



DELBERT HOSEMANN
Secretary of State

2015 Election Code Update Study Group Minutes

August 12, 2015

The third meeting of the Election Code Update Study Group was called to order on Wednesday, August 12, 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

Doug Davis, Chief of Staff, welcomed everyone to the third meeting of the Election Code Study Group. Davis noted that there were many important issues to discuss and asked if any in attendance had questions regarding the minutes of the second study group. No questions were asked, and the study group subsequently adopted the minutes of the second meeting. After his introduction, Davis introduced the first speaker, Kim Turner, Assistant Secretary of State, Elections Division, as well as Hawley Robertson, Senior Attorney, Elections Division.

Turner again welcomed everyone. Turner noted that it was impressive and very much appreciated that the circuit clerks and election commissioners were able to attend because of the recently held primary elections. Turner further noted that multiple articles of the election code would be reviewed at the meeting.

Article 19. Absentee Ballots and Early Voting

Turner began the substantive discussion with Article 19, pertaining to absentee voting and early voting. Before introducing any proposed changes, Turner gave some brief statistics regarding absentee voting and how the process has been abused. Turner noted that absentee ballot numbers have substantially increased and that three counties--Noxubee, Claiborne, and Quitman--all had significantly high numbers of absentee ballots this past primary cycle. Mississippi law requires a voter to provide a specific reason to vote via absentee ballot, Turner noted that many people are not being truthful and that the opportunity for fraud is great.

Subarticle A

Turner first proposed making Subarticle C of Article 19 the new Subarticle A so that the code flows logically. Sections 23-15-621 through 23-15-639 would now be referred to as the Mississippi Absentee Voter Law. Turner then proposed further limiting who can vote by absentee ballot by mail. The proposed change to Section 23-15-623 would restrict absentee ballot by mail to: (1) any person who has a temporary or permanent physical disability and who, because of such disability, is unable to vote in

person without substantial hardship to himself or others, or whose attendance at the voting place could reasonably cause danger to himself or others, and (2) any person who is 65 years of age or older.

This revision would remove those who are temporarily residing outside of the county and those who have a relative in a hospital more than 50 miles away. A group member asked if this change factored in students, and Turner noted that this proposed change would eliminate students from casting absentee ballots by mail. Turner noted that other states have deleted the provision for student to absentee vote to tighten up their absentee procedure. Secretary Hosemann remarked that members of the legislature will most likely require tightening absentee ballots to pass early voting. Secretary Hosemann noted that the group could allow junior college and college students to absentee vote by mail, but possibly restrict it to only those students who are under twenty-two years old.

A group member noted that elections are held during the fall when colleges and universities have busy schedules and that college is a perfectly good exception to fall under absentee voting. Another member stated the only category that should be eliminated is the provision for anyone who is out of the county on Election Day because early voting takes care of those voters. Turner noted that, while the majority of people who vote by absentee ballot of those who are “out of the county on Election Day,” many of those people have to leave the clerk’s office and go to the parking lot to “remember” the reason why they were going to be out of town on Election Day.

A group member asked if the Statewide Election Management System (“SEMS”) captured data on what excuses are used to vote by absentee ballot and Secretary Hosemann noted that such information is available on the Secretary of State’s website. The member then asked if these changes would knock out a significant number of voters, and Turner responded “no” because early voting would solve the problem and early voting would not only be more effective but also make the circuits clerks’ and voters’ lives easier. A member agreed, noting that early voting would help the absentee process because poll workers could early vote instead of casting absentee ballots that they would have to count after working a twelve hour election day.

Secretary Hosemann again stressed the importance of the tradeoff between early and absentee voting. Secretary Hosemann noted that the recommendation to keep absentee voting for college students was a good suggestion. Secretary Hosemann further noted that most Mississippians live within twenty miles of his or her circuit clerk’s office; thus, the recommended changes are still very accommodating. Turner then noted that, if the group keeps absentee voting by mail available for college students, the change isn’t as drastic because only one category is being eliminated.

Turner then addressed revising Section 23-15-625 to conform to absentee voting changes and proposed removing unnecessary language from Section 23-15-629 that is also in Section 23-15-649.

