



DELBERT HOSEMANN

Secretary of State

January 18, 2013

SECTION 5 CONSIDERATION REQUESTED

Mr. T. Christian Herren, Jr.
Chief, Voting Rights Section
Civil Rights Division
United States Department of Justice
Room 7254 – NWB
1800 G Street, NW
Washington, DC 20006

Re: File 2012-0003

Administrative Rules and Other Materials Related to Mississippi's Voter ID Law

Dear Mr. Herren:

In my capacity as chief elections officer of the State of Mississippi and as an official authorized under state law to make this submission, I submit the above-referenced administrative rules ("Rules") for preclearance under Section 5 of the Voting Rights Act. As set forth in 1 Mississippi Administrative Bulletin 19271, at 2 (Dec. 12, 2012), the Rules establish procedures to implement constitutional and statutory provisions requiring electors to present photo ID when voting in person. The submission of the Rules is related to the State of Mississippi's previous submission of Mississippi Constitutional Initiative Number 27 ("Initiative 27") and House Bill 921 ("HB921"), which are currently under consideration by the U.S. Attorney General. *See* File 2012-0003.

In accordance with 28 C.F.R. § 51.27, I submit the following information:

A copy of the Rules is provided as Attachment 1. An electronic copy is also available at <http://www.sos.ms.gov/ACProposed/00019271b.pdf>. These are new Rules and there are no previous versions.

While the purpose of the constitutional and statutory provisions is to confirm the person presenting himself to vote is the voter on the poll list, the purpose of the Rules is to establish procedures for the administration of this new requirement.

Chapter 1 of the Rules sets forth the definitions of the various terms used in HB921. For example, "current" means the ID "has no expiration date or was issued at a date not more than ten (10) years prior to the date the document is presented." For purposes of the administration of the photo ID requirement, current can encompass expired photo ID. The photo ID requirement is not intended to prevent an elector from voting by regular ballot because his or her photo ID may have recently expired. To address changes in an elector's appearance over a span of years and to provide a clear standard for election officials tasked with determining the sufficiency of an elector's photo ID, the Rules provide that an ID having expired

more than ten (10) years prior to the date the elector presents it to vote is not acceptable. This 10-year standard mirrors the federal government's for United States passports issued to individuals over the age of 16.

Chapter 2 outlines the acceptable forms of photo ID as prescribed in HB921. Rule 2.1 requires each qualified Mississippi elector presenting to vote in person at the polling place or at the county Registrar's office and who is not exempted from photo ID requirements, to identify himself or herself to an election official by presenting a form of acceptable photo ID. The acceptable forms of photo ID include, but are not limited to, a Mississippi driver's license; an employee photo ID issued by any government entity in Mississippi, a U.S. Passport; an employee photo ID card issued by the U.S. government; a Mississippi firearm license containing a photo of the elector; a tribal ID card containing a photo of the elector; a U.S. photo military ID card; a student photo ID card issued by any accredited college, university or community or junior college in the State; an official Mississippi Voter Identification card; any photo identity document issued by the U.S. government or any U.S. state other than Mississippi; or a Veteran's Universal Access Card.

Chapter 3 addresses procedures for issuing free voter ID cards, specifically the availability of and application for the card. Chapter 3 also outlines the eligibility requirements for receiving the voter ID card and receipt for the card, contains instructions to registrars for processing voter ID card applications and issuing receipts and provides certain other rules governing the Mississippi's voter ID requirements.

Rule 3.2 requires the registrar of each county to provide a location in his or her office, including each office in those counties with two judicial districts, where the registrar makes available and accepts applications for the voter ID card and issues the voter ID card receipt. The voter ID card applications will be accepted and the receipt will be issued during normal business hours and during any additional hours as are provided by the Mississippi law. The rule also provides that a qualified, eligible elector may apply for a voter ID card at any county registrar's office in the State. Almost no elector lives farther than 20 miles from any registrar's office. The State's analysis indicates that 99.7% of Mississippi's surface area is covered within the 20-mile radius (see attached maps of Mississippi illustrating (1) circles drawn around each registrar's office representing a 20-mile radius from each office and (2) 20-mile radius total area coverage (Attachment 2)).

