

# CASE NO. CV 14-462

IN THE ARKANSAS SUPREME COURT

Mark Martin, ET AL

) DEFENDANTS/

) APPELLANTS

vs.

)

)

Freedom Kohls, ET AL

) PLAINTIFFS/

) APPELLEES

---

ON APPEAL FROM THE  
CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

THE HONORABLE TIMOTHY DAVIS FOX, CIRCUIT JUDGE

---

BRIEF OF PLAINTIFFS/ APPELLEES  
AND SUPPLEMENTAL ADDENDUM

VOLUME 1 of 1

---

Jeff R. Priebe (AR 2001124)  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Telephone: (501) 372-1414  
Facsimile: (501) 372-1659  
Email: jpriebe@jamescarterlaw.com

Deborah Truby Riordan (AR 93231)  
Appellate Solutions, PLLC  
d/b/a Riordan Law Firm  
425 West Capitol Ave., Suite 217  
Little Rock, AR 72201  
Telephone: (501) 235-8235  
Facsimile: (501) 235-8234  
Email: deb@arklawoffice.com

*Attorneys for Plaintiffs/ Appellees*

**TABLE OF CONTENTS**

Points on Appeal .....iv

Table of Authorities .....v

Counter Statement of the Case..... SoC 1

Argument..... Arg 1

I. Standard of Review..... Arg 1

II. Statutory and Constitutional Framework..... Arg 2

    A. Article 3, Section 1 of the Arkansas Constitution ..... Arg 2

    B. Act 595 of 2013..... Arg 4

III. The Circuit Court Had Jurisdiction to Issue  
a Preliminary Injunction ..... Arg 8

    A. Plaintiffs established standing to challenge Act 595 ..... Arg 9

    B. Sovereign immunity does not apply ..... Arg 10

    C. Necessary parties are not omitted ..... Arg 12

IV. The Preliminary Injunction Standard in Arkansas ..... Arg 14

    A. The Circuit Court acted within its discretion  
    in finding that Plaintiffs would suffer irreparable harm  
    absent a preliminary injunction..... Arg 14

    B. The Circuit Court acted within its discretion in finding  
    that Plaintiffs are likely to succeed on the merits. .... Arg 16

        1. This Court’s precedents are clear that the Arkansas  
        Constitution fiercely protects against the General  
        Assembly’s interference with Article 3 of the  
        Arkansas Constitution ..... Arg17

2. Extra-constitutional qualifications have been stricken by this Court in other contexts.....	Arg 21
3. Other states’ interpretations of proof of identity statutes.....	Arg 22
4. HAVA and NVRA do not compel states to adopt proof of identity requirements. ....	Arg 28
Conclusion .....	Arg 30
Certificate of Service .....	Arg 31
Certification of Compliance.....	Arg 32
Supplemental Addendum.....	Supp. Add. 1
Plaintiff’s Response to Motion to Shorten Time .....	Supp. Add. 2
Exhibit A- Notices of Deposition to All Named Plaintiffs.....	Supp. Add. 6
Secretary of State’s Reply to Plaintiff’s Response to Motion to Shorten Time .....	Supp. Add. 15
Plaintiff’s Motion to Quash Subpoenas.....	Supp. Add. 20
Exhibit A- Subpoena to Rick Hogan.....	Supp. Add. 25
Exhibit B- Subpoena to Breck Hopkins .....	Supp. Add. 28
Exhibit C- April 18, 2014 Correspondence transmitting Secretary of State’s First Set of Interrogatories and Requests for Production.....	Supp. Add. 31
Plaintiff’s Reply to the Secretary of State’s Response to Motion to Quash and Response to Motion to Compel .....	Supp. Add. 37
Exhibit 1- April 21, 2014 Email among Jeff Priebe, Martha Adcock and Joe Cordi.....	Supp. Add. 46
Exhibit 2- April 18, 2014 correspondence from Jeff Priebe to Judge Fox .....	Supp. Add. 47

Exhibit 3- April 22, 2014 correspondence  
from Jeff Priebe to Judge Fox ..... Supp. Add. 48

Exhibit 4- June 19, 2013 Minutes of State Board of  
Election Commissioners..... Supp. Add. 50

Exhibit 5- April 21, 2014 Email from  
Alex Reed to Jeff Priebe..... Supp. Add. 54

Exhibit 6- House Appropriations Bill 1159 ..... Supp. Add. 55

## POINTS ON APPEAL

- I. The Circuit Court correctly held that Plaintiffs established standing to challenge the constitutionality of Act 595 of 2013.
  - *Jegley v. Picado*, 349 Ark. 600, 80 S.W.3d 332 (2002);
  - *Thompson v. Arkansas Social Services*, 282 Ark. 369, 669 S.W.2d 878 (1984).
- II. The Circuit Court correctly held that sovereign immunity does not prohibit the court's ability to issue a temporary injunction and to declare Act 595 unconstitutional.
  - *Cammack v. Chalmers*, 284 Ark. 161, 680 S.W.2d 689 (1984);
  - *Jensen v. Radio Broadcasting Co.*, 208 Ark. 517 (1945).
- III. The Circuit Court correctly held that all necessary parties have been named in the action.
  - *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441 (1908);
  - Ark. Code Ann. § 7-4-101.
- IV. The Circuit Court did not abuse its discretion in issuing a preliminary injunction.
  - *Rison v. Farr*, 24 Ark. 161 (1865);
  - Arkansas Constitution, Article III, Sec. 1, 2.
- V. The Circuit Court did not err in declaring Act 595 of 2013 unconstitutional.
  - *Rison v. Farr*, 24 Ark. 161 (1865);
  - *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006).

