Report of Election Day Activities

Wilkinson County
Special Democratic Party
Primary Election

June 24, 2008

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REPORT OF ELECTION ACTIVITIES

WILKINSON COUNTY
SPECIAL DEMOCRATIC PRIMARY

JUNE 24, 2008

Prepared by:
Mississippi Secretary of State's Office

OVERVIEW

The results of the August 2007 Democratic Primary for three races were contested in circuit court. A specially appointed judge heard evidence and ordered that a new election must take place. Two Special Masters were appointed by the Judge to conduct the elections. Therefore a special election was set for June 24, 2008, as the special primary election.[1] In separate litigation, two groups within the Wilkinson County Democratic Executive Committee vied to be designated as the "true" executive committee.[2]

On June 24, 2008, approximately 4,501 Wilkinson County residents cast ballots to select a nominee in the Democratic primary for three offices—Circuit Clerk, Sheriff, and Supervisor in District 2.[3] Approximately 383 votes were cast by absentee voters.[4] As of June 19, 2008, there were 10,325 registered voters in Wilkinson County.[5] According to the United States Census Bureau, there were 10,266 people residing in Wilkinson County on July 1, 2007.[6] In 2000, there were 10,312 residents. Of those, 7,648 people were over

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[1] Hollins v. Smith, et al., Civil Action No. 07-0117; Jackson v. Stewart, et al., Civil Action No. 07-0118; Allen v. Delaney et al., Civil Action No. 07-0119; Wilkinson County Circuit Court. See court order attached as Appendix 1.

[2] Wilkinson County Democratic Executive Committee v. Ross, Civil Action No. 08-0050, Wilkinson County Circuit Court.

[3] See certified election results attached as Appendix 2. The figure 4,501 was obtained by adding up the total votes cast in the sheriff's race, which received the highest total of votes cast out of the three races on the ballot.

[4] List of absentee voters provided by Wilkinson County circuit clerk's office.

[5] Report from the Statewide Elections Management System (SEMS), administered through the Office of the Secretary of State.

[6] http://factfinder.census.gov/servlet/DTTable?_bm=y&-context=dt&-ds_name=PEP_2007_EST&-mt_name=PEP_2007_EST_G2007_T001&-mt_name=PEP_2007_EST_G2007_T008_2007&-CONTEXT=dt&-tree_id=807&-geo_id=05000US28157&-search_results=01000US&-format=&-_lang=en

the age of eighteen, and thus potentially eligible to vote.[7] Approximately forty-four percent (44%) of the registered voters in Wilkinson County participated in this special primary election. Measured against census numbers, approximately fifty-nine percent (59%) of the potentially eligible citizens participated in this special primary election.

Conducting a party primary is ordinarily the responsibility of the county's party executive committee. Executive committees may assign some of their statutory responsibilities to their county's election commission. In this special election, however, the primary was overseen by two Special Masters, appointed by the Court that ordered the election.[8] Further, the Secretary of State was requested to provide personnel to act as poll workers or monitors in each of the nine (9) precincts for both the primary special election and general election.

SECRETARY OF STATE ACTIVITIES

PRIOR TO ELECTION DAY

Prior to Election Day, the Secretary of State coordinated database building and other technical support for the county. Diebold voting machines were in place in all of the nine precincts in Wilkinson County. A single county technician was deployed into Wilkinson County by Premier Election Solutions (Premier), the successor company to Diebold. The county technician assisted the co-chairs of the Democratic Executive Committee in performing the necessary logic and accuracy testing of the Diebold voting machines. No irregularities were noted in the performance of the machines or in the programming of the memory cards.

The Secretary of State provided technology support, consistent with previous practice. Unusually, however, the Secretary of State also provided two separate training sessions for poll workers. Ordinarily, for a primary election, the party executive committee is responsible for providing certification training for poll workers. Due to the issues faced in this particular election, the special masters felt that it would be more appropriate for the Secretary of State to provide that training. Each training session was conducted at the Wilkinson County Courthouse in Woodville, Mississippi.

