



October 14, 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:

We wrote to you on March 17, 2022 to describe concerning issues related to polling location changes that took place ahead of the November 2020 general election in Mississippi and to request the issuance of rules and guidance from your office to address those issues. Thank you for your April 5, 2022 response to our letter. We were encouraged by your stated commitment to ensuring that every eligible voter in Mississippi is able to exercise their right to vote, and specifically, by your pledge to work with county officials to ensure that polling place information is accurate and easily accessible to voters.

However, we are concerned that your refusal to implement the specific recommendations we outlined in our previous letter has and will result in the continued disenfranchisement of Mississippians. Public reporting and our own monitoring have revealed that many of the polling place changes that occurred since the 2020 election were either not reflected in the Statewide Election Management System (SEMS) or were reflected incorrectly leading up to the June 2022 primary election.¹ With the November 2022 general election only weeks away, these problems stand to repeat themselves. It is therefore critical that you promptly take the steps outlined in our previous letter—which you have the authority to do—to ensure that voters receive the correct information about where they are supposed to vote on Election Day.

I. Inaccurate Polling Site Information is Still an Obstacle to Mississippi Voters in 2022

As we described in our March 2022 letter, poll site changes impacted thousands of Mississippi voters ahead of the 2020 election due to omissions or inaccurate reporting of those changes on the Secretary of State’s online poll site locator. Unfortunately, this problem has not been solved. Leading up to the June

¹ Ashton Pittman & William Pittman, *Mississippi Election Officials Made 70 Polling Place Changes Since 2020, MPF Finds*, MISS. FREE PRESS (June 3, 2022), <https://www.mississippifreepress.org/24350/mississippi-election-officials-made-70-polling-place-changes-since-2020-mfp-finds> (describing changes in polling places from the 2020 election).

2022 Primary Elections, there were 70 changes to polling places, including 48 precinct relocations, 15 closures, and 8 new precincts.² Many changes were not reflected in SEMS at all, and some changes were incorrectly reported or recorded in SEMS.³ Calls to the circuit clerks and election commissioners revealed errors in the April 2022 SEMS updates, indicating that the issue of inaccurate or outdated polling place locations from the 2020 election continues.⁴

Because SEMS serves as the data source for the online poll site locator, this means that the locator reported incorrect information to voters seeking information about how and where to vote. Poll site changes disproportionately impact Black voters, and it is essential that you act to remedy these needless sources of confusion and disenfranchisement.⁵ Importantly, adopting the recommendations we have provided will improve confidence in your office's stated commitment to ensuring that all Mississippians have the information they need to vote.⁶

II. You Have the Authority to Issue Guidance to Assist County Officials in Carrying Out Their Election-Related Responsibility of Reporting Polling Site Changes

In your response letter, you assert that you do not have the authority to carry out our recommendations because your office is limited to “administering” SEMS.⁷ As explained below, you do have the authority to issue the rule we recommended. But even if you did not, most of our recommendations are for the issuance of *non-binding guidance*. Nothing precludes you from doing this. As you describe in your letter, “[t]he role of the Secretary of State’s office is to assist counties in conducting elections, which includes . . . providing assistance to local election officials in carrying out their election-related responsibilities.”⁸ Indeed, your office routinely issues guidance to clerks and other local officials to assist them with election administration. Again, there is no colorable argument that you lack authority to issue simple guidance.

We recommend that you issue guidance to assist county officials to: (1) report polling site changes to your office, as is statutorily required,⁹ on a reasonable timeline to account for the proximity of Election Day; and (2) specify when and how local officials should notify voters about changed polling sites. Given the gaps in reporting of polling site changes, there is a need for guidance from your office. Guidance would undoubtedly assist county officials in meeting their statutorily required responsibility of reporting polling

² *Id.*

³ *Id.*

⁴ *Id.* In addition, our own nonpartisan poll monitors discovered changes to polling locations in Gulfport that were not updated.

⁵ Ashton Pittman & 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> (describing disproportionate impact of voting site changes on communities of color in Mississippi); Robert McDuff, *The Voting Rights Act and Mississippi*, 17 REV. OF L. & SOC. JUST. 475, 480 (2008) (describing a broader history of discrimination in voting, including through discriminatory changes in polling locations).

