



March 17, 2022

VIA ELECTRONIC MAIL

Hon. Michael Watson
Mississippi Secretary of State
401 Mississippi Street
Jackson, Mississippi 39201
Email: michael.watson@sos.ms.gov

Re: Urgent Need for Reporting Polling Site Changes

Dear Secretary Watson:

The NAACP Legal Defense & Educational Fund, Inc. (“LDF”), ACLU of Mississippi, Black Voters Matter Capacity Building Institute, Mississippi Center for Justice, Mississippi State Conference of the NAACP, One Voice, and Southern Poverty Law Center write to urge your office to implement formal rules and guidance to ensure that voters receive accurate and timely information concerning polling site changes. During the 2020 election, there were widespread reports of inaccurate or outdated information about polling site changes as voters throughout Mississippi received conflicting information from local election officials and the Secretary of State’s online poll locator. Indeed, local election officials in Mississippi changed polling sites in at least 55 precincts before the 2020 election, but the Secretary of State reported changes in only 17 precincts.¹ Polling site changes affected 65,000 voters.²

To avoid similar problems during the 2022 election cycle, the Secretary of State should ensure that the online poll locator reports timely and accurate information to voters by requiring county governments to immediately report polling site changes to your office and into the Statewide Elections Management System (SEMS). Mississippi law requires county Boards of Supervisors to provide notice to the Secretary

¹ Ashton Pittman, *Mississippi Officials Moved Three Times More Polling Places Than Reported for 65,000 Voters*, Miss. Free Press (Oct. 31, 2020), <https://www.mississippifreepress.org/6577/mississippi-officials-moved-three-times-more-polling-places-than-reported-for-65000-voters/> (describing how counties do not update the Secretary of State with sufficient frequency).

² Nick Judin, *Before Today's Election Confusion, Voting Rights Activists Warned of State's Polling Place Changes*, JACKSON FREE PRESS (Nov. 2, 2020), <https://www.jacksonfreepress.com/news/2020/nov/02/election-eve-voting-rights-activists-respond-state/>.

of State *before* implementation of any polling site changes,³ but it appears that there is inconsistent compliance with the law⁴ and confusion about whether county or state officials must update SEMs. Moreover, there are no regulations governing how and when voters receive notice of polling site changes. The impact to voters is significant, and we are writing to urge you to address this problem immediately to ensure compliance well in advance of the 2022 mid-term elections.

Accordingly, we recommend that your office:

- 1) promulgate rules instructing Election Commissioners or other authorized election officials to timely enter polling site changes into SEMs;
- 2) issue guidance establishing a timeframe and process for county Boards of Supervisors to report polling site changes to your office; and
- 3) issue guidance establishing requirements for the timing and adequacy of notice to voters about polling site changes.

These recommendations are explained in greater detail below.

I. Inaccurate Information about Polling Site Changes Can Cause Voter Confusion, Hinder Access to the Ballot, and Disproportionately Harm Black Voters

Outdated polling site information causes voter confusion when voters do not receive adequate notice of their polling site changes and go to the wrong polling place. During the 2020 election, news outlets reported widespread voter confusion about polling site changes.⁵ Numerous voters in Lauderdale County, for instance, reported going to the wrong polling site because they were unaware of changes made to their polling site assignments.⁶ One voter stated that he waited at his old polling site for nearly an hour before learning he was at the wrong location.⁷ Similar unreported polling site changes in Lauderdale County affected approximately 1,650 voters during the 2020 election.⁸ One Lauderdale County voter reported to LDF that she visited three different polling sites because she had not been notified that her polling site was changed.⁹

³ Miss. Code § 23-15-283(1) (“Upon the order of change in the boundaries of any voting precinct *or the voting place therein*, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change. *No change shall be implemented or enforced until the requirements of this section have been met.*” (emphasis added)).

⁴ At a press conference, Secretary Watson told press that there was no statute requiring election officials to inform his office of polling site changes. *See* Judin, *supra* note 2. However, Miss. Code § 23-15-283(1) provides that the county Board of Supervisors must notify the Secretary of State of any voting place changes.

