

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

PULASKI COUNTY ELECTION
COMMISSION, *ET AL*

PLAINTIFFS

v.

Case No. 60CV-14-1019

ARKANSAS STATE BOARD OF
ELECTION COMMISSIONERS

DEFENDANT

and

DOYLE WEBB, ON BEHALF OF
THE REPUBLICAN PARTY OF ARKANSAS

INTERVENOR

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

On the 24th day of April 2014, this matter came on for consideration with the parties having filed cross-motions for summary judgment. Based upon the pleadings, attachments thereto, and the arguments of counsel, the court makes the following findings of fact and conclusions of law:

1. The regulations that are the subject of this lawsuit are the defendant State Board of Election Commissioners' *Emergency Rules on Poll Watchers, Vote Challenges, and Provisional Voting*, revised on March 4, 2014.

2. Such regulations were implemented by the defendant as a result of the disparate treatment between absentee voters and voters who vote at the polls relating to a cure period for presentation of "proof of identity" as defined in Act 595 of 2013.

3. The plaintiff sued the defendant alleging that defendant was acting outside the scope of its authority, and infringing upon a legislative function in violation of the separation of powers doctrine. The separation of powers doctrine as it applies between regulatory authority of

the executive branch, and legislative prerogative was discussed in the case of *Department of Human Services v. Howard*, 367 Ark. 55, 238 S.W.3d 1 (2006).

4. Act 595 of 2013, entitled “Voters and Voting—Identification Cards,” became effective on April 2, 2013.

5. Section 1 of Act 595 created a new definition entitled “proof of identity.”

6. Section 2 of Act 595 requires that any voter desiring to vote at the polls must present a document included in the “proof of identity” definition in order to vote.

7. Section 5 of Act 595 provides that in order for the vote to count of any voter desiring to vote at the polls who did not provide “proof of identity,” that such voter must return a “proof of identity” or an affidavit to the county clerk or the board of election commissioners by noon on the Monday following the election.

8. Section 6 of Act 595 provides that in order for the vote to count of any voter desiring to early vote who did not provide “proof of identity” that such voter must return a “proof of identity” or an affidavit to the county clerk or the board of election commissioners by noon on the Monday following the election.

9. Section 4 of Act 595 provides that the county election commissioners may provide information about voters who did not provide “proof of identity,” to the prosecuting attorney for possible voter fraud.

10. It appears that the legislative purpose in enacting Act 595 of 2013 was to reduce or eliminate voter fraud.

11. No reasonable person could disagree that reduction or elimination of voter fraud is a worthwhile and proper legislative purpose.

12. Article 3, Section 1 of the Arkansas Constitution, states:

§ 1. Qualifications of electors.

Except as otherwise provided by this Constitution, any person may vote in an election in this state who is:

- (1) A citizen of the United States;
- (2) A resident of the State of Arkansas;
- (3) At least eighteen (18) years of age; and
- (4) Lawfully registered to vote in the election. [As amended by Const. Amend. 85.]

13. Article 3, Section 2 of the Arkansas Constitution, states:

§ 2. Right of suffrage.

Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof. [As amended by Const. Amend. 85.]

14. Article 3, Section 1 provides that any person who meets the four requirements set forth therein may vote in elections in Arkansas. Article 3, Section 2, provides that “no power” has the authority to limit a qualified elector’s right to vote.

15. Amendment 51, Section 1 to the Arkansas Constitution, states:

§ 1. Statement of policy.

The purpose of this amendment is to establish a system of permanent personal registration as a means of determining that all who cast ballots in general, special and primary elections in this State are legally qualified to vote in such elections, in accordance with the Constitution of Arkansas and the Constitution of the United States.

16. Amendment 51, Section 3 to the Arkansas Constitution, states:

§ 3. Application.

No person shall vote or be permitted to vote in any election unless registered in a manner provided for by this amendment.

17. Amendment 51, Section 6 to the Arkansas Constitution, states:

§ 6. Voter registration application forms.

(a)

(1) The mail voter registration application form may only require identifying information, including signature or mark, and other information, including data relating to previous registration by the applicant, as is necessary to assess the applicant's eligibility and to administer voter registration and other

parts of the election process.