⁶ Ashton Pittman, *Voters Who Registered May 31 Not in Poll Books, Required to Vote Affidavit in Runoffs*, MISS. FREE PRESS (June 28, 2022), <https://www.mississippifreepress.org/25231/voters-who-registered-may-31-wont-appear-in-poll-books-must-vote-affidavit-in-runoffs> (discussing a mistake where those registering to vote on May 31, 2022 for the June 2022 primary election were not included on the poll books and needed to vote affidavit ballots).

⁷ MISS. CODE ANN. § 23-15-165.

⁸ Letter from Michael Watson to Tanesha Williams (Apr. 5, 2022).

⁹ MISS. CODE ANN. § 23-15-283(1) (“Upon the order of change in . . . any voting precinct or the *voting place therein*, the board of supervisors shall notify the Office of the Secretary of State” and “[n]o change shall be implemented or enforced until the requirements of this section have been met.” (emphasis added)).

site changes to your office and their election-related responsibility of providing voters accurate and updated information.

III. You Have the Authority to Issue a Rule Requiring Counties to Update SEMS with Polling Site Changes

You also have the authority to issue a rule requiring county election officials to update SEMS with poll site changes under Mississippi Code § 23-15-165. As you note, your office has the authority to adopt rules and regulations to administer SEMS.¹⁰ Administering SEMS requires that you take reasonable steps necessary to ensure that the information in SEMS regarding polling locations is accurate and up-to-date. If SEMS contains inaccurate or outdated information regarding polling sites, Mississippi law permits you to enact procedures through a rule or regulation to fix it.¹¹

In addition, Mississippi law provides that administering SEMS *requires* at least the “maintenance of a centralized database for voter registration information.”¹² It also *requires* establishing “procedures for integrating [voter information] into the centralized database.”¹³ Voter registration information includes the polling place where a person votes. Indeed, an official Mississippi voter registration card includes the address of the voter’s assigned poll site. Accordingly, your office is statutorily responsible for issuing rules to ensure SEMS contains accurate poll-site information. Further, because local officials may update SEMS data directly, it follows that in order to administer SEMS, your office may issue binding instructions for how and when those officials must update poll site data.¹⁴ A common-sense reading of the law confirms that your office may issue this rule. This is precisely the type of procedure the statute contemplates, and it is squarely within your authority.

In fact, your own office has issued rules under similar authority before—indeed, at least three times. Mississippi may be a “bottom up” state, but your office routinely issues rules that reach even further (and rest upon less clear statutory authority) than the rule we request. First, you issued a rule to “administer” state Photo ID requirements under Miss. Code § 23-15-7.¹⁵ There, your rule required the Registrar to abide by strict timelines when issuing voter ID cards, even though the statute required no such timeline.¹⁶ Second, you issued rules with respect to Electronic Polling Books (EPBs) under the authority of Miss. Code § 23-15-169.5, which required your office to “effectuate” the Help America Vote Act of 2002 (HAVA).¹⁷ There, your rule established a rigid timeline for when SEMS data may be incorporated into EPBs even though,

¹⁰ MISS. CODE ANN. § 23-15-165(4)(a).

¹¹ Even further, you must implement SEMS in a “uniform and nondiscriminatory” manner. Mississippi’s Election Code already requires the county registrar to provide polling locations for approved applicants who register to vote by mail. MISS. CODE ANN. § 23-15-47(2)(c) (“If the county registrar determines that the applicant is qualified . . . the county registrar shall mail the applicant written notification that the application has been approved, specifying the county voting precinct, municipal voting precinct, if any, polling place and supervisor district in which the person shall vote.”). Here, requiring the same notice for polling location changes after voters have registered would help ensure all voters are treated equally.

¹² *Id.*

¹³ MISS. CODE ANN. § 23-15-165(4)(b).

¹⁴ *Id.* See also MISS. CODE ANN. § 23-15-283(1) (noting voting places may also be updated by local officials, including the board of supervisors and election commissioners with access to SEMS).

