



DELBERT HOSEMANN
Secretary of State

2015 Election Code Update Study Group Minutes

July 16, 2015

The second meeting of the Election Code Update Study Group was called to order on Thursday, July 15, 2015, at 11:00 a.m. at the Secretary of State's Office, 125 S. Congress Street, Jackson, Mississippi. A list of attendees is included as Exhibit A.

Welcome and Introduction

Delbert Hosemann, Secretary of State, welcomed everyone to the second meeting of the Election Code Study Group. Secretary Hosemann noted there were many important issues to discuss and be voted on by the group. Secretary Hosemann asked if anyone had questions or comments regarding the minutes of the first study group meeting. No questions were asked, and the study group subsequently adopted the minutes of the first meeting. Secretary Hosemann then introduced the first speaker, Preston Goff, Assistant Secretary of State, Policy and Research Division, as well as Kim Turner, Assistant Secretary of State, Elections Division, and Hawley Robertson, Senior Attorney, Elections Division.

Finalizing Changes to Election Code Articles 1 through 7

Removal from Ballot for Failure to Comply with Campaign Finance Requirements

Mr. Goff presented the group with its first issue of the day. Candidates cannot take office without filing campaign finance reports, so Goff asked the group if their names should appear on the ballot. Secretary Hosemann gave the group an example, stating candidates have appeared on the ballot for a current election after failing to file campaign finance reports from a previous election. Secretary Hosemann noted the intent of the statute clearly shows that voters should know who is contributing to candidates when ballots are cast. Kim Turner interjected, remarking three (3) candidates last year on the statewide ballots never filed finance reports. Goff noted some other states do remove candidate's names from ballots.

During the discussion, it was noted there may already be language in the statute that provides for this removal, but the problem is enforcement at the local level. The group agreed

there should be a cutoff date for removal, as candidates are required to file campaign finance reports all the way up to the election; but failure to file reports from previous elections should trigger removal of one's name from the ballot. The group then engaged in discussion agreeing that any failure to comply with campaign finance requirements from *any past election cycle* should be grounds for removal from the ballot, unless the appropriate documents are filed along with all penalties/fines paid. The Secretary of State has the tools and information needed to enforce removal for statewide, state district, and legislative offices, but counties and municipalities would be responsible for local elections. Secretary Hosemann then moved for a vote to exclude any candidate who has not filed campaign finance reports from *any past election* from the ballot. The group passed the motion.

Number of Additional Poll Managers

Goff then presented the second issue for the group: the total number of additional poll managers election commissioners are allowed to appoint under Section 23-15-235. Mr. Goff suggested a cap be placed on the amount of additional poll workers at a precinct, limiting the number to six (6) additional poll managers, for a total of nine (9) poll managers. The study group agreed that a cap of six (6) additional poll managers is a good number.

Online Voter Registration

Goff then moved on to the third issue for the group: online voter registration requirements. Goff asked for comments from the group, noting that the Secretary of State's Office would need to get signature files from the Dept. of Public Safety ("DPS") to move forward.

It was noted that the group needed to determine how to allow university students, including those from out of state who do not have a Mississippi Driver's License, access to this tool. Secretary Hosemann noted the State of Georgia has data on this topic. In Georgia, over 100,000 voters were registered online and the state required driver's license matches. The majority of online registrants were between the ages of 18-35. Secretary Hosemann stressed these online registration programs have been successful in other states. Another member asked if there would be language added to ensure this online system flowed through the Secretary of State's Office to the clerks, who actually register voters. Goff noted that such language could be added in, and that once all of the information was gathered by the Secretary of State, it would be then be up to the clerks to accept or reject the application.

Secretary Hosemann stated that running the signature files through DPS would take the work load off of the clerks, as the information would already be verified. Absent DPS verification, the work would fall to the clerks to administer a separate verification process and

obtain a signature. Secretary Hosemann further noted he and Ms. Turner had been looking at bids for implementation of this program and that expanding beyond a simple DPS verification would increase the cost. Secretary Hosemann asked the group to allow the Secretary of State's Office to take a step back and further look at how to implement this system in a cost efficient manner, and report back to the group. The group agreed, and noted that there was clear consensus that online registration was a tool that should be implemented.

Preston Goff then introduced Ms. Hawley Robertson, who presented the group with proposed changes to Articles 9, 11, and 13 of the Election Code.