SECRETARY OF STATE ACTIVITIES

ELECTION DAY

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[7] http://factfinder.census.gov/servlet/DTTable?_bm=y&-context=dt&-ds_name=DEC_2000_SF1_U&-mt_name=DEC_2000_SF1_U_P001&-mt_name=DEC_2000_SF1_U_P012&-CONTEXT=dt&-tree_id=4001&-redoLog=true&-all_geo_types=N&-geo_id=05000US28157&-search_results=01000US&-format=&-_lang=en

[8] Hollins v. Smith, et al., Civil Action No. 07-0117; Jackson v. Stewart, et al., Civil Action No. 07-0118; Allen v. Delaney et al., Civil Action No. 07-0119; Wilkinson County Circuit Court. See court order attached as Appendix 3. The two special masters were Honorable Barry Ford and Honorable Robert Gibbs, both former circuit court judges.

Pursuant to the request of the trial court, the Secretary of State positioned observers in each precinct in Wilkinson County. Observers underwent a training session to remind them of the applicable federal and state election laws. The observers were asked to be present at 6:00 a.m., when the poll managers were scheduled to begin assembling voting machines and beginning the process of opening the polling location. The observers were directed to record their observations throughout the election day, particularly noting where there were perceived irregularities or departures from existing federal or state law. At the close of the election day, our observers monitored the processing of absentee ballots. After ballot boxes were packed for return to the courthouse, our observers followed the returning manager with the ballot boxes.

Thirteen (13) Secretary of State personnel were deployed into nine (9) voting precincts on election day to observe election day activities. Nine observers were asked to remain at an assigned precinct, while three observers were allowed to travel between precincts, allowing rest breaks and meal times to those fixed observers. The Assistant Secretary of State for Elections was positioned at the county courthouse during election day but also observed the election in precincts located near the courthouse. Several observers remained after the close of the voting at the courthouse as ballot boxes were processed and votes were tallied and canvassed. At least three federal observers from the Office of Personnel Management were noted in each precinct. Further, Premier provided two technicians for election day. Additionally, the Attorney General provided a special assistant attorney general and an investigator for election day. A number of other state law enforcement officials were present throughout the day as well.

By Friday, June 27, 2008, the combined Wilkinson County Democratic Executive Committee had certified the results of the election.[9]

OBSERVATIONS

Voter Assistance

Individuals who are blind, physically disabled, or unable to read or write are eligible to receive assistance in casting their votes.[10] Upon presenting themselves to vote, those voters should declare their reason for seeking assistance and must then ask for the assistance of an individual of their choice. If the pollworkers determine that the individual is qualified to receive assistance, the assistor of their choice is allowed to physically mark the ballot on behalf of the voter.

In this election, voter assistance was improperly rendered on multiple occasions. It was improperly rendered by pollworkers, other election officials, representatives of candidates, and members of the public. Improper voter assistance was provided in such a quantity as to cast doubt on the outcome of the election.

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[9] See certified election results attached as Appendix 2.
[10] 42 USC 1973aa-6; Miss. Code Ann. §23-15-549.