## TABLE OF AUTHORITIES

CASES	PAGE NO.
<i>Allred v. McLoud</i> , 343 Ark. 35, 31 S.W.3d 836 (2000).....	21
<i>Applewhite v. Commonwealth</i> , 2014 WL 184988 (Pa. Commw. Ct. 2014).....	28
<i>Arcia v Detzner</i> , 746 F.3d 1273 (11 <sup>th</sup> Cir. 2014).....	29
<i>Arkansas State Bd. of Election Comm'rs v. Pulaski Cnty. Election Comm'n</i> , 2014 Ark. 236, -- S.W.3d -- (2014).....	17
<i>Baptist Health v. Murphy</i> , 365 Ark. 115, 121, 226 S.W.3d 800 (2006).....	1
<i>Cammack v. Chalmers</i> , 284 Ark. 161, 680 S.W.2d 689 (1984).....	iii, 11
<i>City of Memphis v. Hargett</i> , 414 S.W.3d 88 (Tenn. 2013).....	24, 26
<i>Commission on Judicial Discipline and Disability v. Digby</i> , 303 Ark. 24, 792 S.W.2d 594 (1990).....	11
<i>Crawford v. Marion County Election Board</i> , 553 U.S. 181, 128 S.Ct. 610 (2008).....	24
<i>Custom Microsystems, Inc. v. Blake</i> , 344 Ark. 536, 425 S.W. 3d 453, 456 (2001).....	1, 17
<i>AJ &amp; K Operating Co., Inc. v. Smith</i> , 355 Ark. 510, 140 S.W.3d 475 (2004).....	1
<i>Daniels v. Dennis</i> , 365 Ark. 338, 229 S.W.3d 880 (2006).....	21- 22
<i>Democratic Party of Georgia, Inc. v. Perdue</i> , 707 S.E.2d 6711 (Ga. 2011).....	24, 26

<i>Ex parte Young</i> , 209 U.S. 123, 28 S.Ct. 441 (1908).....	iii, 13
<i>Faubus v. Fields</i> , 239 Ark. 241, 245, 388 S.W.2d 558 (1965).....	4
<i>Faubus v. Miles</i> , 237 Ark. 957, 377 S.W.2d 601 (1964).....	20, 25
<i>Henderson v. Gladish</i> , 198 Ark. 217, 138 S.W.2d 257 (1939).....	19-20
<i>Jegley v. Picado</i> , 349 Ark. 600, 619, 80 S.W.3d 332 (2002).....	iii, 10
<i>Jensen v. Radio Broadcasting Co.</i> , 208 Ark. 517, 186 S.W.2d 931 (1945).....	iii, 12
<i>Kreutzer v. Clark</i> , 271 Ark. 243, 607 S.W.2d 670 (1980).....	14
<i>League of Women Voters of Indiana, Inc. v. Rokita</i> , 929 N.E.2d 758 (Ind. 2010) .....	24, 25
<i>Linder v. Linder</i> , 348 Ark. 322, 349, 72 S.W.3d 841, 856 (2002).....	2
<i>Mississippi County v. Green</i> , 200 Ark. 204, 138 S.W.2d 377 (1940) .....	21
<i>Proctor v. Daniels</i> , 2010 Ark. 206, 392 S.W.3d 360 (2010).....	22
<i>Rison v. Farr</i> , 24 Ark. 161 (1865) .....	iii, 18- 20
<i>State v. Oldner</i> , 361 Ark. 316, 206 S.W.3d 818 (Ark. 2005) .....	2
<i>Thompson v. Arkansas Social Services</i> , 282 Ark. 369, 669 S.W.2d 878 (1984).....	iii, 10
<i>U.S. Term Limits, Inc. v. Hill</i> , 316 Ark. 251, 872 S.W.2d 349 (1994).....	22

<i>United Food and Com. Workers v. Wal-Mart Stores, Inc.</i> , 353 Ark. 902, 120 S.W. 3d 89 (2003).....	14
<i>Weinschenk v. State</i> , 203 S.W.3d 201 (Mo. 2006) .....	iii, 27
<i>Wilson v. Luck</i> , 203 Ark. 377, 156 S.W.2d 795 (1941).....	3
<i>Wilson v. Pulaski Ass'n of Classroom Teachers</i> , 330 Ark. 298, 954 S.W.2d 221 (1997).....	14

<b>STATUTES AND RULES</b>	<b>PAGE NO.</b>
42 U.S.C. § 1973gg-6.....	24, 28- 29
42 U.S.C. 15483(a)(2).....	29-30
Act 595 of 2013.....	<i>passim</i>
Ark. Const., Amend. 8 .....	3, 20
Ark. Const., Amend. 39 .....	3, 4, 20, 25
Ark. Const, Amend. 51 .....	3, 22-26
Ark. Const., Amend. 80 .....	22
Ark. Const., Amend. 85 .....	4
Ark. Const. Article 3, Section 1 .....	<i>passim</i>
Ark. Const. Article 3, Section 2.....	3, 4, 27
Ark. Const. Article 5, Section 20.....	10
Ark. Const. Article 7, Section 29.....	21
Ark. Const. Article 7, Section 41 .....	21



Ark. Const. Article 19, Section 3 .....	21
Ark. Code Ann. § 7-1-101 .....	SoC 1, 6
Ark. Code Ann. § 7-4-101 .....	iii, 13
Ark. Code Ann. § 7-5-201 .....	SoC 1, 6, 22
Ark. Code Ann. § 7-5-305 .....	SoC 2, 7
Ark. Code Ann. § 7-5-321 .....	SoC 2-3, 7
Ark. Code Ann. § 7-5-418(c) .....	SoC 1, 6, 7
Ark. Code Ann. § 16-111-106 .....	11, 12
Ark. R. Civ. P. 19(a) .....	12
Ark. R. Civ. P. 65 .....	SoC 3, 1
Ark. R. App. Civ. 2(a)(6) .....	1
ASBEC’s Emergency Rules for Voter Identification, 801 .....	<i>passim</i>
ASBEC’s Emergency Rules for Voter Identification, 802 .....	SoC 3, 14, 15
Pennsylvania Const. Art. 1, Sec. 5; Art. 7, Sec. 1 .....	28
Wisc. Constit., Art. III, Sec. II .....	28
<b>BOOKS &amp; TREATISES</b>	<b>PAGE NO.</b>
43 C.J.S., Injunctions, § 108, pp. 618, 619 .....	11
<b>MISCELLANEOUS</b>	<b>PAGE NO.</b>
<i>Voter Identification Requirements/ Voter ID Laws (June 25, 2014)</i> , National Conference of State Legislators, at <a href="http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx">http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx</a> (last visited July 24, 2014).....	30

## **COUNTER-STATEMENT OF THE CASE**

Act 595 of the 89<sup>th</sup> General Assembly, formerly Senate Bill 2, was formally passed by both houses of the Arkansas General Assembly on March 19, 2013. (Add. 47)<sup>1</sup> It was vetoed by the Governor on March 25, 2013, because it “unnecessarily restricts and impairs our citizens’ right to vote.” (Add. 55) The Governor’s veto was overridden by the Arkansas Senate on March 27, 2013, and then by the Arkansas House of Representatives on April 1, 2013. (Add. 57) Act 595 took effect on January 1, 2014.