Article 9

Structural Compliance with the ADA

Robertson first suggested changes to Section 23-15-281. The proposed changes would require each county to provide the Secretary of State with current legal descriptions and maps of each supervisor's district, precinct, and polling place. Robertson also noted that the changes would require these legal descriptions and maps to be available for public inspection in the circuit clerk's office. Robertson noted these changes are needed because candidates attempt to qualify in one district, thinking they lived in that district, only to find out they relied on an outdated map, so the candidate never actually qualified in any district. Another proposed change would move language from Article 7 to Article 9 regarding a supervisor's authority to select polling places, and include requirements for all polling places to be ADA compliant and structurally sound.

Robertson noted that, by placing the requirements in the Election Code, the State could enforce these laws along with the federal government. Secretary Hosemann stressed the fact that the State has money set aside for compliance with the ADA, so there is no cost involved for constructing these updates. Ms. Turner echoed Secretary Hosemann's comments, noting the State has federal money expiring in September 2016 and last year it returned a fair amount of money that was not used. Secretary Hosemann asked the group if there were any concerns about this topic, and the group had none. It was noted that making these changes to the Code could help give ammunition to moving some of the voting precincts that are in deplorable places to better locations.

Deadline to Change County Districts and Precincts

Robertson then submitted to the group proposed changes to Section 23-15-283, regarding the establishment and alteration of boundaries. The changes would clarify the Board of Supervisors authority in changing supervisor districts, precincts and polling places. Ms.

Robertson stated the law would require no changes shall be made to any supervisor's district or voting precinct in any calendar year in which the general election of county supervisor(s) is held. Ms. Robertson noted that under the current law counties cannot make changes to supervisor districts within 30 days before the qualifying deadline. The proposed change would now force the supervisors to make any changes before January 1, thereby ensuring that a person who qualifies in a district will be able to be elected in that district. The group had no problems with the proposed changes that were presented.

Robertson also proposed that no changes to the location of polling places would be allowed within sixty (60) days of any election. A study group member expressed concern with this, noting a situation occurred where a polling place had to be changed at the last minute due to unforeseen circumstances; he therefore suggested an emergency provision should be placed in the text to allow for relocation upon the occurrence of certain events. Turner interjected, stating that such a provision could be placed in the text of the statute for such provisions.

Robertson then presented to the group further proposed changes Section 23-15-283 to coincide with circuit clerks' current practices. The proposed changes would require circuit clerks to notify any voter of a change in the voter's polling place by mailing the voter a new voter registration card with the voter's new precinct. The group had no concerns with this change.

Redistricting/Existing Districts

The group moved on to a discussion regarding redistricting. A proposed change would require officials performing redistricting in the Statewide Elections Management System ("SEMS") to be certified by the Secretary of State's Office in redistricting techniques. Robertson noted that the Secretary of State's Office has people in place to train county officials on how to go into the SEMS system and accurately update street addresses and other information. Robertson presented the group with this idea with the intent to reduce the amount of errors in the systems. Robertson also proposed a change to require all government entities authorized to adopt boundary lines or perform redistricting to inform the appropriate county circuit clerk of the changes, so the changes may be correctly implemented in SEMS. Secretary Hosemann then asked the group if they had any problems with this, and the group expressed no concerns and agreed that this was not only needed but should be required.

A group member asked, regarding redistricting, if there could be a state law provision that would require supervisors to ask their planning development firms to put information in a format that would be compatible with SEMS in order to help implement any changes. Another member stated the same problem arose with legislative redistricting as well. Another member stated that these planning and development firms had the technology to provide these SEMS friendly formats and there is no reason why they could not be provided. Secretary Hosemann

agreed and made note of the importance to provide a format that is easily transferable to SEMS. Ms. Turner then informed the group that the Secretary of State's Office could get the clerks the information they needed to ensure it would not be a hassle updating the machines to show the correct redistricting information.

Robertson continued with the proposed revisions to election code laws, suggesting a removal of the maximum voter limit. She noted that with the implementation of electronic voting devices, there is no need to limit the number of voters in a precinct. The group, having no concerns with this removal, moved to a discussion on Articles 11 and 13.