In one polling location, a particular pollworker consistently and repetitively provided assistance to individuals who did not appear to be qualified to receive assistance, did not request assistance, and did not communicate their wishes in any perceptible manner to that pollworker providing assistance. "[u]nauthorized voter assistance was a pronounced problem in this precinct. Approximately half to 75% of all voters received assistance. Much of this assistance come from one of the pollworkers, . . ." "On many occasions [the pollworker] would follow the voter into the booth without the voter indicating he or she needed assistance. On other occasions [the pollworker] would initiate contact with the voter and make a statement like 'you need help, right/' and then follow the voter into the booth and provide assistance. On many occasions it appeared that there was little to no conversation between [the pollworker] and the voter. [The pollworker] seemed to simply point to certain names while the voter cast the vote." At the same location, an elected county official "also participated in providing unauthorized voter assistance. [The official] assisted approximately 50 voters who did not indicate to pollworkers that they needed assistance. [The official] personally drove a number of these voters to the precinct. Most did not appear to require any assistance whatsoever. . . . [The official] was actually touching the screen for the voters." And again, another individual "appeared repeatedly to assist voters." "[That individual] drove many of the voters to the polls. [That individual] also was present at other times when the voters would come to vote, and [that individual] would follow the voter into the booth to vote. I did not witness any voter ask [that individual] for help or state to the pollworkers that he or she needed help voting."

At another precinct, a candidate's representative affirmatively told the voter he was assisting for whom he would be voting, without seeking input from the voter. "[W]hile she was behind the curtain with the voter she said, 'I know you gonna vote for your brother-in-law, aren't you?" At a third precinct, candidate representatives used cellular telephones and shortly thereafter, individuals arrived to vote with their "voter assistants." When special masters arrived, cellular telephones were used again, and voter assistance ceased until the telephone calls were made again. In multiple precincts voters who did not appear to need voter assistance declared their need for assistance and requested a representative for a particular candidate to provide assistance.

Still further, the same elected official in the county was observed "throughout the day bringing voters to the precinct. When [the official] walked in with them, [the official] would follow them to the voting machine and touch the screen for them. (actually voting for them) Some of the voters [the official] brought to the precinct were not on the voter rolls; therefore, an affidavit ballot was given. Once the ballot was in hand, [the official] would sit down and fill out the information for them. None of the voters that [the official] brought to the precinct, with the exception of one, actually asked for voter assistance throughout Election Day. [The official] was seen coming in and out of the precinct five times. Each time [the official] brought and assisted 1 to 6 people."

In another location, a woman appearing to be "in her early twenties" and seemingly "physically able bodied and [able to] see" requested assistance from someone

who had arrived with her. The assistor took the voter access card and voted for the voter while the voter stood beside the machine.

In yet another location, a "voter got assistance with out stating why they (sic) needed assistance or the poll worker checking to be sure that the person assisting didn't meet the criteria preventing them from assisting."

At a different location, one person "accompanied numerous voters to the precinct and each time was 'asked' to assist the voter (no visible handicap) [the person] brought. Time after time [the person] was observed actually touching the voter screen for the voter." A poll watcher stated that the person was the "driver." In the same location, another individual "accompanied numerous voters to the precinct. I personally witnessed her drive off in a van with numerous passengers that voted. Multiple times she was 'asked' to assist voters with no visible handicap in voting." In that same location, an elected official in the county "arrived at the precinct twice and 'assisted' voters twice. Both times the voter assistance was not to the standard set forth in the code." Still further, another individual assisted a man who "did not have a disability. [That same individual] brought several voters to the polls and tried to assist voters as much as allowed." Our observer noted that "[i]n each instance mentioned, I felt that the practices were not in good faith. I believe that certain poll workers and poll watchers were involved in determining when prime opportunities were available for these voters to come to the polls with 'voting assistants.'" The conclusion at that location was that "[t]here seems to be a mix between a lack of knowledge in proper voter assistance combined with intentional voter fraud."

There are examples of the process done correctly. One voter "was obviously close to pure blindness. She seemed to be able to make out people, and large objects, but was guided by her husband who voted for the two while she stood beside him." In a different location "[t]he poll workers seemed especially well-training on this process. Voters were required to ask for help before anyone could go to the machine with them."

It is important to remember that illiteracy is not apparent by viewing an individual; so it is difficult to know whether individuals who were assisted were unable to read or write. However, there is a requirement that such individuals declare their need for assistance and request the assistance from the pollworkers.