Act 595 erects an obstacle between voters and the ballot box by establishing a new qualification for in-person voting in the State of Arkansas. The new “proof of identity” qualification is found in Section 2 of Act 595, which amends Ark. Code Ann. § 7-5-201 and addresses voting on election day, and in Section 6 of Act 595, which amends Ark. Code Ann. § 7-5-418(c) to include the “proof of identity” requirement for voters who participate in in-person early voting.

Act 595 amends Ark. Code Ann. § 7-1-101 to specify what documents suffice as “proof of identity”:

---

<sup>1</sup> Unless otherwise noted, all references to the Addendum are to the Addendum submitted by the Attorney General on behalf of the members of the Arkansas State Board of Election Commissioners.

- (30)(A) “Proof of identity” means:
- (i) A voter identification card under § 7-5-322; or
  - (ii) A document or identification card that:
    - (a) Shows the name of the person to whom the document was issued;
    - (b) Shows a photograph of the person to whom the document was issued;
    - (c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
    - (d) If displaying an expiration date:
      - (1) Is not expired; or
      - (2) Expired no more than four (4) years before the date of the election in which the person seeks to vote.

A qualified voter’s failure or inability to present “proof of identity” at the polling place removes the qualified voter’s ability to cast a regular ballot, limiting the qualified voter to casting only a “provisional” ballot. See Ark. Code Ann. § 7-5-305. Section 5 of Act 595, implemented as Ark. Code Ann. § 7-5-321, provides that qualified voters who cast provisional ballots will only have their votes counted if they make an additional trip to appear at the County Board of Election Commissioners or the County Clerk by noon the Monday following the election and either provide proof of identity or swear under penalty of perjury that they are either “indigent”<sup>2</sup> or have a religious objection to being photographed. See Ark.

---

<sup>2</sup> Although the statute refers to indigency as the basis of a potential, subsequent waiver of the “proof of identity” requirement, the term is not defined nor is there any explanation as to why the affidavit cannot occur at the time of voting.

Code Ann. § 7-5-321. On January 1, 2014, the Arkansas State Board of Election Commissioners (“ASBEC”) adopted Emergency Rules for Voter Identification, which implement Act 595’s “proof of identity” requirements. (Add. 37, 123-25, 128-29)

On April 16, 2014, Appellees Freedom Kohls, Toylanda Smith, Joe Flakes, and Barry Haas, registered voters in Pulaski County, Arkansas, filed in the Pulaski County Circuit Court a Complaint for Injunctive and Declaratory Relief challenging the constitutionality of those sections of Act 595 which mandate that registered voters provide specifically-designated “proof of identity” each and every time they seek to cast an in-person ballot. The defendants named in the Complaint are Mark Martin, in his official capacity as Arkansas Secretary of State and in his official capacity as Chair of the ASBEC, as well as Rhonda Cole, C.S. Walker, James Harmon Smith, III, Stuart Soffer, Barbara McBryde, and Chad Pekron in their official capacities as Commissioners of the ASBEC. (Add. 1)

Pursuant to Rule 65, Plaintiffs filed a Motion for Preliminary Injunction on April 22, 2014, asserting a facial challenge to the “proof of identity” requirements of Act 595, specifically, those set forth in Sections 1, 2, 4, 5, and 6, as well as Rules 801 and 802 of the ASBEC’s Emergency Rules for Voter Identification, which implement Act 595’s “proof of identity” requirements. (Add. 37, 123-25, 128-29) Plaintiffs supplemented their Motion on April 25 and April 30, addressing

the Circuit Court’s previous ruling declaring Act 595 unconstitutional, as well as decisions of other courts construing similar proof of identity requirements. (Add. 139, 150) ASBEC filed a Response to Plaintiffs’ Motion for Preliminary Injunction on May 1, and an Answer to the Complaint on May 9. (Add. 274, 346) Defendant Martin filed a Response to Plaintiffs’ Motion for Preliminary Injunction and an Answer to Plaintiffs’ Complaint on May 2. (Add. 293, 306) Thereafter, multiple discovery motions and responses were filed by the parties. (SOS Add. 111, 118; Supp. Add. 2, 15, 20, 37) Those motions remain pending.

A hearing was held on Plaintiffs’ Motion for Preliminary Injunction on May 2, 2014, wherein the parties stipulated that Plaintiffs were registered voters in Pulaski County, Arkansas. (Ab. 1)<sup>3</sup> Following the arguments of counsel, the Circuit Court granted a preliminary injunction of the enforcement of the “proof of identity” provisions of Act 595 and *sua sponte* stayed the injunction, given the pendency of an appeal of another decision concerning the absentee provisions of Act 595, *Arkansas State Board of Election Commissioners v. Pulaski County Election Commission*, Supreme Court Case No. CV-14-371, as well as the immediacy of the May primary elections. (Ab. 49-54) On May 23, 2014, the

---

<sup>3</sup> References to the Abstract unless otherwise noted are to the Abstract prepared by the Attorney General on behalf of the commissioners of ASBEC.

Pulaski County Circuit Court entered a formal Order (Add. 357) finding that:

1. Plaintiffs have standing to make a facial challenge to Act 595.
2. The “proof of identity” documentation required by Act 595 constitutes an additional qualification to the right to vote, in violation of Article 3, Section 1 of the Arkansas Constitution. Accordingly, Defendants were ordered enjoined and restrained from enforcing the “proof of identity” provisions contained in Act 595, and the 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.
3. Plaintiffs made the requisite showing of irreparable harm in the event that the “proof of identity” provisions of Act 595 are enforced.
4. Plaintiffs showed a likelihood of success on the merits given the facial unconstitutionality of the “proof of identity” provisions of Act 595.
5. The Court *sua sponte* stayed its decision pending the outcome of *Arkansas State Board of Election Commissioners v. Pulaski County Election Commission*, Supreme Court Case No. CV-14-371.