¹⁵ MISS. CODE ANN. § 23-15-7 (“The Secretary of State . . . shall adopt rules and regulations for the *administration* of this section.” (emphasis added)). The Section describes Photo ID requirements.

¹⁶ 1 Miss. Admin. Code Pt. 16, R. 3.6, <https://www.sos.ms.gov/adminsearch/ACCcode/00000534c.pdf> (outlining deadlines for assessing applications for Mississippi voter ID cards).

¹⁷ MISS. CODE ANN. § 23-15-169.5 (“The Secretary of State shall promulgate rules and regulations necessary to effectuate the provisions of the Help America Vote Act of 2002 in this state.”).

again, the statute was silent.¹⁸ This rule was implemented for the purpose of improving SEMS data accuracy, and when issuing that rule, you cited the precise statutory authority we ask you to rely on here.¹⁹ Third, you issued rules with respect to absentee voting and ballot cures under Miss. Code §§ 23-15-637(3) and 23-15-227(6).²⁰ There, your rule created a deadline to submit ballot cure forms, as well as extensive voter notification procedures, even though the statutes do not contemplate such a timeline or notification procedures.²¹ Compared to all three of these rules, our proposed rule is more firmly grounded in the statute and would be even less burdensome on counties and voters. We do not ask you to exercise your authority in ways that exceed what you have done in the past.

Your office can use multiple approaches to ensure that all counties receive guidance quickly. Of course, you may email guidance to county officials (including those who have been certified via mandatory trainings sponsored by your office²²) or post it on your website. In future elections, we ask that this is made part of the mandatory training for election officials seeking certification.

This matter is urgent. Given the proximity of the election, we ask for action and a response to this letter as soon as possible, and no later than October 18th. We welcome the opportunity to continue the conversation on this pressing matter in a meeting with you and your staff ahead of the November 2022 elections. Please feel free to contact Tanner Lockhead (tlockhead@naacpldf.org) with any further questions.

Sincerely,

/s/ Tanner Lockhead

Tanner Lockhead

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¹⁸ 1 Miss. Admin Code Pt. 10, R. 9.3, <https://www.sos.ms.gov/adminsearch/ACCode/00000175c.pdf> (requiring all EPBs to be compatible with SEMS).

¹⁹ *Id.*

²⁰ MISS. CODE ANN. §§ 23-15-637(3) (discussing dates for ballot casting, receipt, deposit, and finality, but not ballot cure applications), and 23-15-227(6) (compensation of poll managers).

²¹ 1 Miss. Admin Code Pt. 17, R. 4.1 & 4.2, <https://www.sos.ms.gov/adminsearch/ACCode/00000731c.pdf> (“The notice must also inform the voter that if he/she does not cure the signature mismatch by noon on the 10th calendar day post-election, the voter’s ballot will not be counted.”). The rules provide extensive guidance on procedures for notifying voters on signature mismatches – precisely the type of instruction we request for notifying voters of precinct changes.

²² Miss. Code § 23-15-211(4) requires local election commissions to be certified, and certification requires attending an annual elections seminar sponsored by your office.

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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.*

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.

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.

Black Voters Matter – Mississippi

Black Voters Matter – Capacity Building Institute’s goal is to increase power in marginalized, predominantly Black communities. Effective voting allows a community to determine its own destiny. We agree with the words of Dr. Martin Luther King, Jr. when he said, “Power at its best is love implementing the demands of justice, and justice at its best is power correcting everything that stands against love.”

Mississippi Black Women’s Roundtable

Mississippi Black Women’s Roundtable (MS-BWR) is an intergenerational civic engagement statewide network and the women and girls empowerment arm of the National Coalition on Black Civic Participation (NCBCP) that champions equitable public policy on behalf of Black women and girls nationally and across the South.

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.

Lawyers’ Committee for Civil Rights Under Law

The principal mission of the Lawyers’ Committee for Civil Rights Under Law is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities. The Lawyers’ Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar’s leadership and resources in combating racial discrimination and the resulting inequality of opportunity – work that continues to be vital today.

CC:

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