There are no reports of any voter's being denied assistance, despite few voter's appearing to need assistance and very few actually asking for it. There are no reports of any voter's being offered the use of accessible voting devices purchased by grants from the Help America Vote Act.[11] There are no reports of use of the accessible voting devices.

Voter Instruction

[11] Diebold touch-screen voting machines are equipped with headphones for blind or illiterate voters to hear an oral ballot and a numerical keypad to enter voting selections. Through the use of such devices, the necessity for voter assistance should be waning.

Voter instruction is distinguished from voter assistance in that any voter may receive instruction. A voter receiving instruction marks the ballot himself, but receives information from two or more pollworkers regarding the operation or manipulation of the machinery necessary to mark a choice. No one ever looks at the ballot, nor is anyone present when the voter marks his choice. Voter assistance is mandated by federal and state law and allows a person other than the voter to actually mark the ballot.

In one polling location, a pollworker consistently engaged in what the pollworker called instruction. However, observers noted that the pollworker was behind the voting machines while the voter was present and sometimes the pollworker physically touched the voting machine while speaking with the voters. These voters did not identify themselves as requiring assistance, and the pollworker explained the pollworker was providing instruction to voters who did not know how to operate the voting machines. In a different polling location, a candidate representative who posed as a pollworker, was reported to be "giving instructions to people on the ballot machine."

In another location, there was a "designated answer provider. Most of the time, the problem was not knowing where to put the card." That answer provider would "call out step by step instructions to the voter." "Occasionally, a voter would want some instruction during the course of voting that [the provider] could not provide by simply calling out instructions. On such occasions, two poll workers would always be there. I saw no evidence that the poll workers were trying to steer any voter in any particular direction. When a voter would ask for special assistance, the feds would get that voter's name." This is an example of how voter instruction should be provided.

Curbside Voting

Curbside voting is the procedure whereby an individual who presents himself to vote at the polling location, but cannot physically get into the structure due to a physical infirmity may vote at the "curbside."[12] A precondition to such curbside voting is the finding of fact by the pollworkers that such voter is actually at the polling location and that the individual is physically unable to enter the structure. The Mississippi legislature passed legislation, effective upon preclearance by the United States Department of Justice, concerning the conduct of curbside voting.

No statistical data are available to determine the frequency of curbside votes in any election in Mississippi. However, anecdotal evidence suggests that curbside voting in this election was higher than expected. Frequently, curbside voting was conducted with the presence of a "voting assistor" in the vehicle. For example, a county elected official was observed "roll[ing] up the windows in the automobile and lean[ing] over the voter in the passenger seat" of the vehicle that the official drove. "It did appear that [the elected official] may have been marking the ballot for the voter." Frequently, those individuals desiring to vote at curbside never touched the ballots that were marked on their behalf.

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[12] Mississippi Attorney General's Opinion July 1, 1959, Biennial Report, p. 23. *See also* SB 2910 Section 8, lines 518-550 (2008 Regular Legislative Session), where curbside voting was codified, effective July 1, 2008, and contingent upon preclearance by the United States Department of Justice.

Absentee Voting

Voters who meet certain statutory conditions may vote by absentee ballot.[13] On election day, a list of those who voted by absentee ballot should be posted at the polling location.[14] At the end of the election day, pollworkers (in a DRE voting device county such as Wilkinson County) are to examine the applications of the voters and the absentee ballot envelopes to determine if the voter qualifies to vote absentee and that the procedural steps have been followed.[15] If the voter is not qualified, the procedural steps have not been followed, or the voter has voted in person during the election day, the absentee ballot should be rejected.

Only one polling location had a list of absentee voters posted throughout the election day. In one polling location, the pollworkers refused to post the list and instead the list was locked inside the ballot box, unaccessible until the end of the election day. The purpose of posting the list is obvious when one considers what happened at another location. When "Processing absentee ballots" began there were "21 on list and 20 in hand." In a different location, the posting "listed 33 names. The list compiled by the bailiff had 35 names." Presumably this latter list was a list of actual ballots delivered to the precinct.