Defendants timely filed notices of appeal on May 23, 2014. (Add. 362, 365) The question before this Court is whether the Circuit Court abused its discretion in granting a temporary injunction based on Plaintiffs’ facial challenge to the constitutionality of the “proof of identity” requirements for in-person voting.

## ARGUMENT

### I. Standard of Review

This appeal stems from the Pulaski County Circuit Court's issuance of a preliminary injunction and declaration that portions of Act 595 of 2013 are unconstitutional. (Add. 357) Arkansas Rule of Appellate Procedure Civ. 2(a)(6) renders the Circuit Court's Order immediately appealable.

In determining whether to issue a preliminary injunction pursuant to Ark. R. Civ. P. 65, Arkansas courts consider (1) whether irreparable harm will result in the absence of a preliminary injunction, and (2) whether the moving party has demonstrated a likelihood of success on the merits. See *Custom Microsystems, Inc. v. Blake*, 344 Ark. 536, 425 S.W. 3d 453, 456 (2001). This Court reviews the grant of a preliminary injunction under an abuse-of-discretion standard. See *AJ & K Operating Co., Inc. v. Smith*, 355 Ark. 510, 140 S.W.3d 475 (2004). Any factual findings by the trial court which lead to conclusions of irreparable harm and likelihood of success on the merits will not be set aside unless clearly erroneous. See *Baptist Health v. Murphy*, 365 Ark. 115, 121, 226 S.W.3d 800 (2006). "But a conclusion that irreparable harm will result or that the party requesting the injunction is likely to succeed on the merits is subject to review under an abuse-of-discretion standard." *Id.*

Plaintiffs have asserted a facial challenge to Act 595. This Court has said

that facial invalidation of a statute is appropriate if it can be shown “that under *no* circumstances can the statute be constitutionally applied.” *Linder v. Linder*, 348 Ark. 322, 349, 72 S.W.3d 841, 856 (2002). As a general rule, this Court will review a trial court’s interpretation and construction of constitutional provisions *de novo*; however, in the absence of a showing of error by the trial court, its interpretation will be accepted on appeal. See *State v. Oldner*, 361 Ark. 316, 206 S.W.3d 818 (Ark. 2005).

For each of the reasons set forth below, the Circuit Court correctly exercised its discretion in granting a preliminary injunction. The Circuit Court further correctly interpreted Act 595 as establishing an additional qualification to vote in violation of Article 3, Section 1 of the Arkansas Constitution.

## **II. Statutory and Constitutional Framework.**

### **A. Article 3, Section 1 of the Arkansas Constitution**

The Arkansas Constitution was originally adopted by the people of the State of Arkansas in 1874. Article 3 has, since the Constitution’s inception, set forth the qualifications required of all voters in this State. As enacted, Article 3 provided,

Sec. 1. Every male Citizen of the United States, or male person who has declared his intention of becoming a citizen of the same, of the age of twenty one years, who has resided in the State twelve months, and in the county six month, and in the voting prescient or ward one month, next preceding any election, where he may propose to vote, shall be entitled to vote at all elections by the people.



Sec. 2. 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 the right to vote at any election shall be made to depend upon any registration of the elector's name; or whereby such right shall be impaired or forfeited, except for the commission of a felony at common law, upon lawful conviction thereof.

Article 3, Section 1 was first amended by Amendment 8 in 1908. As amended, Section 1 set forth specific qualifications for Arkansas voters. One such qualification was that the voter present at the time of voting “a receipt or other evidence that they have paid their poll tax at the time of collecting taxes next preceding such election.” Even after Amendment 8, however, voters were presumed to be qualified to vote and were permitted to cast a valid ballot without a poll tax receipt so long as they were included on the list of qualified voters and no one objected. See *Wilson v. Luck*, 203 Ark. 377, 156 S.W.2d 795 (1941).

In 1948, Amendment 39 granted to the General Assembly the authority “to enact laws providing for a registration of voters” before any election “and to require that the right to vote at any such election shall depend upon such previous registration.” Amendment 51 (1964) then “establish[ed] 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.” Section 19 of Amendment 51 further provides that any

amendment to the voter registration provisions must pass by a two-thirds vote of each house of the General Assembly. See Ark. Const, Amend. 51, Sec. 19; see also, *Faubus v. Fields*, 239 Ark. 241, 245, 388 S.W.2d 558 (1965). The language of Article 3 did not change with either Amendment 39 or 51.

Amendment 85 was passed in 2007 to clarify that there are only 4 qualifications that Arkansas residents must meet in order to be eligible to vote. Importantly, Amendment 85 eliminated as a qualification any requirement that registered voters present any evidence of their eligibility to vote at the time of in-person voting. As amended, Article 3, Sections 1 and 2, now provide:

Sec. 1. 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.

Sec. 2. Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right to 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.

### **B. Act 595 of 2013**

Act 595 of 2013, also known as Senate Bill 2, was formally passed by both houses of the Arkansas General Assembly on March 19, 2013. It was subsequently vetoed by the Governor of the State of Arkansas. In his “Veto Letter” dated March

25, 2013, Governor Beebe informed the Arkansas Senate that he was vetoing Senate Bill 2 because it “unnecessarily restricts and impairs our citizens’ right to vote.” (Add. 55) Governor Beebe not only analyzed the language of Article 3, Sections 1 and 2, in his veto letter, he also analyzed the Act’s “proof of identity” requirement and determined that there was no need for a “proof of identity” requirement because there were no credible examples of election fraud that the requirement would address. (Add. 56) Governor Beebe was, and is, correct.

