

Report of Election Day Activities

Wilkinson County Special General Election

July 22, 2008



DELBERT HOSEMANN
Mississippi Secretary of State

REPORT OF ELECTION ACTIVITIES

WILKINSON COUNTY SPECIAL GENERAL ELECTION

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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. Therefore a special election was set for July 22, 2008, as the special general election.¹ It followed a special primary election which was held on June 24, 2008 and reported in a separate report from our office. In separate litigation, two groups within the Wilkinson County Democratic Executive Committee vied to be designated as the “true” executive committee.²

On July 22, 2008, approximately 3,894 Wilkinson County residents cast ballots to select county officials in three offices—Circuit Clerk, Sheriff, and Supervisor in District 2.³ Only the race for Sheriff was contested. As of June 19, 2008, there were 10,325 registered voters in Wilkinson County.⁴ According to the United States Census Bureau, there were 10,266 people residing in Wilkinson County on July 1, 2007.⁵ In 2000, there were 10,312 residents. Of those, 7,648 people were over the age of eighteen, and thus potentially eligible to vote.⁶ Approximately thirty-eight percent (38%) of the registered

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 3,894 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 Report from the Statewide Elections Management System (SEMS), administered through the Office of the Secretary of State.

⁵ 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

⁶ 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&-

voters in Wilkinson County participated in this special general election. Measured against census numbers, approximately fifty-one percent (51%) of the potentially eligible citizens participated in this special general election.

Conducting a general election is ordinarily the responsibility of the county's election commissioners. This special general election, however, was overseen by two Special Masters, appointed by the Court that ordered the election.⁷

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. Two county technicians were deployed into Wilkinson County by Premier Election Solutions (Premier), the successor company to Diebold. The county technician assisted the Wilkinson County Election Commission 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.

Consistent with the practice prior to the special primary election, the Secretary of State also provided a training session for pollworkers for the general election. Ordinarily, for a general election, election commissions are responsible for providing certification training for pollworkers. Due to the issues faced in this particular election, the special masters again decided that it would be advantageous for the Secretary of State to provide pollworker training. As before, the training session was conducted at the Wilkinson County Courthouse in Woodville, Mississippi.

SECRETARY OF STATE ACTIVITIES *ELECTION DAY*

Due to safety and budget concerns, the Secretary of State positioned a total of only four observers throughout Wilkinson County. They observed the elections in two groups, paired to maximize safety. The observers were present at approximately 8:00 a.m. after voting had already begun for the day. The observers travelled between polling locations, managing to be present in all nine for some portion of the day. The observers recorded their observations throughout the election day, particularly noting where there were perceived irregularities or departures from existing federal or state law. At the close

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⁷ 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.

of the election day, our observers monitored the processing of absentee ballots in selected polling locations. Two observers remained at the courthouse during the processing of ballot boxes. At least two federal observers from the Office of Personnel Management were noted in each precinct. Further, Premier provided a technician for election day.

By Friday, July 25, 2008, the Wilkinson County Election Commission had certified the results of the special general election.⁸

OBSERVATIONS

Voter Assistance

Improper assistance was noted again in many precincts. The most egregious examples occurred in the Woodville Fire Station, where one particular pollworker again assisted vigorously. On some occasions, her actions only rose to the level of monitoring the voting as ballots were actually cast. There is no doubt that she knew the individual choices made by a large percentage of the voters in that polling location, whether through monitoring or through active assistance.

One particular voter was engaged in a conversation by an observer after being assisted to vote. That voter was not able to identify his address, but did know his name. The short conversation revealed that his cognitive ability was obviously limited. His assistor indicated that he needed the assistance because he was suffering from a disorder that impaired his ability to think for himself.

Another voter was assisted by someone claiming to be his mother. The voter appeared to be old enough to vote, and he engaged in an intelligent conversation with others around him. His putative mother claimed that he could not read.

There are no reports of any voter's being denied assistance. 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.⁹ There are no reports of use of the accessible voting devices.

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."¹⁰ A precondition to such curbside voting is a finding of fact by the pollworkers that such voter is actually at the polling location and

⁸ See certified election results attached as Appendix 2.

⁹ 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.

¹⁰ 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.

that the individual is physically unable to enter the structure. Curbside voting was noted at several precincts during this election.

Absentee Voting

Voters who meet certain statutory conditions may vote by absentee ballot.¹¹ On election day, a list of those who cast absentee ballot should be posted at the polling location.¹² 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.¹³ 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.

The list of absentee voters was posted at all but one polling location. At least one absentee ballot was rejected due to the application's lacking a seal. As in the special primary election, this failure on the part of the circuit clerk or his deputy led to the disenfranchisement of an apparently otherwise valid voter.