There were misunderstandings and misperceptions about the applicable law among the various pollworkers and precincts. Absentee ballots were rejected based on the finding that the signatures on the application and the ballot envelope did not match. However, the statute and case law do not require such an interpretation. Only when the signatures do not *correspond* should the ballot be rejected based on a problem with the signatures.[16] For example, in one instance, a voter signed an application in cursive, and his ballot was signed in block letters. Even though his name was the same and there was no other indication that any fraud or ill-intent was present, his ballot was rejected because the signatures "did not match." Under the standard found in the law, his ballot probably should have been accepted.

Another serious issue regarding absentee ballots was the lack of the registrar's seal on absentee ballot applications. The appearance of a registrar's seal on an absentee ballot application is a prerequisite finding to determine that the application is valid.[17] Originally, in at least two precincts, pollworkers wanted to refuse absentee ballots on the ground that the application *envelope* did not contain a seal. There is no requirement that an absentee ballot application be placed into an envelope, nor is there a prohibition on such practice. However, absentee ballot applications are placed in envelopes in Wilkinson County. Pollworkers were reluctant to open the envelopes to examine the applications and compare them to the absentee ballot envelopes, probably due to the fact that they had been trained not to open the ballot envelopes at the polling locations.

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[13] Miss. Code Ann. § 23-15-627; Miss. Code Ann. § 23-15-673; Miss. Code Ann. § 23-15-713.
[14] Miss. Code Ann. § 23-15-625.
[15] Miss. Code Ann. § 23-15-639.
[16] Miss. Code Ann. § 23-15-641 (1); Pegram v. Bailey, 708 So.2d 1307 (Miss. 1997).
[17] Miss. Code Ann. § 23-15-627.

Desiring to follow their instructions, they frequently were confused about their authority to open the envelopes containing applications. Further complicating the matter was their knowledge that the application must contain the registrar's seal. Without opening the envelopes, it was impossible for them to discern whether the seal was on the application, and they originally began to reject each and every absentee ballot. Upon the urging of the special masters, they reconsidered those rejected ballots and unsealed the envelopes containing applications.

At the conclusion of the election process, employees of the Secretary of State placed telephone calls to those absentee voters who could be identified. Many did not have telephone contact information available. At least one individual was listed as having requested an absentee ballot, but indicated on the telephone that no request was made.

Some applications did, indeed, lack the appropriate registrar's seal. It appears that each of those absentee ballots was rejected. In fact, one observer noted that "[m]any of the rejected ballots were thrown out because the Clerks Office did not put the proper seal on the absentee ballots." Another noted that a voter had his absentee ballot rejected because of "Seal and signature missing on ballot envelope." At yet a different location, it was noted that a deputy clerk "would sign the applications/ballots and not provide her seal; therefore, invalidating the ballot. (sic)" In that location alone, at least three voters were disenfranchised because of problems with the seal. In yet a different location "[a] number of absentee ballots were rejected due to a lack of a seal on the application (a failure on the part of the deputy circuit clerk) . . ." Based on the actions of the circuit clerk or his deputy, several otherwise eligible voters were disenfranchised in this election.

Curbside Absentee Voting

Absentee voting is generally conducted in person at the registrar's office. The question of curbside voting at the Courthouse is unaddressed in the current statutory framework regarding absentee voting. In Wilkinson County, issuing curbside absentee ballots has historically been the practice. In this election, curbside absentee balloting occurred. Secretary of State observers were present on the final Saturday when absentee voting was being conducted and had the opportunity to observe this practice.

Curbside absentee balloting provides an increased opportunity for voter fraud. When confined in a vehicle, individuals were noted to be subject to pressure from other occupants of the vehicle.