Following Governor Beebe’s veto, members of the Arkansas General Assembly requested that Attorney General Dustin McDaniel perform an analysis of the proposed Act. In that analysis dated March 25, 2013, the Arkansas Attorney General also questioned the constitutionality of Act 595 given the strong Arkansas Constitutional language concerning voter qualifications. (Add. 59) With the knowledge of Governor Beebe’s veto letter and the Attorney General’s expressed concerns, the Governor’s veto was overridden, first, by the Senate on March 27, 2013, and, then, by the House of Representatives on April 1, 2013. (Add. 57)

By its terms Act 595 was to become effective upon the later of January 1, 2014, or when there was appropriation and availability of funding “for the issuance of voter identification cards under Section 5 of this act.” (Add. 47) Though no specific appropriations were made for Act 595 (Supp. Add. 55), separate Defendant Martin decided that Act 595 would take effect on January 1, 2014.

Act 595 mandated the amendment of various Code sections to implement the new “proof of identity” qualification for Arkansas voters. The new “proof of identity” qualification is found in Section 2 of Act 595, wherein Ark. Code Ann. § 7-5-201 (titled, “Registration—Residency”) was amended to require all qualified voters appearing to vote in person to present proof of identity. Section 6 of Act 595 amended Ark. Code Ann. § 7-5-418(c) to require all qualified voters who appear to vote during early voting to present proof of identity.

Act 595 places considerable limits on the type of documents that suffice as “proof of identity” for in-person voting. Act 595 defines the new “proof of identity” qualification by amending Ark. Code Ann. § 7-1-101 to include the following provisions:

- (30)(A) “Proof of identity” means:
  - (i) A voter identification card under § 7-5-322; or
  - (ii) A document or identification card that:
    - (a) Shows the name of the person to whom the document was issued;
    - (b) Shows a photograph of the person to whom the document was issued;
    - (c) Is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas; and
    - (d) If displaying an expiration date:
      - (1) Is not expired; or
      - (2) Expired no more than four (4) years before the date of the election in which the person seeks to vote.

Nursing home residents are afforded an additional option to present documentation from the facility administrator attesting that the designated person

is a resident of the facility. No other alternate methods are prescribed which will satisfy the “proof of identity” requirement.

Failure to present sufficient “proof of identity” relegates qualified voters to casting only a “provisional” ballot. The voter and election officials must then proceed according to Ark. Code Ann. § 7-5-321. See Ark. Code Ann. § 7-5-305 and § 7-5-418(d), amended by Sections 4 and 6 of Act 595. Section 5 of Act 595 established Ark. Code Ann. § 7-5-321, which sets for the procedure for voters who fail to provide “proof of identity” at the time of in-person voting either during early voting or on Election Day. Ark. Code Ann. § 7-5-321 relegates such voter to only casting only a provisional ballot. Such provisional ballot will then not be counted unless the voter makes an additional trip to the County Board of Election Commissioners or the County Clerk by noon the Monday following the election and either provides proof of identity or, if applicable, swears under penalty of perjury that he or she is either “indigent” or has a religious objection to being photographed. See Ark. Code Ann. § 7-5-321.

Defendants argue that Act 595 is not a substantial departure from the previous requirements of Ark. Code Ann. § 7-5-305. Defendants are wrong. The earlier version of Ark. Code Ann. § 7-5-305 did not impose an additional qualification to voting. The earlier version of Ark. Code Ann. § 7-5-305 provided that a qualified voter in Arkansas would be asked by a poll worker for current and

valid photo ID, or a utility bill, bank statement, or other government document that shows the name and address of the voter. Unlike the mandate of Act 595, which prohibits voters without proof of identity from voting, the prior law provided that voters who refused or were unable to comply with the poll worker's request for identification were still provided with a valid ballot. Their lack of identification was indicated on the voter registration list, but they were not prohibited from voting. Thus, before the enactment of Act 595, there was no "proof of identity" qualification for Arkansas voters. If a voter did not have identification or refused to provide identification, the voter was still allowed to cast a valid ballot.

Act 595 is a sea change for Arkansas voters. Qualified voters, as defined by Article 3, could previously cast a valid ballot. Now otherwise qualified voters must meet the additional statutory qualification of possessing and presenting "proof of identity," or, if applicable, documentation that they are a resident of a residential care facility. Unlike a registration requirement, Act 595 requires that, at the time of casting a ballot, qualified voters present "information to prove who they are that they didn't have to have to register in the first place." (Ab. 38) The Circuit Court correctly determined that Act 595's proof of identity requirement is "in excess of what you had to show up with to get registered to vote," rendering the provision a qualification to vote in violation of Article 3, Sections 1 and 2. (Ab. 40)

### **III. The Circuit Court Had Jurisdiction to Issue a Preliminary Injunction.**

**A. Plaintiffs established standing to challenge Act 595.**

Plaintiffs' Complaint asserts both a facial challenge and an as-applied challenge to the constitutionality of Act 595. (Add. 1) Plaintiffs' Motion for Preliminary Injunction was limited to Plaintiffs' facial challenge to the Act. (Add. 140) The new voter qualification is facially invalid because it cannot be constitutionally applied to any voter. As the Circuit Court correctly noted, "Just because I have my driver's license with me, doesn't mean it's constitutional to tell me that I have to produce it." (Ab. 44) Plaintiffs have standing regardless of whether they possess the requisite "proof of identity" (three of the four named Plaintiffs have verified that they do not), because they are registered voters subject to the new qualification. (Add. 41, 42, 43, 44)

At the hearing on Plaintiffs' motion, the parties stipulated that the four named Plaintiffs are registered voters in Pulaski County, Arkansas. (Ab. 2-3) Although Plaintiffs attached to their Motion for Preliminary Injunction affidavits demonstrating that, with the exception of separate Plaintiff Haas, none of the Plaintiffs have any form of photo identification that would satisfy the "proof of identity" requirement contained in Act 595 or in Defendants' *Emergency Rules for Voter Identification*, the Circuit Court announced that none of the facts regarding Plaintiffs' possession of the required identification or their attempts, or lack of

attempts, to vote under the provisions of Act 595 are relevant to a facial challenge. (Add. 41, 42, 43, 44; Ab. 13) Instead, in order to establish standing, Plaintiffs were only required to demonstrate that they are, or one of them is, within the class of persons affected by the statute. See *Jegley v. Picado*, 349 Ark. 600, 619, 80 S.W.3d 332 (2002), citing *Thompson v. Arkansas Social Services*, 282 Ark. 369, 669 S.W.2d 878 (1984). Thus, Plaintiffs only had to prove that they are registered voters, a fact to which Defendants stipulated at the hearing. The Circuit Court announced from the bench that this stipulation established standing. (Ab. 2-3) Defendants' contention on appeal that Plaintiffs lack standing is without merit.