⁵ Judin, *supra* note 2. *See also* Kate Royals, *Many Meridian Voters Unsure of Where to Vote After County Officials Approved Late Change*, MISS. TODAY (Nov. 3, 2020), <https://mississippitoday.org/2020/11/03/many-meridian-voters-unsure-of-where-to-vote-after-county-officials-approved-late-change/> (reporting confusing at the polls because of last-minute changes to polling places).

⁶ Royals, *supra* note 5.

⁷ *Id.*

⁸ *Id.* (reporting confusion at the polls because of last-minute changes to polling places).

⁹ LDF Volunteer Report, Nov. 3, 2020.

Outdated information on the Secretary of State’s online poll locator caused much of this confusion. According to news reports, local election officials changed polling sites in at least 55 precincts, but the Secretary of State’s online poll locator reported changes in only 17 precincts.¹⁰ Voters reported discrepancies between the polling site closures they experienced on Election Day and those reported by the Secretary of State.¹¹ In Hinds County, for instance, although county Election Commissioners released correct polling site locations for Precinct 46, voters still “lined up [at the wrong polling location] due to faulty information on the Secretary of State’s poll locator.”¹²

Inaccurate information about polling site changes hinders access to the ballot for voters in Mississippi. Because Mississippi offers limited absentee voting and no early voting, the vast majority of voters must vote in person on Election Day. Since voters are required to vote at their designated polling site (or cast an affidavit ballot),¹³ voters must know the location of their designated polling site in order to cast a vote that will be counted on Election Day. This is made even more confusing given that many voters in Mississippi are assigned to different polling sites for city and county elections. When election officials close, move, or make polling sites hard to access without providing voters with accurate information and up-to-date notice of polling site changes, voters lose fair and equal access to the ballot box.

Moreover, these unpublicized polling site changes disproportionately impact Black voters. In 2020, most of the unpublicized changes occurred in counties with significant Black populations. According to media reports, nineteen counties failed to report one or more polling site changes before the 2020 general election.¹⁴ In eleven of those counties, Black people comprise over 40% of the population.¹⁵ Unpublicized polling site changes and consolidations historically have been used as tactics to suppress the political participation of voters of color and other voters.¹⁶ Poll site closures may lead to longer lines at other polling places, transportation issues, and confusion at the polls, all of which make it harder for all voters, and Black voters in particular, to cast their ballots.¹⁷ Moving polling sites miles away creates additional barriers for Black voters who disproportionately experience transportation problems.¹⁸ Harrison County officials, for

¹⁰ Pittman, *supra* note 1 (describing how counties do not update the Secretary of State with sufficient frequency).

¹¹ *Id.*

¹² Judin, *supra* note 2.

¹³ *See* Miss. Code § 23-15-573.

¹⁴ Pittman, *supra* note 1.

¹⁵ *See Mississippi: 2020 Census, Mississippi’s Population Declined 0.2%*, U.S. Census Bureau (Aug. 25, 2021), <https://www.census.gov/library/stories/state-by-state/mississippi-population-change-between-census-decade.html>.

¹⁶ *See, e.g., Common Potentially Discriminatory Voting Changes*, LDF, <http://www.naacpldf.org/document/common-potentially-discriminatory-voting-changes>; *see also Democracy Diminished: State and Local Threats to Voting Post-Shelby County*, Alabama v. Holder (May 2019) [hereinafter *Democracy Diminished*], <https://www.naacpldf.org/wp-content/uploads/State-local-responses-post-Shelby-5.30.19.pdf>; *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND (Nov. 2016), <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

¹⁷ *The Great Poll Closure*, THE LEADERSHIP CONFERENCE EDUCATION FUND (Nov. 2016), <http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf>.