Advocacy Groups

In more than one polling location, representatives from advocacy groups were present. In at least one polling location, those representatives attempted to block access to law enforcement personnel. They also expressed a perception that the Secretary of State employees' uniform (slacks and a polo shirt with the Secretary of State's seal) was inappropriate and intimidated voters.

Candidate Pollwatchers

Each candidate is authorized to have one representative to inspect the manner in which the election is held and to challenge the qualifications of any person offering to vote. [18] There seemed to be frequent abdication of pollworker duties to candidate representatives. For example, in one precinct, a candidate's representative presented herself as a pollworker. She helped prepare the polling location for the election, she handled absentee ballots, and she participated in screening potential voters as they arrived. Her true identity was discovered in the early afternoon and she was informed that she could not participate in running the election; she could only observe and make appropriate challenges. In a different location, "[t]wo poll workers checked the voters rolls [when voters arrived] and let the voter sign if his or her name was in the book. When the voter's name was not in the book, they turned to the poll watcher whose list appears to have more comprehensive information."

Further, "[i]t was noted that all of the observers representing candidates were assisting voters" at another polling location. In fact "[o]n dozens of occasions [our observer] witnessed both [candidate representatives] going into the voting booth with a voter" at that same polling location. There was no "conversation between the [candidate representatives] and the voter that would have allowed a conclusion that the observer was asking the voter how they wanted to vote." The candidate representative "was voting the individuals and [] the [representative] was actually touching the screen for the voter."

At one location two representatives for the same candidate were present. A special master apparently asked one to leave. "The one who left came back later in the day and sat outside the door most of the afternoon, but did not cause any problems. Some voters recognized these watchers and greeted them. However, the watchers, to their credit, did not greet the voters other than to direct them to the registration table." However, one candidate representative "challenged the poll workers for many reasons from legitimate absentee ballot challenges to frivolous criticisms such as about the seals on the blue bags for the voting machines extra parts."

In one polling location, "one candidate's poll watcher [was] standing in close proximity to the three voting machines." One of the special masters arrived "a short time later, however, and politely asked the candidate's poll watcher to move away."

In multiple polling locations, the candidate's representative greeted voters and actively solicited and participated in providing voter assistance. As noted above, on many occasions, voters apparently knew prior to their arrival to seek the assistance of certain representatives, which resulted in those representatives' knowledge of the vote that was cast. In multiple locations, candidates had more than one representative. When their identities were made known, they were required to limit their participation to one for each precinct, as mandated by law. It was also noted that representatives had documentation such as lists of voters and were taking notes on the identities of voters. This exceeds the scope of their presence as authorized by statute. At intervals, representatives were substituted.

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[18] Miss. Code Ann. § 23-15-577.

Pollworkers-Bailiff Duties

Pollworkers designated as bailiffs have the duty to keep order at the polling location.[19] Individuals who are not authorized to be present should not be allowed to loiter within thirty (30) feet of the polls.[20] Improper voter assistance should be neutralized by the bailiff. All other election laws should be enforced by the bailiff as well. In the event that it is necessary, bailiffs are authorized to request the assistance of law enforcement officers.

Some examples of questionable conduct that should have been addressed by the bailiffs include the following: "7:09 a.m. Sheriff's Deputy in patrol car in front of precinct talking to voters." When a voter attempted to vote curbside, a candidate "sat in the car with [her] and talked with her while she voted." At a different polling location, 'there seemed to be a lot a (sic) loitering outside as well as inside of the precinct." At that location, a candidate was observed speaking with voters before they entered the polling location. He was heard telling voters "Come see me when you get back-You know what to do." Additionally, the first voter at one location "reported that people were in the parking lot yelling at her asking her name."

At one location it was "noted that two of the four pollworkers seemed to be intimidated by the other two pollworkers and generally by the politics of the elections. The bailiff, [] was not vocal even when she clearly observed inappropriate behavior from pollwatchers and individuals providing assistance to voters. She stated that she did not want to make a scene. She stated that if she questioned these actions, . . . it would do not good."