**B. Sovereign immunity does not apply.**

Defendants contend that the Circuit Court lacked jurisdiction to grant a preliminary injunction because Defendants are immune from suit. Defendants are wrong. The defense of sovereign immunity arises from Article 5, Section 20, of the Arkansas Constitution, which provides: "The State of Arkansas shall never be made a defendant in any of her courts." Sovereign immunity extends to the State of Arkansas, its agencies, and its officers acting in their official capacities, but does not apply when plaintiffs seek declaratory relief from an official's non-discretionary application of an unconstitutional law.

In their Complaint, Plaintiffs named Defendants in their official capacities as state officials responsible for the implementation and enforcement of Act 595.



(Add. 2) As such, sovereign immunity could apply to Defendants if Plaintiffs were seeking money damages or requesting the court to interpret Defendants' discretionary acts. Instead, Plaintiffs sought a declaratory judgment that Act 595 is unconstitutional, which constitutes an exception to sovereign immunity. See Ark. Code Ann. § 16-111-106(b); see generally, *Commission on Judicial Discipline and Disability v. Digby*, 303 Ark. 24, 792 S.W.2d 594 (1990)(recognizing authority to maintain a declaratory judgment action against a state agency). Defendants do not contest Plaintiffs' ability to seek declaratory relief against them. Instead, Defendants maintain that any other form of relief, such as injunctive relief, "would be barred by sovereign immunity." (Add. 290) Defendants' reliance on various decisions which preclude the courts from interfering with the discretion exercised by state agencies and officials has no bearing here.

Sovereign immunity does not prohibit Plaintiffs' instant claims because the statute in issue, Act 595, and the promulgated, implementing rules, are unconstitutional. Where the state acts illegally, an action against the officer or agency is not prohibited. See *Digby*, 303 Ark. 24. Moreover, illegal, unconstitutional, and *ultra vires* acts may be enjoined. See *Cammack v. Chalmers*, 284 Ark. 161, 680 S.W.2d 689 (1984). Quoting 43 C.J.S., Injunctions, § 108, pp. 618, 619, this Court expressly recognized the power of the courts to grant temporary injunctions against public officers and boards,

Where great and irreparable injury may be done private citizens by officers acting under a mistaken belief of their authority, or by the unlawful acts of public officers... a temporary injunction may issue to preserve the status quo pending the determination of the litigation.

*Jensen v. Radio Broadcasting Co.*, 208 Ark. 517, 186 S.W.2d 931 (1945).

As Plaintiffs asserted in their Complaint, Act 595 “placed additional qualifications and impairments on Arkansas residents before they can exercise their State constitutional right to vote.” (Add. 1) Because Plaintiffs have asserted that Act 595 violates Arkansas residents’ constitutional right to vote by imposing additional qualifications on in-person voting, this action is not subject to Defendants’ asserted sovereign immunity defense.

**C. Necessary parties are not omitted.**

Plaintiffs’ Complaint names as a defendant Mark Martin in his official capacity as Secretary of State for the State of Arkansas and in his official capacity as Chairman of the ASBEC. In addition, Plaintiffs name as defendants Rhonda Cole, C.S. Walker, James Harmon Smith, III, Stuart Soffer, Barbara McBryde, and Chad Pekron in their official capacities as Commissioners of the ASBEC. (Add. 1)

Ark. Code Ann. § 16-111-106 (a) provides that, in a declaratory action, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. Similarly, Ark. R. Civ. P. 19(a) provides that a

“person who is subject to service of process shall be joined as a party in the action if . . . complete relief cannot be accorded among those already parties . . . or . . . disposition of the action in his absence may . . .leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations . . .” Defendants contend that, by not naming as defendants the County Clerks and County Election Commissions, Plaintiffs failed to name all necessary parties pursuant to Ark. R. Civ. P. 19.

Yet, Plaintiffs’ Complaint sufficiently identifies the State’s “Chief Election Official,” Secretary of State Mark Martin and the ASBEC Commissioners, who are commanded to conduct statewide training for election officers and county election commissioners; adopt necessary rules regarding the training of election officers and county election commissioners; monitor all election law-related legislation; and formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures. See Ark. Const. Amend. 51(b)(1); Ark. Code Ann. § 7-4-101.

*Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441 (1908), requires as a prerequisite to any action asserting the unconstitutionality of a statute that the named defendant state officials have some connection with enforcement of the Act and that they either have threatened or are about to enforce the unconstitutional Act. *Id.*, 209 U.S. at 155-56. Plaintiffs correctly named those vested with the

authority and responsibility for enforcing the unconstitutional provisions of Act 595 and the implementing statutes and rules. See Arkansas Atty. Gen. Opinion No. 2014-060 (July 2, 2014). Because the County Clerks and County Election Commissions are trained by and obtain their rules and instructions from the named Defendants, there would be no added benefit to naming those subordinate groups as defendants.

Further, the Circuit Court was able to afford complete relief by enjoining Defendants' enforcement of Act 595, including the ASBEC Rules 801 and 802, without the County Clerks and County Election Commissions being parties to the action. Defendants' objections to the contrary were correctly overruled.

#### **IV. The Preliminary Injunction Standard in Arkansas.**

##### **A. The Circuit Court acted within its discretion in finding that Plaintiffs would suffer irreparable harm absent a preliminary injunction.**

“Irreparable harm is the touchstone of injunctive relief.” *United Food and Com. Workers v. Wal-Mart Stores, Inc.*, 353 Ark. 902, 120 S.W. 3d 89 (2003); *Wilson v. Pulaski Ass'n of Classroom Teachers*, 330 Ark. 298, 954 S.W.2d 221 (1997). Harm is generally considered irreparable when it cannot be adequately compensated by money damages or redressed in a court of law. *Kreutzer v. Clark*, 271 Ark. 243, 607 S.W.2d 670 (1980).