(2) Such forms shall include, in identical print, statements that:

(A) Specify voter eligibility requirements;

(B) Contain an attestation that the applicant meets all voter eligibility requirements and that the applicant does not claim the right to vote in another county or state;

(C) Specify the penalties provided by law for submission of a false voter registration application;

(D) Inform applicants that where they register to vote will be kept confidential; and

(E) Inform applicants that declining to register will also be kept confidential.

(3) The following information will be required of the applicant:

(A) Full name;

(B) Mailing address;

(C) Residence address and any other information necessary to identify the residence of the applicant;

(D) If previously registered, the name then supplied by the applicant, and the previous address, county, and state;

(E) Date of birth;

(F) A signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration;

(G) If the applicant is unable to sign his or her name, the name, address, and telephone number of the person providing assistance;

(H) If the applicant has a current and valid driver's license, the applicant's driver's license number;

(I) If the applicant does not have a current and valid driver's license, the last four (4) digits of the applicant's social security number; and

(J) If the applicant does not have a current and valid driver's license number or social security number, the Secretary of State will assign the applicant a number which will serve to identify the applicant for voter registration purposes, and this number shall be placed on the application.

(4) The following information may be requested on the registration card, but it shall not be required:

(A) Telephone number where the applicant may be contacted; and

(B) Political party with which the applicant wishes to be affiliated, if any.

(5) The mail voter registration application shall not include any requirement for notarization or other formal authentication.

(6) The mail voter registration application form shall include the following questions along with boxes for the applicant to check "yes" or "no" in response:

(A) "Are you a citizen of the United States of America and an Arkansas resident?";

(B) "Will you be eighteen (18) years of age on or before election day?";

(C) "Are you presently adjudged mentally incompetent by a court of competent jurisdiction?"; and

(D) "Have you ever been convicted of a felony without your sentence having been discharged or pardoned?"

(7) The mail voter registration application form shall include the following statements immediately following the questions asked in subdivision (a)(6) of this section:

(A) "If you checked "No" in response to either questions A or B, do not complete this form.";

(B) "If you checked "Yes" in response to either questions C or D, do not complete this form."; and

(C) The mail-in voter registration application form shall include the following statement:

"If your voter registration application form is submitted by mail and you are registering for the first time, and you do not have a valid driver's license number or social security number, in order to avoid the additional identification requirements upon voting for the first time you must submit with the mailed registration form: (a) a current and valid photo identification; or (b) a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows your name and address."

(8) If an applicant for voter registration fails to provide any of the information required by this section, the permanent registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for its completion before the next election for federal office.

(9) The mail voter registration application shall be pre-addressed to the Secretary of State.

(b) (1) The voter registration application portion of the process used by the Office of Driver Services and state revenue offices shall include:

(A) The question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(B) A statement that if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes;

(C) A statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes;

(D) Voter registration eligibility requirements;

(E) Penalties provided by law for providing false information;

(F) An attestation that the applicant meets each eligibility requirement and that the applicant does not claim the right to vote in another county or state; and

(G) A space for the applicant's signature or mark.

(2) The voter registration application portion shall require the signature of the applicant under penalty of perjury, but shall not require

notarization or other formal authentication.

(c) Public assistance agencies and disabilities agencies shall provide, in addition to the federal or state mail voter registration application form, a declination form, to be approved by the State Board of Election Commissioners, which includes the following question and statements:

18. Amendment 51, Section 19, provides:

The General Assembly may, in the same manner as required for amendment of law initiated by the people, amend Sections 5 through 15 of this amendment, so long as such amendments are germane to this amendment, and consistent with its policy and purposes.

19. Section 19 of course relates only to amending Amendment 51. The citizens of the State of Arkansas retain the sole authority to change or later voter qualifications under Article 3.