In one polling location located in a gymnasium, "[s]everal people inside sitting on the stage. They are most likely poll watchers, but otherwise are loiterers. Several people handing around outside under the big trees out front as if they are having a party."

Bailiffs were not asserting themselves in most of the precincts sufficiently to prevent or reduce voting irregularities. Stronger bailiffs could have prevented many of the irregularities that were observed on election day. There is no report of the use of law enforcement officers to enforce the election laws that appear to have been broken. The only known involvement of local law enforcement was an attempt by one pollworker to disenfranchise a voter by threat of arrest.

Lack of Appropriate Signs

State and federal laws require the presence of certain signs at the polling locations.[21] Instructions on affidavit voting and instructions on how to operate the voting machines are required. Other general information on relevant laws is also required to be posted. In all but one precinct, no signs were noted. In that one precinct, the only sign that was noted was operational instructions regarding the voting devices.

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[19] Miss. Code Ann. § 23-15-241.
[20] Miss. Code Ann. § 23-15-245.
[21] 42 USC 15482 (b); Miss. Code Ann. § 23-15-255 (2).

Affidavit Voters

Voters whose names do not appear on a pollbook must be allowed to vote through an affidavit ballot if they insist they should vote at the polling location where they present to vote.[22] However, before they cast such an affidavit ballot, it is proper for the pollworkers to ascertain if the individuals are in their correct precinct, and if not, determine their correct precinct. In the event that an affidavit ballot is cast, the voter should be provided written instructions that he may contact an election official to determine if his vote was counted, and if it was not, why it was not counted.[23]

Voters did present to vote on election day and were not found in the pollbooks. In almost no instance was a potential affidavit voter directed to a different precinct. Few discernable attempts were made by pollworkers to determine if those voters should vote in a different polling location. We did not note any provision of written instructions on how voters should act to determine if their votes were counted.

Affidavit voters were universally interviewed by the federal observers who were present. These interviews were conducted outside of the polling location and after the voter had voted. Our observers frequently listened to these interviews, but only participated on two occasions. It appeared that a high number of individuals expressed that they often had to vote by affidavit ballot despite their feeling that they had always validly been registered to vote. In one instance, "[s]everal of the affidavit voters commented that this wasn't there (sic) time voting affidavit."

Resolution Board

A resolution board was appointed by the Democratic Executive Committee. Resolution boards are utilized to determine the will of a voter when a paper ballot is rejected by the scanner at the central election site at the courthouse at the end of the election day.[24] In the event that the scanner does not accept that ballot, it proceeds to the resolution board for examination and a determination of the will of the voter. Voters occasionally circle their choice instead of filling in a bubble corresponding to their choice, or sometimes a stray mark is made on a ballot such that the ballot reports two choices in one race. Resolution boards function to visually examine those ballots and act to accept those ballots where a clearly discernable will can be determined. Resolution boards are only authorized to act in making the will of a voter known where the automated technology is unable to discern that will.

In this election, the resolution board apparently reviewed the actions taken by the pollworkers at the polling locations in accepting or rejecting absentee ballots. They acted, in effect, as an appellate court in reviewing those decisions. This is clearly contrary to the purpose of a resolution board.

Pollworkers-Gratuities

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[22] 42 USC 15482 (a); Miss. Code Ann. § 23-15-573 (1).
[23] 42 USC 15482 (a)(5)(A); Miss. Code Ann. § 23-15-573 (4).
[24] Miss. Code Ann. § 23-15-483.

In most of the precincts, individuals brought lunches to certain pollworkers. It was apparent that the same two individuals were making a circuit throughout the county, delivering these lunches. It was interesting to note that only certain pollworkers received these lunches and that others were pointedly excluded. Further, it was interesting to note that the individuals making the deliveries were not election officials and appeared to have a connection to a candidate. The deliveries of any gratuities to pollworkers calls into question the intentions of both the ones making the gift and the ones receiving the gift. Moreover, those intentions are subject to heightened concern when only certain pollworkers appear to be rewarded.