¹⁸ According to voting data gathered by the Census, 5.8% of Black voters who did not vote attributed it to transportation problems. *See* Table 10, <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-585.html>.

example, moved a polling site from an area that was 44.1% Black and 47.1 % white to a location nearly two miles away that is 65.7% white and only 31.8% Black.¹⁹

Madison County illustrates the array of problems facing Black voters in Mississippi due to polling site changes. During the 2020 elections, Madison County moved more than 2,500 Black and Hispanic voters from a polling site at Ridgeland Recreation Center in a racially mixed precinct to a polling site more than three miles away in a majority non-white voting precinct. The Black and Hispanic voters were packed into a single precinct, tripling the number of voters served at the new polling site, which resulted in longer waiting times for them and reduced waiting times for the White voters who remained at Ridgeland Recreation Center.²⁰ Voters reported waiting in hours-long lines on Election Day due to thousands of additional voters assigned to their precinct.²¹ Moreover, many voters also reported receiving no notice alerting them to the change from the county. Voters who did receive notice commented that the letter was confusing and left them unsure about where to vote.²²

II. The Current System Lacks Formal Processes to Ensure Voters Receive Prompt and Accurate Information about Polling Site Locations

Mississippi voters faced obstacles in finding their polling sites during the 2020 election in large part due to a system that lacks formal processes for voters to receive prompt and accurate information through the two main sources of polling site information—the Secretary of State’s online poll locator and notices by county election officials.

a. Inaccurate Information in the Secretary of State’s Online Poll Locator

The Secretary of State’s online poll locator serves as a central resource for voters across Mississippi. During the 2020 elections, however, this tool did not have accurate and up-to-date information because of confusion among county and state officials about who should update SEMS (the data source for the online poll locator) and the lack of compliance and enforcement with state law requiring county Boards of Supervisors to report polling site changes to the Secretary of State before they go into effect.

i. Confusion about Who Is Responsible for Updating SEMS

Polling site location changes are initiated when the Board of Supervisors, often at the recommendation of the county Election Commissioners, votes by resolution to change, close, or consolidate polling site locations. The new polling site location is then to be entered into the SEMS, which then feeds data to the Secretary of State’s online polling site locator.

However, there is confusion about how this process works. Your office has indicated that SEMS “only reflects what county officials have entered into the system and is not vetted by the Secretary of State’s

¹⁹ Area based on American Community Survey population estimates for each census tract.

²⁰ Ashton Pittman and William Pittman, *Madison County Moves 2,000 Black, Hispanic Voters To Crowded Precinct With Little Warning*, MISS. FREE PRESS (Oct. 29, 2020), <https://www.mississippifreepress.org/6492/madison-county-moves-2000-black-hispanic-voters-to-crowded-precinct-with-little-warning/>.

²¹ Ashton Pittman and William Pittman, *Confusion, Two-Hour Waits After 2,000 Black, Hispanic Voters Relocated In Ridgeland*, MISS. FREE PRESS (Nov. 3, 2020), <https://www.mississippifreepress.org/6704/confusion-two-hour-waits-after-2000-black-hispanic-voters-relocated-in-ridgeland/>.

²² *Id.*

office,” and your office is “not notified when changes are made.”²³ However, county officials informed us that the Secretary of State is responsible for inputting polling site changes into SEMS. This confusion appears to be at least one of the reasons why SEMS, and as a result the online poll locator, does not reflect the most up-to-date and accurate polling site information.

Mississippi law provides your office with the authority to “adopt rules and regulations necessary to administer [SEMS].”²⁴ We urge you to adopt rules pursuant to this authority requiring Election Commissioners or other authorized county officials to promptly report polling site changes in SEMS so that the online poll locator is updated accordingly. Moreover, we urge you to create a process that notifies your office when changes to polling site locations occur in SEMS and allows you to vet entries into SEMS.

ii. Lack of Compliance with Law Requiring County Boards of Supervisors to Report Polling Place Changes to the Secretary of State

Mississippi law requires the county Board of Supervisors to report polling site location changes to the Secretary of State. The Election Code provides that “upon the order of change in the boundaries of any voting precinct *or voting place therein*, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change.”²⁵ Significantly, the law provides that “*[n]o change shall be implemented or enforced until the requirements of this section have been met.*”²⁶ While the law does not provide a reporting timeframe, it is clear that the change cannot be implemented until the Secretary is notified.