The Circuit Court acted within its discretion in determining that Plaintiffs

would suffer irreparable harm if a preliminary injunction were not granted. Act 595 imposes an additional qualification on voting that is not contained within the Constitution. It requires that qualified, registered Arkansas voters present a statutorily-defined “proof of identity” in order to cast a valid ballot. Under the statute, all qualified voters must take steps in addition to those required by the Constitution and the voter registration process before his in-person vote will be counted.

In addition to the statutory changes mandated by Act 595, Defendants have adopted rules that implement Act 595. These new rules expand the new “proof of identity” requirement. Rule 801, for example, mandates that “[a]ll voters except those who reside in a long-term care or residential care facility licensed by the state must present “proof of identity” to cast a regular ballot at the polls during early voting and on election day.” (Add. 109, 112) § 802 then permits poll workers to subjectively assess the validity of the “proof of identity” by, first, verifying “that the name on the proof of identity is consistent with the name in the Precinct Voter registration list, allowing for abbreviations and nicknames.” Then, “[i]f the name is consistent, compare the photograph to the voter to determine whether the voter is the person depicted in the photograph, considering hair color, glasses, facial hair, cosmetics, weight, age, injury and other physical characteristics.... If the poll worker determines that the proof of identity does not depict the voter, then the poll

worker shall offer the voter a provisional ballot.” (Add. 109, 113)

Act 595, as extended by the Rules of the ASBEC, creates additional qualifications that voters who are otherwise constitutionally qualified must meet before they will be permitted to cast a vote in an Arkansas election during either early voting or on Election Day. Because the effect of Act 595 and these Rules is to add a new qualification for electors, the “proof of identity” provisions of Act 595 are unconstitutional.

The Circuit Court correctly acted within its discretion in finding that Plaintiffs demonstrated that Act 595 and the Rules of the ASBEC subject voters to irreparable harm by imposing additional qualifications on their right to vote. “You don’t think that the entire electorate suffers irreparable harm if one or more of its constituents cannot vote? You don’t think the entire election system and the electorate as a whole doesn’t suffer irreparable harm?... If we’re the universe of voters in this room—and ten of us can’t vote because of that, then I think the entire universe of voters has suffered by not having those voices.” (Ab. 44- 45) The Circuit Court’s Order granting a preliminary injunction should be affirmed.

**B. The Circuit Court acted within its discretion in finding that Plaintiffs are likely to succeed on the merits.**

The Circuit Court acted within its discretion in determining that Plaintiffs have demonstrated that they are likely to succeed on the merits of their claims.

“Likely to succeed on the merits” means “a reasonable probability of success.”  
*Custom Microsystems, Inc.*, 425 S.W. 3d at 457.

This is not the first lawsuit to address the constitutionality of Act 595. On March 12, 2014, the Pulaski County Election Commission and others brought suit against these same Defendants seeking an order declaring the ASBEC’s rules dealing with absentee ballots invalid. *See Pulaski County Election Commission v. Arkansas State Board of Election Commissioners*, Pulaski County Circuit Court, Case No. CV-14-1019. The Circuit Court granted the Pulaski County Election Commission’s motion for summary judgment regarding the unenforceability of the ASBEC’s emergency rules and declared Act 595 unconstitutional. On appeal, this Court held that the Circuit Court’s ruling on the Act’s constitutionality was in error. *See Arkansas State Bd. of Election Comm'rs v. Pulaski Cnty. Election Comm'n*, 2014 Ark. 236, -- S.W.3d -- (2014). Unlike the *Pulaski Cnty. Election Comm'n* case, this case presents a complete record of Plaintiff’s facial challenge to the constitutionality of Act 595’s “proof of identity” requirements for in-person voting. The Circuit Court acted within its discretion in finding that Plaintiffs have a reasonable probability of succeeding on the merits of establishing the unconstitutionality of Act 595.

- 1. This Court’s precedents are clear that the Arkansas Constitution fiercely protects against the General Assembly’s interference with Article 3 of the Arkansas Constitution.**

As stated above, Sections 1 and 2 of Article 3 of the Arkansas Constitution set forth the only qualifications for a citizen to vote. They further prohibit any impairment of a citizen's right to vote. The Arkansas Supreme Court previously addressed a similar attempt by the Arkansas General Assembly to place additional qualifications on voting and, without pause, struck down the law as unconstitutional. In *Rison v. Farr*, 24 Ark. 161 (1865), the Arkansas Supreme Court addressed an "oath law" that was passed by the Arkansas General Assembly that required "that each voter shall, before depositing his vote at any election in this state, take an oath that he will support the constitution of the United States and of this state, and that he has not voluntarily borne arms against the United States or this state, nor aided, directly or indirectly, the so-called confederate authorities since the 18th day of April, 1864...." *Id.* at 170 (quotations omitted).

In its strongly worded opinion, the Court emphasized that the legislature may not take away a citizen's right to vote when the citizen meets all of the constitutional qualifications to vote.

The right of suffrage in this state, if not an inherent, is at least a constitutional right, and whoever possesses the required qualification, cannot be restrained from the exercise of that right except by the alteration of the constitution, and any law infringing upon that right as vested by the constitution is null and void.

*Rison v. Farr*, 24 Ark. 161, 171 (1865). Further, "if the legislature cannot, by



direct legislation, prohibit those who possess the constitutional qualification to vote, from exercising the elective franchise, that end cannot be accomplished by indirect legislation.” *Id.* at 172.

The *Rison* Court struck down the “oath law” because it had the effect of restricting the right to vote and added to the qualifications required by the Constitution. The Court wrote:

The constitution having fixed the qualification of an elector in this state, those possessing the qualifications required, can no more be deprived of the right to vote by legislative enactment, than they can be deprived of the right to trial by jury, or the right to worship God according to the dictates of their own consciences.