Rule 3.3 provides that the Mississippi Secretary of State will design and publish the voter ID card application form. The application will require the elector to (i) affirm the elector is registered to vote in Mississippi, or is registering to vote at the same time the elector is submitting an application for the voter ID card, (ii) affirm the elector does not currently possess any of the forms of acceptable photo ID to vote; and (iii) provide the elector's full legal name, date of birth, legal residence address, and mailing address (if different). The elector will sign the application under oath in the presence of the registrar. Any falsification or fraud committed in making the application for the voter ID card with respect to the elector's name and address constitutes false swearing as defined and is punishable by Miss. Code Ann. Section 97-7-35.

Rule 3.4 defines the eligibility requirements for an elector to receive a voter ID card. An elector who possesses a valid and unexpired Mississippi driver's license or photo ID card issued by the Mississippi Department of Public Safety ("DPS") is not eligible to receive a voter ID card. Those eligible electors must complete and sign the voter ID card application and present one of the six listed types of documentation or information ("underlying documentation") to the registrar. Underlying documentation includes a photo identity document; any documentation setting forth the elector's full legal name, date

and place of birth; a Social Security card; a Medicare or Medicaid card; or a document setting forth the elector's name and current address such as a utility bill, bank statement, paycheck or government check. These include the same materials accepted to register to vote under the Help America Vote Act.

Rule 3.5 sets out the procedure by which the registrar will process the voter ID card application. If an elector does not possess one of the above forms of underlying documentation, the registrar will have the ability to electronically certify the elector's birth records (free of charge to the elector) by accessing the Electronic Verification of Vital Events ("EVVE") system if the elector provides basic identifying information. Nearly all Mississippi electors already have access to at least one of the forms of underlying documentation. The State will go a step further to ensure that all eligible electors are able to obtain the voter ID card - and the information needed to obtain an ID card - at no cost. The State has entered into a memorandum of understanding between the Secretary of State and the Department of Health, Office of Vital Records. The National Association for Public Health Statistics and Information Systems ("NAPHSIS"), the developer of the EVVE system, will verify an elector's birth information. Any fees incurred for the utilization of EVVE will be paid by the State.

Chapter 4 provides detailed guidelines to election officials for assessing the sufficiency and validity of photo ID presented by an elector appearing to vote in the registrar's office or in person at the polling place. An election official is instructed to verify (1) that the photo ID presented by the elector is one of the forms of acceptable photo ID, (2) that the photo fairly depicts the elector, and (3) that the elector's name as it appears on the photo ID is substantially similar to the elector's name as it appears on the poll book. If the election official determines that the above criteria have been met, the elector is allowed to cast his or her ballot. Should the photo ID fail to meet any of the above guidelines, the elector may vote by affidavit ballot pursuant to Miss. Code Ann. Section 23-15-573.

Chapter 5 includes affidavit ballot procedures for electors who are unable to present an acceptable form of ID. If an elector appears to vote at the registrar's office or polling place and cannot produce an acceptable photo ID or if the elector states that he or she has a religious objection to being photographed, the elector may vote by affidavit ballot. An affidavit ballot cast by an elector who did not produce an acceptable photographic identification will automatically be counted as a vote if the elector returns to the registrar's office in his or her county of residence and presents an acceptable photo ID within five (5) business days (effectively seven (7) calendar days) of the election.

Chapter 6 restates which electors are exempted from the photo identification requirements set forth in Initiative 27 and HB 921: (1) electors with a religious objection to being photographed and (2) electors who reside in a licensed nursing home or assisted living center.

Chapter 7 addresses absentee voting by mail. It should be noted and is stated in Chapter 7 that any elector who receives and casts his or her vote by absentee ballot by mail is exempt from the photo ID requirements. Absent electors receiving and casting votes by absentee ballot by facsimile or electronic mail delivery under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") are also exempt from the voter ID requirements. Lastly, Chapter 7 restates that an elector appearing at the registrar's office in person to vote by absentee ballot is subject to the voter ID requirements.