This reporting requirement should allow the Secretary to keep the online poll locator updated with polling site location changes. However, the inaccurate and incomplete polling site information on the Secretary’s website during the 2020 elections indicates either that county election officials are not complying with their reporting requirement or the Secretary’s office fails to timely update the website or to utilize this reporting to ensure the accuracy of the online poll locator.

Accordingly, we urge you to issue guidance affirming the obligation of county Boards of Supervisors to notify the Secretary of State of polling site changes *prior* to implementation and establishing a timeframe and process for Boards of Supervisors to report these changes. Additionally, the Secretary of State should create internal processes that allow it to utilize the legal descriptions and maps of polling location changes reported by county Boards of Supervisors to vet the information entered into SEMS so that information on the online poll locator is timely, accurate, and complete.

b. Inconsistent Notice to Voters by Counties

Once a polling site location has been changed, the county Election Commissioners should issue notice to affected voters. But, as described above, there were widespread reports of voters not receiving timely (or any) notice of their polling site changes.²⁷ Moreover, the Attorney General’s office has indicated in an advisory opinion that Election Commissioners should provide voters with notice of changes affecting

²³ Pittman, *supra* note 1.

²⁴ Miss. Code § 23-15-165(4).

²⁵ Miss. Code § 23-15-283(1) (emphasis added)

²⁶ *Id.*

²⁷ Pittman, *supra* note 20 (explaining that some voters in Madison County reported not receiving notice of their polling site changes).

where they cast their ballots,²⁸ but Election Commissioners have no formal rules for the timing, delivery, and adequacy of such notice.

Prompt and adequate notice to voters about polling site changes is an appropriate safeguard against voter confusion. Adequate notice, at minimum, includes publishing polling site changes on county websites and in traditional news and social media sources. It may also include sending written notice to voters for changes that occur shortly before the election. We urge you to consider issuing guidance governing how and when Election Commissioners notify voters about polling site changes.²⁹

III. Recommendations for Addressing Polling Site Changes

We urge you to implement the following recommendations and take the steps outlined below to prevent unpublicized polling site changes. We are eager to meet with representatives from your office to discuss these issues and ways to prevent these discrepancies in future elections.

- 1) **Promulgate Rules Requiring Election Commissioners or Other Authorized Officials to Enter Polling Site Changes into SEMS:** We urge you to issue rules or regulations instructing Election Commissioners or other authorized election officials, including circuit clerks and county registrars, to input poll site changes into SEMS. We recommend these rules require that no polling site changes be made within 60 days of an election, except in exceptional circumstances.³⁰ We also recommend requiring polling site changes be entered into SEMS within 10 days if the change is made more than 90 days before an election; within 3 business days if the change is made within 90 days of the election; and within one (1) day if change is made within 30 days of an election.
- 2) **Provide Guidance to County Boards of Supervisors and Election Officials about Reporting Polling Site Changes:** We urge you to issue formal guidance that affirms the Board's reporting obligation under Mississippi law and establishes a process and deadline for timely reporting changes based on the number of days before the election. We recommend that you instruct all election officials that no polling site changes be made within 60 days of an election, except in exceptional circumstances.³¹ We also recommend instructing Boards of

²⁸ See Op. Atty. Gen. No. 94-0249, 1994 WL 241037 (Miss. A.G. May 25, 1994) (concluding that Election Commissioners should notify voters “of the [precinct] change so he will know that he is to vote at the polling place of the precinct where he resides”).

²⁹ Other states have instituted similar notice requirements. See Tex. Election Code § 43.061(b)(1) (requiring counties to post notice of a polling site change within 24 hours on the county clerk website); Ga. Code Ann. § 21-2-265 (requiring the county to publish notice of a polling site change once a week for two consecutive weeks). In Florida, for instance, counties are required to publish notice of a polling site change on the county website and in a county newspaper, and to mail notice to the voter for changes made more than fourteen days before the election. Fla. Stat. §§ 101.001; 101.71.

³⁰ Georgia has a similar deadline for changing polling site locations. See Ga. Code Ann. § 21-2-265(f) (prohibiting poll site changes less than 60 days before an election, or 30 days before a special election, “except, in the discretion of the superintendent, when an emergency or event occurs during such time period which renders the polling place unavailable for use at such general primary, general election, special primary, special election, or runoff”); see also Ala. Code § 17-6-4(d) (“Except as provided further by local election laws or by the electronic vote counting laws, whenever voting places are once designated and established as required by this section, the voting places for precincts shall not be changed within three months before an election is to be held.”)