Subarticle B

Turner then proposed moving former Subarticle A to Subarticle B. Under the change, Sections 26-15-633 through 23-15-653 would now be called the Absentee Balloting Procedures Law. In Section 23-15-639, Turner suggested updating the application for an absentee ballot to retain UOCAVA categories of

absent voters and to comply with the earlier suggested revisions. Under the update, an absentee ballot would be provided to only those voters who are (1) members of the military, Merchant Marine, or American Red Cross, their spouse or dependents; (2) disabled war veterans, their spouse or dependents; (3) overseas voters; (4) trained emergency response providers; (5) temporarily or permanently disabled; and (6) 65 years of age or older.

Turner then proposed editing Section 23-15-643 to require temporarily physically disabled voters to submit an absentee ballot application accompanied by a statement signed by a licensed medical provider to vote absentee ballot by mail, which would be a partial mirroring of 23-15-641. A group member welcomed this change, noting that this category was one of the most abused categories in her county. Turner noted that a temporarily disabled person does not trigger a voter receiving an absentee ballot by mail every year. The group agreed that a temporarily disabled person's absentee application should only be for the single election rather than for a calendar year or other amount of time.

A member asked if the Secretary of State's Office could create a form for how a doctor's excuse should look. Turner responded the proposed changes allow the Secretary of State to draft administrative rules to administer the code and a form could be included. Turner questioned whether a voter has a right to vote by absentee ballot, or if they just have the right to cast a ballot. A member noted that if they had been casting absentee ballots in the past, they will expect to have the right in the future.

Turned then suggested a revision to Section 23-15-645 to add language to prohibit a candidate, his spouse, parent or adult child from acting as an attesting witness for any absentee ballot upon which the candidate's name appears. A group member asked why postmasters were taken out. Turner responded the division had been informed that postmasters do not perform this duty anymore. Another group member noted that a postmaster attested to his ballot recently, and Turner noted that the Secretary of State would return postmasters to the list if they are authorized to do so.

A change to Section 23-15-651 deleted the deadline by which absentee ballots must be cast when voting in person in the registrars' offices. Turner then presented the group with a question regarding Sections 23-15-653. Turner asked if all absentee ballots cast, regardless of whether the ballots are accepted or rejected, should be recorded. Several members answered yes. Another member, however, said to record only those that are accepted. Another member noted that the poll books needed to be marked because poll books will be fed into SEMS and it will become public record. It was asked if the mark could be put in a different location so that the poll workers would be sure not to scan the ballots. Secretary Hosemann then called for a vote amongst the group. The majority of the group voted to record all absentee ballots in the pollbooks regardless of whether the ballots were accepted or rejected. The last proposed change to Subarticle B was to delete former Section 23-15-653 requiring registrars' offices remain open until noon on the two Saturdays prior to each election because early voting would already mandate that the clerk's offices be open during that time.

A group member then asked the group why returned absentee ballots currently leave the clerk's office and go out to individual precincts, noting that the potential for human error is reduced if the votes are counted in one central location. Turner noted that this idea was presented a few years ago. Members of the group mentioned that this problem will likely be reduced by early voting replacing many of these

absentee ballots. A member noted that such a change would make hiring and retaining poll workers easier and would also make poll workers happier. A member noted that the responsibility of the counting the votes should not be placed on the circuit clerk's offices but maybe a resolution board instead.

Subarticle C

The only proposed change to Subarticle C was that the Armed Services Absentee Voting Law, previously Subarticle B, is now Subarticle C. A group member asked about UOCAVA, specifically if there would be a statutory codification of sending instant runoff ballots to those overseas. Turner noted that administrative rules were used for the past two elections, but that it was up to the group to choose to use either a permanent administrative rule or to update the statute to allow for instant runoff ballots. Turner noted that we currently send a runoff ballot along with the regular ballot that allows those overseas to rank their choices in case of a runoff. A group member noted that the runoff date needs to be changed because three weeks is simply not enough time. Another group member disagreed, noting that voters would likely get sick of elections if there was a sixty (60) day runoff period. Secretary Hosemann agreed that a sixty (60) day period would be ineffective and expensive. Secretary Hosemann suggested the group keep the current ranking procedure, and there were no issues with that suggestion.

Subarticle D

New Subarticle D will be entitled "Early Voting." The proposed changes authorized the early voting period to begin thirty (30) days before each election and end at 12:00 p.m. on the Saturday immediately preceding Election Day. Under the changes, early voting shall take place Monday through Friday during regular business hours, with extended hours during the last full week, at the option of the registrar, and the two (2) Saturdays immediately preceding the election from 8:00 a.m. to 12:00 p.m.