Perception of Inaccurate Voter Rolls

At different polling locations, pollworkers expressed their belief that the pollbooks they were using were highly inaccurate. They alleged that they knew of individuals who had died or moved from the county for several years who remained on the voting rolls.

Indeed, in one instance a voter was required to vote by affidavit ballot. "The young lady stated, 'I registered to vote 30 days prior to the election. Why is my name not on the rolls?'" No answer could be provided. In a different polling location "poll workers joked casually about the deceased being on the poll books and individuals they knew who had moved away" were still on the poll books. In yet a different location, "[t]here were a few male voters who had recently just registered to vote and names have yet to be placed on the poll books."

In another location, "[all] most (sic) all the affidavit voters complained that they had to vote affidavit in the past elections and their info. Information wasn't updated." One voter there reported that she "has gone to the Circuit Clerks (sic) office several times to get it (her information) corrected and it is still incorrect."

In a second location, "voters' names appeared in the book twice with the exact spelling of names and address. A few voters have different middle initials and different addresses appearing in the book. However, all the discrepancies were resolved and the voters were allowed to vote." It was noted at a third that "two people [] were on the book twice."

In a forth polling location, "[o]ne family of voters, all of whom live at the same address in Centreville, complained loudly that all of their addresses were listed incorrectly. These mistakes included being listed as living in Woodville, while registered in Centreville 3 precinct. They said they had complained to the Circuit Clerk's office several times, but to no avail."

Voting Technology

Various problems with the touch-screen voting devices were reported throughout the county. No voting machine was irretrievably impaired at any point in the day. The problems ranged from voter access cards' being jammed in the machines to the display on the machine being blank. The presence of two technicians from Premier greatly

enhanced the ability to address these technological issues in a timely manner. It is thought that many of the reported problems were related to real or feigned lack of knowledge on the part of pollworkers about the operation of the voting devices.

CONCLUSIONS

The June 24, 2008, Special Democratic Primary Election was highly unusual in many respects. For the first time in the institutional memory of the Secretary of State's Office, observers were sent to observe every polling location and every facet of an election. Special Masters were employed to supervise the elections. These Special Masters spent many hours in the County in preparation for the election and on election day. Their efforts improved the electorial process. The two factions of the Democratic Executive Committee were frequently in disagreement regarding how the election should proceed.

Despite the presence of Special Masters, federal observers and observers from the Secretary of State, improper voter assistance was provided in such a large quantity as to cast doubt on the outcome of the election. The number of voters who received assistance who apparently did not meet the statutory requirements for assistance and without that voter's requesting assistance orally or in writing was sufficient to alter the results of the election. Inflated and arguably otherwise inaccurate voter rolls provided the opportunity for voter fraud. The circuit clerk, who was a candidate in this election, or his deputy, took actions that ultimately led to the disenfranchisement of voters. Whether those actions were intentional or negligent, they inevitably lead to the perception of impropriety. Some voters were unable to cast regular ballots, and this inability has apparently existed for successive elections without a resolution of the issues by any election officials. Some bailiffs were not able to control the presence of extraneous individuals in their polling places nor were they able to exercise control over candidate representatives, who injected themselves into the decision making process of pollworkers and voters. Procedures regarding the handling of absentee ballots were misunderstood or misapplied, leading to the disenfranchisement of eligible voters. Several areas of ambiguity in the law were exposed—particularly regarding the propriety of candidate representatives' use for an electoral advantage of information gained while watching polls, the giving of gratuities, and the practice of curbside absentee voting. On the whole, based on the observations of our personnel, it is difficult to express confidence that the will of the people in Wilkinson County was accurately determined or measured by the results of the Special Democratic Primary Election on June 24, 2008.