The person making this submission is Delbert Hosemann, Secretary of State of Mississippi. The mailing address for the Secretary of State is P.O. Box 136, Jackson, MS 39205-0136. The phone number is 601-359-1350. The Secretary of State submits these materials on behalf of the State in his capacity as

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chief elections officer and under the authority granted to him by Mississippi law, including Section 10 of HB921.

The statutory authority under which the Rules are promulgated is HB921. The Rules are being adopted in accordance with the Mississippi Administrative Procedures Act, Miss Code Ann. 25-43-1.101 et seq. The Rules were published for public comment in the Mississippi Administrative Bulletin on December 12, 2012. No comments were submitted or oral proceeding was requested during the 25-day public comment period. If the submission receives no objection, the Secretary of State will file the rules as final.

The Rules will neither disproportionately affect nor impose a material burden on minority voters. To our knowledge, there is no past or pending litigation concerning the subject matter of the Rules.

The Secretary of State is providing additional information that may assist in the review of this submission. By letter dated October 1, 2012, the U.S. Attorney General's requested additional information concerning Mississippi's new voter ID requirement. This information may also be responsive to those requests.

DOJ requested information regarding the State's determination that the voter ID requirements would not have a retrogressive effect on minority voters. In response, the State submits the results of a survey conducted by Edison Research on behalf of the Mississippi Secretary of State. Edison Research is a premier research company in the United States, and the sole provider of exit poll information to the Associated Press, ABC News, CBS News, MSNBC, Fox News, CNN and USA Today. During the November 6, 2012 general election, Edison personally surveyed Mississippi voters as they exited 30 polling locations selected randomly by Edison. In the survey, Mississippi voters were asked whether they possessed one of the forms of photo ID acceptable under HB921. Less than 1% of respondents reported not having one of the forms of ID acceptable under the Mississippi's voter ID law.

Edison's survey results, data tables, and training materials are enclosed as Attachment 3.

While the survey reveals 1.5% of Blacks and 0.4% of Whites do not currently possess photo identification, the extensive mitigation efforts by the State will more than adequately address any issues regarding the effective exercise of the electoral franchise. HB921 provides for the issuance of free Voter ID cards to all eligible electors free of charge, at any registrar's office in the State.

The State will:

1. Publicize voter ID requirements so that all citizens are adequately informed of the need for photo ID and the availability of the free Mississippi Voter Identification Card. The Secretary of State will implement a robust outreach and media plan to this effect. Enclosed is an estimated budget for outreach and media efforts and implementation of the Mississippi Voter ID Card program (Attachment 4).
2. Provide free transportation to and from the registrar's office for the purpose of obtaining a Mississippi Voter Identification Card. The Secretary of State and the Mississippi Department of Transportation have entered into a memorandum of understanding ("MOU") to implement a free voter ID transportation program. Through this partnership, public and private transit

providers will provide free transportation for voters who need a free voter ID card but need transportation to a registrar's office. The transportation program MOU is enclosed as Attachment 5.

3. Provide the Mississippi Voter Identification Card at no expense to the voter. HB921 provides that no fee will be charged to the voter for applying for and obtaining the card. No cost must be incurred by the voter for providing the underlying documentation for verifying one's identity for application for a Mississippi Voter Identification Card. The rules contained herein provide a list of documents that may be accepted as identity verifying documentation. The Secretary of State has also taken measures to ensure that voters who cannot provide the necessary underlying documentation may still have their birth records certified through the Electronic Verification of Vital Events ("EVVE") System. A memorandum of understanding (enclosed as Attachment 6) was executed between the Secretary of State and the Mississippi State Department of Health to coordinate registrar access to the EVVE system for the purposes of verifying the identity of Mississippi Voter Identification Card applicants.