Pollworkers-Bailiff Duties

Pollworkers designated as bailiffs have the duty to keep order at the polling location.¹⁴ Individuals who are not authorized to be present should not be allowed to loiter within thirty (30) feet of the polls.¹⁵ 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

In one particular location, there were extraneous individuals, not associated with the election in any way, roaming freely throughout the room where the voting was taking place. Additionally, an elected county official who was not involved in the election, was standing outside the building greeting voters as they arrived. He was also waving and flagging down passing vehicles. When rain fell, he sat in a vehicle marked "Wilkinson County." It is quite possible that this individual did not attempt to persuade voters to cast votes in any particular manner; however, he was within one hundred-fifty (150) feet of the entrance of the building and his presence appeared calculated to motivate participation in the election.

One candidate representative was positioned by a bailiff such that she could almost see the face of a voting machine from her seat. Had she risen, she could have seen the votes as they were cast. It did not appear from the context of the situation, particularly the small size and physical layout of the polling location, that anything

¹¹ Miss. Code Ann. § 23-15-627; Miss. Code Ann. § 23-15-673; Miss. Code Ann. § 23-15-713.

¹² Miss. Code Ann. § 23-15-625.

¹³ Miss. Code Ann. § 23-15-639.

¹⁴ Miss. Code Ann. § 23-15-241.

¹⁵ Miss. Code Ann. § 23-15-245.

untoward was occurring; however, the bailiff could have found a more suitable location for the observer.

Pollworkers-Cell Phones

Pollworkers were frequently engaged in making cellular telephone conversations in multiple polling locations while simultaneously engaged in conducting the election. For instance, at the Woodville Fire Station polling location, one particular pollworker remained in an extended telephone conversation for approximately one and a half hours while programming voter access cards.

Pollworker-General Conduct

One pollworker reported to an observer that she was happy not to have to work with the same pollworkers as she had in the primary election. She reported that during the primary election, one pollworker had threatened to “pull her gun out of her purse and shoot” another pollworker with whom she had a disagreement.

A member of the Democratic Executive Committee complained that certain pollworkers were too close to voting devices in one polling location. Our observers noted that the pollworkers were not nearly as close there as in other locations. Further, in another location a pollworker was actually behind the voting machines, observing the votes as they were cast. No action was taken and the complainant was asked to leave the building.

Affidavit Voters

A separate receipt book for affidavit ballots is required. At multiple polling locations, there was not a separate receipt book. Pollworkers improvised and used separate sheets of notebook paper instead.

Resolution Board

A resolution board was appointed by the Wilkinson County Election Commission. 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.¹⁶ 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 was again handling absentee ballots and affidavit ballots. It appeared that a special master intervened prior to the resolution board's making any substantive decisions regarding whether any ballots should be counted. The resolution board originally consisted of three members. When the special

¹⁶ Miss. Code Ann. § 23-15-483.

master directed the individuals on the board to leave the area where ballots were being handled, two of the members immediately went to confer independently with the two co-chairs of the Wilkinson County Democratic Executive Committee. Their actions called into question their impartiality, and they were removed from the resolution board by the special master present.

One woman removed from the resolution board went into the gallery of the courtroom where the counting was taking place. A few minutes later another woman came and sat in her lap, apparently uninvited. This display continued for several minutes, with each claiming to have been in the seat first. The sordid matter was concluded by the intervention of a state law enforcement officer. The actions of the resolution board were not monitored further because the two remaining observers vacated the county.

Voting Technology

One polling location reported problems with voter access cards, which are used to load the ballot style of each voter into the Diebold DRE. By noticing the emerging pattern of problems, it quickly became apparent that one of the voter access cards was malfunctioning. It was isolated and removed from service, which solved the problem.

At one polling location, a Diebold voting machine was not operable upon the beginning of the voting day. The battery had not been charged and no power outlet could be located. A solution was reached quickly with an extension cord.

At one polling location, the Premier technician reported a problem with a pollworker who insisted on engaging in conduct that appeared calculated to create problems with the voting devices. The technician reported that the pollworker would not communicate with him regarding the problems others were reporting at the location. It could not be determined if actual technology issues existed at that location or whether there was some form of error in the operation of otherwise sound devices. This pollworker is the same pollworker who allegedly threatened to shoot another pollworker during the special primary election.

CONCLUSIONS

The July 22, 2008, Special General Election was much calmer than the Special Primary Election preceding it. Irregularities were present involving absentee and affidavit balloting. Curbside voting occurred with regularity. Voter assistance was again provided improperly, although at a reduced rate as compared to the Special Primary Election. Generally, pollworkers, especially bailiffs, did not exercise their authority to maintain control over their polling locations. Voting technology was employed with only very minor problems. Members of a putative resolution board attempted to engage in actions that are properly bestowed upon pollworkers and/or the election commission.

It is difficult to know whether these perceived irregularities and departures from the law were enough on their own to affect the outcome of this election. However, there were unusual and improper actions during and after the election that were noteworthy.