Articles 11 and 13

Robertson began the discussion on Articles 11 and 13 with proposed changes to Sections 23-15-299, 23-15-309, and 23-15-359. The first issue regarded qualifying deadlines, and the proposed change sought to clarify what happens when a deadline falls on a weekend or legal holiday. Robertson noted that in 2015 the qualifying deadline fell on a Sunday. The Attorney General issued an opinion stating if the deadline fell on a weekend or holiday, the last day to qualify would be the last business day before the deadline. The proposed changes would match up with the Attorney General's opinion, stating that if the qualifying deadline falls on weekend or legal holiday, the assessment shall be due by 5:00 p.m. on the last business day immediately preceding the qualifying deadline.

Robertson introduced a proposed change which would provide that no candidate may attempt to qualify with any party which is not duly organized within the county or municipality, and the circuit clerk or municipal clerk shall not accept any assessments when he/she does not have contact information for the executive committee.

Candidate Qualifying

Robertson suggested revisions to require candidates be qualified electors of the state, state district, legislative, county, county district, municipality or municipal district in which the candidate seeks at the time of qualifying. A group member asked if the group would want to have a longer residency requirement. Robertson responded, noting that placing further restrictions might present issues with rights afforded under the MS Constitution. Robertson then moved for the group to approve this change, and group adopted this proposed change.

Robertson next suggested a change that would require a qualifying body to notify the candidate if the body finds the candidate does not meet the qualifications to hold the office sought, and gives the candidate and opposing party an opportunity to be heard before electing to not place the candidate's name on the ballot. Under this procedure, the qualifying body must

notify the candidate and provide an opportunity to be heard. Under this proposed change, the body shall mail notice at least three (3) business days before a hearing and attempt to contact via phone, e-mail, and fax. If the candidate fails to appear or provide proof he meets all qualifications, then his name does not go on the ballot. The group expressed no concerns to these proposed changes.

Candidate Withdrawal

Goff presented the group with proposed changes to the code regarding the withdrawal or candidate or nominee. Goff noted two (2) issues: first was the issue of withdrawal before the primary election, and second was the withdrawal after the primary election but before the general election.

Goff suggested tying in the language of Section 23-15-317 requiring candidates, like the nominees, to have a “legitimate nonpolitical reason” to withdraw and put in a replacement name.

A group member then asked whether or not this would eliminate the write-in candidate. Goff answered no; assuring the write-in candidate option would remain available. Kim Turner noted that we already have this exact provision in between the primary and the general election, and noted that we are seeing problems this year before the primary election. Turner noted that the Secretary of State’s Office just mirrored the same provision. Secretary Hosemann suggested the language could be tightened up by only applying this new language when an incumbent withdraws. A group member suggested that it would level the playing field amongst the registered political parties in the state.

Goff then suggested a change to Section 23-15-317(4). Currently under Section 23-15-317(4), “no substitution of candidates shall be authorized, except for death or disqualification, unless the State Board of Election Commissioners approves the affidavit as constituting a “legitimate nonpolitical reason” for the candidate's resignation within five (5) days of the date the affidavit is submitted to the board.” Goff submitted the following change to the group, “a substitute nominee may be authorized under this section unless the State Board of Election Commissioners denies the affidavit as constituting a “legitimate nonpolitical reason” within five (5) days of the date the affidavit is submitted to the board.” The study group had no concerns with this new proposal.

Ballots

Robertson suggested requiring a uniform listing of offices on the ballots. In primary elections, candidates’ names would be listed alphabetically by last name and in general and special elections, nominees of parties qualified to conduct primary elections would be listed first

alphabetically, then any other candidates' names would follow alphabetically. The study group had no concerns with this new proposal.

Robertson also suggested a change to Section 23-15-333. The proposed change would clarify write-in provisions for primary elections so that when a candidate dies, any person qualified to hold the office may be written in the blank space. The change would further require unopposed candidates to appear on the ballot unless all offices are unopposed. A group member asked why a name should appear on the ballot if they are unopposed. Turner replied that name recognition, uniformity, and voter education are gained by placing the unopposed candidates' names on the ballots. A group member noted that her county is a paper county, and thus, her county's ballots could get very long and also voiced concerns of split ballots. Secretary Hosemann called for a vote of the group, and the group agreed that unopposed candidates' names should be placed on the ballot.

