. As our attorney started to leave, a police officer arrived and indicated that he was unsure whether our attorney could remain at the polling site and stated that he would have to arrest her for trespassing if she didn’t leave. She chose to leave.

This incident, which took place long before the advent of more recent inflammatory campaign rhetoric regarding the integrity of our election process, is an example of what can occur when poll workers are insufficiently trained or refuse to obey the relevant laws regarding the rights of poll watchers and voters. The aggressive behavior these poll workers exhibited towards one of our attorneys, suggests that voters may be in an even more vulnerable position.

Indeed, a federal court order—which resulted from litigation brought by LDF under Section 2 and Section 208—prohibits Alabama poll workers from harassing voters and engaging in the very kind of unwarranted intimidation that our attorney experienced in March.³

Alabama’s voter identification law, which is currently under challenge in federal court,⁴ may also create confusion among poll workers about precisely what forms of identification are permissible for voting on Election Day. As poll watchers and observers gather for this election, voters may be exposed to individuals who are ignorant of the laws that protect voters. We think that it is critically important that you ensure that all Election Day personnel are familiar with relevant voter protection laws. I note that while your election website prominently includes information about Alabama election laws, and encourages voters to “stop voter fraud,”⁵ it does not display ready information about the federal laws that protect the rights of voters. For example, Section 208 of the Voting Rights Act provides that:

Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.⁶

Similarly, Section 203(b) of the Act, states that eligible voters in certain jurisdictions requiring assistance because of an inability to read or write in English, are entitled to such assistance and to be furnished with ballots in languages other than English. And of course the core provision of the Voting Rights Act – Section 2 – entitles all eligible voters to cast ballots and participate equally in the political process.

³ *Harris v. Siegelman*, 700 F. Supp. 1083, 1085-88 (M.D. Ala. 1988).

⁴ The NAACP Legal Defense Fund is counsel of record in *Greater Birmingham Ministries v. Alabama*, No. 2:15-cv-02193-LSC (N.D. Ala filed Dec. 2, 2015).

⁵ <http://www.alabamavotes.gov/>

⁶ 52 U.S.C.A. § 10508.

Thus, we urge you to take measures in the coming days to ensure that local election officials are fully apprised of these and other legal protections governing the right to vote. Poll workers should be prepared to protect against challenges to voters based on a misapprehension of the laws that allow voters to have assistance at the polls and that permit citizens to peacefully monitor polling places. As in past years, our volunteers will be present at polling sites around the state of Alabama on Election Day. As always, we will conduct ourselves in accordance with federal law and the laws of the state of Alabama. Our activities are non-partisan and peaceful. We do not, under any circumstances, interfere with voters as they enter or leave the polling place.

I welcome the opportunity to talk with you or a representative from your office about the training and other measures you have instituted to ensure that every voter can fully and freely exercise the franchise on Election Day.

Sincerely,



Sherrilyn A. Ifill
President & Director-Counsel

CC: Vanita Gupta, Acting Assistant Attorney General for Civil Rights
Joyce Vance, US Attorney, Northern District of Alabama
Jim Davis, Assistant Attorney General, Alabama