A group member noted that the overall average of early voting is about twenty-two (22) days and asked why place ours at thirty (30). Haley Salazar liked the idea of thirty (30) days because it could potentially alleviate any last minute long lines during the early voting period. A group member indicated there was the potential for the clerk's staff to become poll workers, and also noted that early voting would take place in the middle of court dates. Another member, however, thought that early voting would save time currently being spent on absentee ballot applications. Other members of the group agreed, noting that the time would even out. The group took a vote, and the majority of the group agreed to a thirty (30) day early voting period.

Turner then turned the group's attention to the early voting procedure, noting it would be very similar to the Election Day procedure. A qualified elector would appear in the office of the registrar of the county in which the elector is registered to vote, present an acceptable form of photo identification, sign the receipt book, and vote as on Election Day. All votes cast during the early voting period would be final, and the votes cast during early voting would be announced simultaneously with the vote cast on Election Day. The study group expressed no concerns with this procedure.

Article 23. Disclosure of Campaign Finance

Turner then turned the group's attention to Article 23, and first suggested to revise the language of Section 23-15-803 to shorten registration of PACs from 10 days to 48 hours of receiving or spending in excess of \$200. Secretary Hosemann noted that this solves the issue of anonymous mail-outs. Turner then suggested revising the language of Section 23-15-805(e) to require itemization of expenditures to payees acting as conduit for payment to another party and revising the standard under Section 23-15-811(a) for a violation of provisions and prohibitions of Article 23. One group member suggested that the Secretary of State post a list of those who are fined for not turning in a report. Secretary Hosemann agreed that such information should be published.

After breaking for lunch, Hawley Roberson led the study group's discussion of Articles 25, 27, 29, and 33.

Article 25. Vacancies in Office

Robertson began the discussion of Article 25 by proposing revisions to county vacancies. Robertson suggested removing the county party executive committee's authority to conduct primary elections before special elections to fill vacancies for county wide and county district offices. Upon a group vote, the vast majority of the study group voted to remove primary elections before special elections. The suggested revision would also provide the individual elected should take office once the election is certified.

Robertson then turned the group's attention to legislative vacancies and suggested increasing candidates qualify deadline from thirty (30) to fifty (50) days before the special election. Robertson further suggested that if a vacancy occurs in the calendar year in which the general election for state officers is held, the Governor not be required to issue a Writ of Election to fill the vacancy. No group members voiced an issue with this change.

Robertson then moved to congressional vacancies and suggested increasing the qualifying deadline from forty-five (45) days to fifty (50) days before the election to comply with federal law. Robertson suggested moving municipal runoff elections from two (2) weeks to three (3) weeks and, if the runoff results in a tie, change the tiebreaking decision from a "lot, fairly and publicly drawn" to "the flip of a coin." The study group expressed no concerns with this change.

Article 27. Regulation of Elections

Robertson began the conversation of Article 27 with distribution of campaign materials. Mississippi law does not address automated calls, nor does it address social media campaign advertisements. Robertson first suggested defining "campaign materials" as materials "designed to influence voters for or against any candidate, party, or measure to be voted on at any election, or containing information about any candidate, party or measure." Robertson also proposed a definition for the word "publish." Under the proposed changes, "publish" means the act or instance of making campaign

material available to the public, or to a list of subscribers, by mail, telephone, electronic communications platforms, Internet, software applications, printed materials, or any other means of distribution.

Another proposed revision introduced to the study group was the creation of a definition for “printed material.” This definition includes, but is not be limited to, any notice, placard, bill, poster, dodger, pamphlet, advertisement, sign, or any other form of printed publication (except notices, posters, and the like, which simply announce a speaking date and invite attendance thereon). One member asked if revisions would apply to live-calls that leave an automated message if the person does not answer. Robertson noted that further research would be needed to see if such calls would be covered under Article 27.

One member asked how broad this revision really is, expressing concern that the language used could be argued to extend to individuals posting messages about who they believe should be elected. Robertson noted that these revisions cover social media pages that are the official candidate pages or pages pretending to be a candidate, but not social media pages of individuals. One group member also noted another revision would need to be made because a section of the current code requiring newspapers to print candidate responses is likely unconstitutional.

The next revision would require that no person publish, or knowingly cause to be published, any campaign materials unless it contains the following information: (a) the name of the candidate along with a statement that the message is approved by the candidate, or (b) if the message has not been approved by a specific candidate, the name of the person or organization paying for the publication of the message, or (c) if the message has not been approved by the candidate and no person or organization is identified as having paid for the publication, the entity printing or producing the campaign materials must be identified. By requiring an authority line, the Secretary of State’s Office or Attorney General’s Office would be able to trace campaign material to its source.

