

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION

FREEDOM KOHLS;
TOYLANDA SMITH;
JOE FLAKES; and
BARRY HAAS

PLAINTIFFS

vs.

Case No. 60CV-14 1495

MARK MARTIN, in his official capacity as
Secretary of State for the State of Arkansas and
his official capacity as Chairman of the Arkansas
State Board of Election Commissioners;
RHONDA COLE, C.S. WALKER, JAMES HARMON SMITH, III,
STUART SOFFER, BARBARA MCBRYDE, and
CHAD PEKRON in their official capacities as
Commissioners of the Arkansas State Board
of Election Commissioners

DEFENDANTS

ORDER ON PRELIMINARY INJUNCTION

Plaintiffs' Motion for a Preliminary Injunction came for a hearing on May 2, 2014. On the face of the Complaint, this is a constitutional challenge to the "proof of identity" provisions contained in Act 595 of the 2013 Arkansas General Assembly. Plaintiffs and Defendants appeared for the hearing, through counsel. The Court made its ruling from the bench at the conclusion of oral argument. As set forth below, the Court granted Plaintiffs' Motion for Preliminary Injunction and enjoined Defendants from enforcing the "proof of identity" provisions of Act 595 of 2013. The Court subsequently stayed its Order.

Act 595 of 2013 passed the legislature on April 1, 2013, and took effect, pursuant ~~to a decision by Separate Defendant Martin, on January 1, 2014.~~ Plaintiffs' filed their lawsuit April 16, 2014, alleging that the "proof of identity" requirements contained in Act

595 are unconstitutional. Plaintiffs filed their Motion for Preliminary Injunction on April 22, 2014 and requested an immediate hearing. Plaintiffs subsequently filed two additional "supplements" to their Motion for Preliminary Injunction, on April 25 and April 30. Defendants filed their Responses to Plaintiffs' motion. In their supplemental filings, and in open Court, Plaintiffs limited their presentation, and the Court's consideration of, the Motion solely to a "facial challenge" to the constitutionality of the "proof of identity" provisions of Act 595 of 2013.

At the hearing, the parties stipulated that all four Plaintiffs were registered voters in Pulaski County. The Court subsequently heard argument from counsel for Plaintiffs, and counsel for Defendants.

FINDINGS OF FACT:

As stipulated, the Plaintiffs are registered voters in Pulaski County, Arkansas.

CONCLUSIONS OF LAW:

The Court makes the following conclusions of law:

1. This is a matter concerning the facial constitutionality of Act 595 of 2013.
2. The four registered voters from Pulaski County have standing to make this challenge.
3. The Court has subject matter jurisdiction over this matter and Defendants' objections to subject matter jurisdiction are overruled and denied.
4. The Court overrules and denies Separate Defendant Martin's objections that sovereign immunity precludes entry of a preliminary injunction.
5. The Court overrules and denies Defendant Martin's objections that

- necessary parties are missing from the lawsuit on the pleadings thus far.
6. Eliminating or reducing voter fraud is a positive thing and a legitimate goal by any legislative body.
 7. On the face of the Complaint, the applicable constitutional provisions are Article 3, Section 1, and Article 3, Section 2 of the Arkansas Constitution.
 8. The "proof of identity" documentation required to be provided by each voter under Act 595 constitutes an additional qualification necessary to vote, in violation of Article 3, Section 1 of the Arkansas Constitution, and Defendants are hereby enjoined and restrained from enforcing the "proof of identity" provisions contained in Act 595 for its facial unconstitutionality on that basis. Defendants are also enjoined from enforcing their rules promulgated as a result of Act 595 that specifically require election officials to require voters to produce "proof of identity" prior to casting a ballot either during early voting or on election day.
 9. Plaintiffs have made the requisite showing of irreparable harm if the "proof of identity" provisions of Act 595 are enforced.
 10. Plaintiffs have shown a likelihood of success on the merits given the facial unconstitutionality of the "proof of Identity" provisions contained in Act 595.
 11. The Court is not persuaded that Act 595 relates to voter registration as Amendment 51 to the Arkansas Constitution requires that changes to voter registration must be passed by a two-thirds majority vote of the Arkansas legislature and Act 595 did not meet that threshold.
 12. The Court's rationale, as stated in its ruling from the bench on May 2, 2014,


is hereby incorporated by reference as if set forth herein.

13. IT IS THEREFORE CONSIDERED, ORDERED, AND DECREED that a Preliminary Injunction be, and it is hereby, GRANTED, pursuant to ARCP 65, in accordance with the Court's findings of fact and conclusions of law.

IT IS FURTHER CONSIDERED, ORDERED, AND DECREED that Defendants are hereby temporarily ENJOINED AND RESTRAINED from enforcing any the "proof of identity" provisions of Act 595 of 2013 and from enforcing their rules promulgated as a result of Act 595 that specifically require election officials to require voters to produce "proof of identity" prior to casting a ballot either during early voting or on election day, pursuant to ARCP 65 pending trial on the merits, in accordance with the Court's findings of fact and conclusions of law.

IT IS FURTHER CONSIDERED, ORDERED, AND DECREED that the Court's Preliminary Injunction, set forth above, be, and it is hereby, STAYED, on the Court's own motion and pending action by the Arkansas Supreme Court in the case styled Pulaski County Election Commission v. Arkansas State Board of Election Commissioners, Pulaski County Circuit Court, Case No. 60CV-14-1019 and styled Arkansas State Board of Election Commissioners v. Pulaski County Election Commission, Arkansas Supreme Court, Case No. CV-14-371. If, after a decision by the Arkansas Supreme Court in the above referenced case is handed down, the parties desire this Court to take additional action or modify this ruling, the parties are encouraged to file a formal request to which the Court will take expedited action.

IT IS SO ORDERED this 23rd day of May 2014.



THE HONORABLE TIMOTHY FOX
Pulaski County Circuit Judge

Submitted by
Jeff R. Priebe