³¹ *Id.*

Supervisors to report location changes within 10 days if made more than 90 days before an election; within 3 business days if made within 90 days of the election; and within one (1) day if made within 30 days of an election.

- 3) **Provide Guidance about the Timing and Delivery of Notice to Voters of Changing Polling Sites:** Your office should issue guidance requiring Election Commissioners to issue notice of a polling site change to affected voters. Adequate notice should include publishing the change in traditional media sources (including television, radio, and county newspapers) and online media sources (including county websites and social media accounts), as well as issuing written notice by mail to voters for changes made within 14 days of the election.³² If the change occurs fewer than 14 days before the election, your office should encourage Election Commissioners to also conduct outreach to affected voters by telephone.

As Mississippi prepares for midterm congressional elections, it is critical that the Secretary of State address barriers to full political participation for every Mississippian, and the lack of accurate and timely information on polling place changes is a significant barrier that must be addressed.

We request a reply by April 1, 2022 indicating whether you plan to implement any policies to prevent unreported polling site changes. Please feel free to contact Tanesha Williams (twilliams@naacpldf.org, (202) 216-2726) with any further questions. Thank you for your attention to this pressing matter.

Sincerely,

/s/ Tanesha Williams

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³² *Supra* note 29, Fla. Stat. §§ 101.001; 101.71. We understand that distributing notice to voters may be complicated in part by delays and issues with the United States Postal Service (USPS). We recommend that any guidance about the timing of notice take into account current USPS delivery times and any potential delays.

Mississippi Center for Justice

Rev. Robert James
State President
Mississippi State Conference – NAACP

Nsombi Lambright
Executive Director
OneVoice

Waikinya Clanton
State Director, Mississippi
Southern Poverty Law Center

NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Co-signed by:

ACLU of Mississippi

The ACLU of Mississippi is dedicated to promoting, defending, and extending civil rights and civil liberties to all Mississippians with emphasis on issues related to criminal justice reform, education opportunities, equal access/equality for all, voting rights, and governmental transparency and accountability. *We accomplish our mission through legislation, litigation and advocacy.*

Black Voters Matter Capacity Building Institute

Black Voters Matter – Capacity Building Institute’s goal is to increase power in marginalized, predominantly Black communities. Through our Capacity Building Institute, we provide training and support for community-based organizations.

Mississippi Center for Justice

Mississippi Center for Justice is a nonprofit, public interest law firm committed to advancing racial and economic justice. Supported and staffed by attorneys and other professions, the Center develops and pursues strategies to combat discrimination and poverty statewide.

Mississippi State Conference – NAACP

The vision of the NAACP is to ensure a society in which all individuals have equal rights and there is no racial hatred or racial discrimination. The mission of the NAACP is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The Mississippi State Conference was on the forefront of all the major battles of the civil rights movement in Mississippi during the ‘50s, ‘60s, and ‘70s through and collaborating with other civil rights organizations to organize demonstrations, protests, selective buying campaigns, sit-ins, marches, and legal action, all aimed at securing equal rights under law for ALL citizens of the state.

One Voice

Through collaborative efforts with traditional and non-traditional allies, One Voice has played a pivotal role in building alliances that transcend organizational and racial boundaries.

One voice grew out of the work undertaken by the Mississippi State Conference NAACP in response to housing, education, civil rights, and other related policy advocacy needs facing historically disadvantaged communities in the wake of the 2005 hurricanes. That work revealed significant needs within the non-profit sector. One such need was access to current and relevant data required to do effective policy analysis. Another need was one of connections between trained and networked community leadership and non-partisan, community-based structures through which broad public involvement could be organized and sustained. One Voice, a 501 (c)(3) non-profit organization, was formed to address these needs.

Southern Poverty Law Center (“SPLC”)

The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.

CC:

Assistant Secretary of State, Elections, electionsanswers@sos.ms.gov