The group then moved to a discussion on whether or not titles and/or nicknames should be allowed on the ballot. Robertson noted that the State Board of Election Commissioners has consistently held to not include titles on the ballot, as titles tend to give candidates unfair advantages over opponents. Robertson also noted that the Attorney General's Office has opined that nicknames should not be used on the ballot unless the officials in charge of the election determine that the appearance of the nickname on the ballot is necessary in order to identify the candidate to the voters. Robertson then summarized the laws of Louisiana, Arkansas, Tennessee, and Alabama regarding titles and nicknames on the ballot, and then opened the floor for discussions on what Mississippi should do regarding these topics. The group then unanimously voted to restrict titles from appearing on the ballots in Mississippi. The group then moved to a vote on whether nicknames should be allowed to appear on the ballot. The group voted to allow nicknames, so long as they are not misleading or deceptive and agreed that there should be a provision in the code that allows the election commission to determine if a candidate's nickname is misleading or deceptive and, if so, to allow the election commission to require further information or omit the confusing or misleading portion, similar to Tennessee's requirements.

Ms. Robertson ended her presentation at 12:15 p.m. and the study group broke for lunch.

The meeting resumed at 12:30 p.m. Kim Turner led the discussion for the study group and presented the proposed revisions to Articles 15 and 17.

Article 15

Subarticle A

Turner began the discussion of Article 15 by proposing several revisions to Subarticle A. Under Subarticle A, the proposed changes regarded Section 23-15-391. The first proposed change to this section was to update and clarify the utilization of OMR equipment or DRE voting equipment unless election by paper ballot is more cost effective. Turner also suggested a revision to limit utilization of paper ballots by election officials to only special and municipal elections and associated runoffs, meaning OMR or DRE equipment must be used in all primary and general elections.

The next proposed changes discussed by Turner dealt with Subarticle B and Subarticle C of Article 15. Turner suggested the repeal of both Subarticles in their entirety due to the fact both Subarticles deal with voting technology that is either outdated or no longer applicable.

Subarticles B, C, and D

Ms. Turner suggested a revision to Subarticle D to coincide with deletions of former Subarticles B and C. And under Subarticle D, Turner suggested the repeal of Section 23-15-501 since it is no longer necessary and also suggested revisions and updates to definitions for voting equipment and systems under Section 23-15-503.

Turner also suggested revisions to both Section 23-15-513(2) and 513(3). For 513(2), Turner proposed a change to add language stating an executive committees shall print official ballots not less than one hundred twenty-five (125%) of the highest number of votes cast in a comparable primary election conducted by the same political party in the preceding ten (10) years.

Turner proposed adding language to Section 23-15-513(3), stating number of official ballots printed for a general election shall be equal to not less than (60%) of the registered voters eligible to vote in the election. The group was in favor of the proposed changes offered by Turner.

Turner then moved onto the suggested revision of Section 23-15-523(11). She suggested revising this language to require resolution board members to complete up to two (2) hours of training specific to their duties, as sponsored or conducted by the executive committee or election commissioners of the applicable county or municipality.

Subarticle E

Turner suggested the addition of Section 23-15.531.05, related to the purchasing or renting of direct recording electronic voting equipment, and technical revisions to Sections 23-15-531.1 through 23-15-531.5 to update language and clarify requirements related to DRE.

Another suggested revision to Subarticle D presented by Turner was a revision to Section 23-15-531.6(1) to utilize 33% of all DRE units available to the county or municipality to meet voting needs for elections other than a primary or general.

She suggested moving language from Section 23-15-531.4 to create Section 23-15-531.6(3)(a) as a subsection to require testing of DRE units two (2) days prior to election, excluding runoffs, and outline the number of units required to be tested. Other suggested revisions included adding language to Section 23-15-531.6(1) to require testing of one-third (33%) of all DRE units available to the county or municipality for all elections other than a primary or general, and adding language to Section 23-15-531.6(3)(a) stating the election commissioners or their designee shall be responsible for the testing of DRE units. Further, Turner suggested adding language to Section 23-15-531.6(3)(b) stating at least one-third (33%) of DRE units available to the county or municipality must be tested for runoff elections.

Secretary Hosemann noted there is always the potential for someone to attempt scamming the system, and suggested that all voting machines should be tested for elections. Turner noted the provision mandating the testing of all machines for general and primary elections was left intact, and this new section requiring testing of only 33% of the machines applied to special and run-off elections only.

Article 17

Subarticle A

Turner noted that the Secretary of State's Office added language to Section 23-15-542 to ensure poll workers understood curbside voting occurred in the same manner as voting inside the polling place, with the pollbook, receipt book and voter ID requirements. Next, Turner suggested a revision to Section 23-15-541(2)(a), which would require all able-bodied occupants in a curbside voter's vehicle to exit the vehicle until the voter has completed casting his or her ballot.