20. In the case of *Faubus, Governor v. Fields*, 239 Ark. 241, 388 S.W.2d 558 (1965), the year after the passage of Amendment 51, the Arkansas Supreme Court discussed Section 19 in a case involving the authority of the defendant State Board of Election Commissioners to pass regulations regarding voter registration. In declaring that the State Board of Election Commissioners exceeded its regulatory authority, the *Faubus* Court stated:

If we had any misgivings about the correct interpretation of the Amendment our doubts would be set at rest by Section 19. That section provides in substance that the legislature may, by a two-thirds vote in each house, amend Sections 5 through 15 of the Amendment, so long as the amendatory legislation is consistent with the Amendment itself.

21. As stated in the *Faubus* case, the courts are entitled to take judicial notice of the actions of the General Assembly. The court takes notice that the passage of Act 595 of 2013, both before and after the gubernatorial veto was by less than two-thirds vote in both houses.

22. A.C.A. Section 7-5-201(a), states:

(a) To be qualified to vote, a person shall have registered at least thirty (30) calendar days immediately prior to the election and in the manner set forth by Arkansas Constitution, Amendment 51.

23. Once a putative voter has completed the voter registration process at least thirty (30) days prior to the election, that individual is a qualified elector pursuant to Article 3, Section 1 of the Arkansas Constitution.

24. The Arkansas Supreme Court has stated that statutes are presumed to be constitutional, and that it is the obligation of the courts to construe a statute as constitutional if possible. See, *Hobbs v. Jones*, 2012 Ark. 293, 412 S.W.3d 844 (2012), and *Sallee v. Dalton*, 138 Ark. 549, 213 S.W.2d 762 (1919).

25. The Court has also repeatedly stated that the Constitution is the expressed will of the people of the State of Arkansas, *Kimbrell v. McCleskey*, 2012 Ark. 443 (2012).

26. In *Rison v. Farr*, 24 Ark. 161 (1865) (decided under prior constitution), decided almost one hundred and fifty years ago, the Arkansas Supreme Court rejected a legislative enactment as unconstitutionally adding a voter qualification not contained in the Constitution. The *Rison* Court stated:

The constitution of the state of Arkansas is then, the supreme law of the land, the commission or power of attorney which the people of a state have given to their representatives, defining and limiting the bounds within which they must act, and fixing the power which each department of the government may exercise; and is the supreme law of the land, and is fixed, permanent, uncontrollable and transcendent in its nature and operation, and cannot be revoked or altered except by the power that made it.

The constitution of this state is of binding force and obligation upon all departments of the government, and assigns the sphere within which each must act and establishes bounds beyond which neither can go. It is the work of the people, speaking in their original capacity, and establishes the permanent conditions of social alliance, and furnishes the test by which every act of the [legislative, as well as of the executive and judicial departments must be tried, and to which every act done by either must conform.

The constitution is the fortification within which the people have entrenched themselves for the preservation of their rights and privileges, and every act of the legislature, or other department of government, which infringes upon any right

declared in the constitution, whether it be inherent in the people or created by that instrument, is absolutely void.

27. The provisions of Act 595 of 2013 relating to presentation of “proof of identity ” at the time of voting cannot be related to voter registration because voter registration closes thirty (30) days before the election itself.

28. Act 595 of 2013 imposes requirements on qualified electors beyond the requirements constitutionally required to register to vote.

29. Act 595 of 2013 threatens voters with the potential for a referral of criminal charges if they attempt to vote and don’t present “proof of identity.”

30. Act 595 of 2013 is unconstitutional as it adds additional qualifications for qualified voters not stated in Article 3, Section 1 of the Arkansas Constitution.

31. Act 595 of 2013 is unconstitutional as it unconstitutionally impairs the right of suffrage guaranteed in Article 3, Section 2 of the Arkansas Constitution.


32. Act 595 of 2013 is declared void and unenforceable.

33. The subject regulations passed by the defendant Arkansas State Board of Election Commissioners being derivative of Act 595 of 2013, are also unconstitutional, as being violative of both Section 1 and Section 2 of Article 3 of the Arkansas Constitution.

34. Such regulations are declared void and unenforceable.

35. The findings of fact and conclusions of law set forth above are incorporated into the *Order* entered on even date herewith.

IT IS SO ORDERED AND ADJUDGED.



TIMOTHY DAVIS FOX
CIRCUIT COURT JUDGE

DATE 4/24/24