DOJ requested information on the State's determination that the voter identification law was not adopted for a discriminatory purpose. In response, the State submits the following documents:

1. Video recordings of the Mississippi Legislature's floor debates concerning HB921. Attachment 7 outlines where the video recordings are stored online and the relevant files and timeframes within those videos containing discussion of HB921 and proposed amendments.
2. The final report of the Commission on Federal Election Reform, "Building Confidence in U.S. Elections" (Attachment 8), which was referenced by Mississippi legislators in support of HB921. The report recommended the use of photo ID to verify voters' identities, citing the existence of voter fraud and lack of public confidence in elections resulting from the absence of a voter ID requirement.
3. The United States Supreme Court decision in *Crawford v. Marion County Election Board*, in which the Court upheld the State of Indiana's voter identification law (Attachment 9). Supporters of Mississippi's voter ID law reference that decision as evidence that the law was both legal and prudent.
4. The report "Voter IDs Are Not The Problem: A Survey of Three States," published by the Center for Democracy and Election Management at American University in Washington, D.C (Attachment 10). The report contains the results of a survey of Mississippi registered voters, which indicate that a high percentage of Mississippians have a driver's license, passport, or military ID, and that many Mississippians lack confidence in the integrity of the election system and favor voter ID requirements. This report was cited by legislators during floor debate on HB921.
5. The report "The Empirical Effects of Voter-ID Laws: Present or Absent," published jointly by Jason D. Mycoff and David C. Wilson of the University of Delaware and Michael W. Wagner of the University of Nebraska (Attachment 11). The researchers used voter turnout data to examine the effect of voter ID laws on voter turnout. The study indicates that voter ID laws have a minimal impact on voter turnout. This report was also cited by legislators during floor debate on HB921.

6. The opinion by the United States District Court for the Northern District of Georgia in *Common Cause v. Billups* (Attachment 12) and subsequent findings by the Secretary of State of Georgia regarding voter turnout (Attachment 13). Mississippi lawmakers used the Georgia voter ID law as a guide since it withstood Voting Rights Act scrutiny from the Department of Justice and federal courts. Also, lawmakers cited the information from the Secretary of State of Georgia indicating that minority voter turnout increased after voter ID laws were put into effect.
7. The transcripts from the constitutional amendment public hearings (Attachments 14-22, and also available online at <http://www.sos.ms.gov/elections/initiatives/>). These public hearings were hosted by the Secretary of State so that citizens could express their views concerning Initiative 27 and the two other constitutional amendments on the ballot for the November 8, 2011 General Election. Nine hearings were held at locations throughout the state. The hearing format provided that each amendment was discussed separately, with one initiative proponent and one opponent giving a statement, followed by an open invitation for citizens to make comments regarding the proposed amendments.
8. Documents regarding meetings hosted by the Secretary of State to seek input from relevant groups on the Rules and implementation of HB921. These meetings were held before the Rules were posted for public comment so that any input may be included in the proposed rules. The Secretary of State invited representatives from various interested parties including voter advocacy groups, including those that had previously voiced objection to the State's voter ID law, election officials, other local and state officials, and political parties. The Secretary of State sought their input on how to promulgate rules and regulations that impose no more than a minor inconvenience to voters and ensure efficient administration of the voter ID requirement. A list of invitees and attendees, meeting presentation slide decks and agendas are enclosed as Attachments 23-25.

Data files from the State's voter registration, drivers' license, and non-drivers' identification card databases have been provided in CSV format. As you know, Mississippi does not request or maintain race data of registered electors.

The locations and hours of operations of DPS offices and registrars' offices are enclosed as Attachments 26-27. The free voter ID card can be obtained at any county registrar's office.

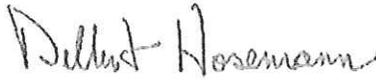
With respect to the list of governmental entities that issue acceptable photo ID, the Secretary of State contacted state and local government entities to ascertain whether they issued photo IDs. The attached list (Attachment 28) includes state and local government entities that responded to the Secretary of State, and indicated that they do issue photo IDs. The list does not include federal agencies or entities.

For the DOJ's request regarding the ID documents not expressly mentioned in HB921, please refer to the Rules.

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I look forward to speaking with you regarding this submission.

Sincerely,

A handwritten signature in cursive script that reads "Delbert Hosemann".

Delbert Hosemann
Mississippi Secretary of State

CDJ,JR/lr

cc: Margarette Meeks, Esq.