Turner then turned the group's attention to Section 23-15-543, and suggested adding language to allow for electronic capture of voters' signatures to generate receipt books. She noted some electronic pollbooks do have the capability of capturing a voter's signature, therefore eliminating the need for the paper receipt books.

The group then moved its discussion to voter assistance. Turner suggested revising the language of Section 23-15-549, regarding persons who may provide voter assistance. The suggested change would limit such persons to a poll worker or any relative within the second degree of kinship, defined as a spouse, parent, sibling, child, grandparent, aunt, uncle, niece, and/or nephew.

Secretary Hosemann suggested it was reasonable to put the burden of assistance on a family member and, if no family member was available, then to shift the burden to two poll workers to assist. A vote on the topic was then called for, and the group agreed with the proposed changes.

Turner then proposed adding language to Section 23-15-549 to prohibit any one (1) person from providing assistance in ballot marking to more than ten (10) voters in the same polling place. A group member suggested lowering that number to five (5) voters. After a vote,

the group decided to amend Section 23-15-549 to prohibit any one (1) person from providing assistance in ballot marking to more than five (5) voters in the same polling place.

Subarticle B

Turner suggested updating the language of Section 23-15-573(1) to include the inability to present acceptable photo identification as reason to vote by affidavit, and further suggested adding Section 23-15-573(3)(b) to allow poll managers to add affidavit ballots to the pollbook for voters unable to present an acceptable form of photo identification.

Turner proposed technical revisions, including adding Section 23-15-573(c)(i) to coincide with Part 16 Chapter 5 of the Elections Voter Photo Identification, Administrative Rule 5.3, and adding Section 23-15-573(5) to require processing of affidavit ballots by the registrar through the use of the Statewide Election Management System (SEMS). The group expressed no concerns about these revisions.

Turner suggested revising the language of Section 23-15-575 to disallow a person to vote or attempt to vote in the primary of one party when he voted on the same date in the primary of another party. The proposed revision further stated that no person shall vote in a second (runoff) primary of one party if he voted in the first primary of another party. Turner noted that the current statute is unenforceable, and others in the group voiced agreement that the current language is not workable. Turner's proposed suggestion takes language from Section 97-13-5, a criminal statute that prohibits a person from voting in both primary elections in the same day, and uses the language to prohibit a person from voting in the primary election of one party and then voting the primary run-off election of another party. Turner opened up the floor for comments, and all members of the study group agreed with the proposed changes.

Subarticle C

Turner noted there are many elections in the state where a plurality vote, rather than a majority, is required to win and these elections have the potential to end in a tie. Turner suggested revising the language of Sections 23-15-601, 23-15-605, 23-15-607, and 23-15-611 to decide elections having an equal number of votes from a "lot fairly and publicly drawn" to a determination by a "toss of a coin." All members of the group agreed and had no issues with the proposed change.

Conclusion

At the conclusion of the meeting, Secretary Hosemann thanked everyone for their attendance and participation. Secretary Hosemann again expressed his appreciation for everyone's input and noted that there were only two study groups left until the final draft would be presented to the group.

The meeting was adjourned at 1:30 p.m.

Exhibit A

**Minutes of the Election Code Update Study Group,
Meeting #2**

July 16, 2015

Members in Attendance

1. Rep. Toby Barker
2. Rep. Angela Cockerham
3. Rep. Bill Denny
4. Dustin Bairfield
5. Trudy Berger
6. Patricia Burchell
7. Connie Cochran
8. Mandy Davis
9. Mark Garriga
10. Steve Gray
11. Reggie Hanberry
12. Terre Harris
13. Martin Hegwood
14. Michael Jinks
15. Malcolm Jones
16. Van Lowry
17. Kristie Metcalfe
18. Kristi Moore
19. Reese Partridge
20. James Reed
21. Hubby Saunders
22. Drew Snyder
23. Lee Westbrook

Secretary of State Staff in Attendance

1. Delbert Hosemann
2. Doug Davis
3. Nathan Upchurch
4. Justin Fitch
5. Kim Turner
6. Hawley Robertson
7. Preston Goff
8. Leann Thompson
9. Curtis Anders
10. Matt Walton
11. Garrett Wilkerson
12. Mary Catherine Thomas

Members in Attendance by Telephone

1. Haley Salazar