One group member asked how this proposed change would be regulated, noting that someone could simply falsify who produced the materials. Another group member agreed with the proposed revision, noting that there was a compelling policy interest for voters to know if money is being spent to influence an election and that the suggestions will likely have a dampening effect on some of the more egregious conduct.

Secretary Hosemann noted that many mail-outs are produced by one company. Secretary Hosemann then asked what the group thought about holding printing companies accountable for what they print and distribute. One group member argued they should be accountable; but noted that the standard used should be heavily analyzed to ensure it is an appropriate standard. Secretary Hosemann felt that these companies should be required, at minimum, to check the Secretary of State’s website to determine if the group asking for the creation of the materials is registered. One member questioned whether the liability for such actions would be criminal or civil, adding that criminal liability would be difficult to enforce and civil would likely be more appropriate.

Robertson continued with the proposed revisions, noting that publication through an electronic platform shall be deemed to comply with the requirements of this section if the candidate or

organization's home page provides the information required by subsection (2), and each electronic publication provides a link to that home page. Another proposed change to Article 27 would require that no person publish, or knowingly cause to be published, campaign materials by telephone to any telephone number on the National Do Not Call Registry maintained by the Federal Trade Commission or the No Call List maintained by the Mississippi Public Service Commission. Further, any campaign materials published by telephone must contain, within the first thirty (30) seconds, the information required by subsection (2).

One member stated he did not like the proposed change, noting that it may have a chilling effect on free speech. Robertson suggested only applying the language to automated calls, but it was suggested that people will just change their methods to get around the law. One member noted that the proposed changes seemed overly broad and would result in enforcement problems. A group member noted that the group was clear on the issue that the revisions are trying to help and that the goal can likely be reached with further research.

Article 29. Election Contests

Robertson then moved to the proposed changes regarding Article 29, beginning with a suggested revision to Section 23-15-911. The proposed change would require notice for ballot box review following an election to be personally served on opposing candidates or by two (2) of the following: leaving a copy at each candidate's dwelling; leaving a copy at each candidate's usual dwelling place with a family member at least sixteen (16) years of age who resides at the residence; by email or other electronic means; or by mailing a copy of the notice by registered or certified mail to the opposing candidate's residence. The change also provides that if service cannot be made to an opposing candidate, notice may be posted on the door of the opposing candidate's usual place of residence. And if any candidate's usual place of residence is a multi-family dwelling, a copy of the notice must be mailed to the candidate(s) by first class mail, postage prepaid, return receipt requested. Lastly, proof of service of the notice to an opposing candidate must be made to the Circuit Clerk within three (3) days before an examination of the ballot can be conducted. A member noted that the text should say "a candidate, *or his or her representative*" may review the contents of the ballots box, and Robertson agreed and assured that such language would be added.

Article 33. Members of Congress

Robertson moved to the final article of the day, Article 33. The sole proposed change was to Section 23-15-1037(1), which revised the language to update the reduction of congressional districts from five (5) to four (4) and revised the language to update the appropriate counties and portions of counties for each of the four (4) congressional districts.

Conclusion

At the conclusion of the meeting, Secretary Hosemann thanked everyone for their attendance and participation and noted only one session was left to complete the review of the entire election code. With no further business, the meeting was adjourned at 1:30 p.m.

Exhibit A

**Minutes of the Election Code Update Study Group,
Meeting #3**

August 12, 2015

Members in Attendance

1. Dustin Bairfield
2. Rep. Toby Barker
3. Sam Begley
4. Trudy Berger
5. Patricia Burchell
6. Connie Cochran
7. Rep. Angela Cockerham
8. Rickey Cole
9. Rep. Bill Denny
10. Mark Garriga
11. Steve Gray
12. Michael Guest
13. Reggie Hanberry
14. Martin Hegwood
15. Michael Jinks
16. Russell Latino
17. Van Lowry
18. Kristie Metcalfe
19. Kristi Moore
20. Reese Partridge
21. James Reed
22. Spencer Ritchie
23. Haley Salazar
24. Hubby Saunders
25. Drew Snyder
26. Erin King
27. Mike Wallace
28. Marty Wisemann

Secretary of State's Staff

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