*Id.* at 176. Similarly, Act 595, which requires that qualified electors who desire to vote in-person present specific proof of identity not otherwise required adds to the qualifications listed in the Constitution. Moreover, Act 595’s imposition of day-of conditions to casting a valid ballot has the effect of restricting the right to vote. Under *Rison*, Act 595’s proof of identity requirement is unconstitutional.

In *Henderson v. Gladish*, 198 Ark. 217, 138 S.W.2d 257 (1939), the Arkansas Supreme Court considered the then-current requirement under Article 3, Section 1 that poll tax receipts or other evidence payment of the poll tax be furnished at the time of voting. In *Henderson*, certain poll tax receipts were turned away from the polling place because they were written in pencil instead of ink. The Court ruled that receipts written in pencil, rather than in ink, could not be

turned away because Amendment 9 specifically permitted that “other evidence” should be taken into account when election officials decide whether someone had paid their poll tax or not. Quoting *Rison et al v. Farr* at length, the Supreme Court noted that the legislature lacked authority to change the constitutional qualifications to vote.

Finally, in *Faubus v. Miles*, 237 Ark. 957, 377 S.W.2d 601 (1964), the Arkansas Supreme Court struck down Act 19 of the First Extraordinary Session of the Sixty-Fourth General Assembly, which abolished the poll tax as a prerequisite to vote in any election and established a registration system for voters in Arkansas. The Court held that Amendment 39’s authorization of legislation to provide for voter registration did not authorize the legislature to alter the qualifications of electors set forth in Article 3, Section 1, as amended by Amendment 8.

If Amendment 39 gives the legislature power to abolish the poll tax (as a prerequisite to voting) then it would seem to follow also that the legislature could change or abolish the qualifications pertaining to age and residence. Such an interpretation amounts to holding Amendment 39 repeals Amendment 8 by implication.

*Faubus v. Miles*, 237 Ark. 957, 962 (1964).

In each of these decisions construing Article 3’s declaration of the qualifications to vote, the Arkansas Supreme Court has fiercely guarded the right to vote from any interference by the Legislature. Consistent with the precedent set forth in *Rison*, *Henderson*, and *Faubus*, this Court should, likewise, declare Act

595's imposition of additional qualifications on electors to be unconstitutional.

**2. Extra-constitutional qualifications have been stricken by this Court in other contexts.**

In addition to the above decisions declaring the exclusivity of the qualifications set forth in Article 3, Section 1, the Arkansas Supreme Court has, in other contexts, stricken state and local statutes which impose qualifications exceeding those that are expressly set forth in the Arkansas Constitution. For example, the Arkansas Constitution expressly sets forth the qualifications for running for or holding various public offices. Because those qualifications are set forth in the Constitution, this Court has consistently declared any statutes that impose additional qualifications for such offices to be invalid, including: a local law requiring county judges to have practiced law for three years, see *Mississippi County v. Green*, 200 Ark. 204 (1940) (held unconstitutional for adding impermissible qualifications for county judges beyond those set forth in Ark. Const. Art. 7, § 29); a local law placing term limits on various county offices, see *Allred v. McLoud*, 343 Ark. 35, 31 S.W.3d 836 (2000) (held unconstitutional for adding qualifications beyond those in the Arkansas Constitution for county judge (Art. 7 § 29), justice of the peace (Art. 7 § 41); and other county offices (Art. 19 § 3)); a state statute prohibiting appointees to a circuit judgeship from seeking election within the same judicial district, see *Daniels v. Dennis*, 365 Ark. 338 229,

S.W.3d 880 (2006) (held unconstitutional for imposing additional qualifications for Circuit judges not set forth in Ark. Const. Amend. 80 § 16(B), (D)); and a state law prohibiting a judge who was removed from office from being appointed or elected to serve as a judge-- see *Proctor v. Daniels*, 2010 Ark. 206, 392 S.W.3d 360 (2010). See also, *U.S. Term Limits, Inc. v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994) (striking term limits for federal offices under qualifications clause of federal constitution). Because statutes that impose qualifications on running for or holding office that go beyond those expressly enumerated in the Arkansas Constitution have been routinely stricken by this Court as unconstitutional, extra-constitutional qualifications for voting imposed by Act 595 should not be treated differently.

### **3. Other states' interpretations of proof of identity statutes.**

Defendants contend that the majority of states that have considered voter ID legislation have upheld such legislation as a procedural mechanism to prove voter registration. At the hearing Defendants conceded that Act 595 is not a registration mechanism, nor can it be. (R. 37, 40- 41) Amendment 51 governs voter registration. Section 4 provides that once a voter is registered, "it is unnecessary for such voter again to register unless such registration is cancelled or subject to cancellation in a manner provided for by this amendment." Ark. Const. Amend. 51, § 4. Section 9, as implement in Ark. Code Ann. § 7-5-201, provides that voter registration must end 30 calendar days immediately before each election. Because

Act 595 requires that all qualified voters present proof of identity on the day they appear in person to vote, it cannot be construed as a registration procedure or else it is violative of Amendment 51.

Section 11 to Amendment 51, which sets for the procedure for cancelling a voter's registration, provides that the permanent registrar may determine by "any reasonable means at any time within the whole or any part of the county whether active record registration files contain the names of any persons not qualified by law to vote." According to Defendant Martin, "**Act 595 of 2013 does nothing more than this.**" (Martin Arg. 19) (emphasis added)

Although Defendant Martin now contends that Act 595 is a method to cancel voter registration under Section 11 of Amendment 51, requiring "proof of identity" at the time of voting is plainly not a method for cancelling registration, as appearing to vote is not a basis for cancelling someone's voter registration. Further, providing "proof of identity" would not under any circumstances reflect whether the registration files contain names of persons not qualified to vote. Defendant Martin's new suggestion that Act 595 is "nothing more than" a method for cancellation of voter registration is nonsensical. If a voter is unable to show the requisite ID, that voter's registration is not cancelled or removed. Instead, he is prohibited from having his vote counted in that election. If the "proof of identity" requirements were to remove a voter from the rolls, such procedure would violate

federal law. 42 U.S.C. § 1973gg-6.

Further, Amendment 51 requires that any changes to the voter registration procedures pass by a 2/3 majority vote. Act 595 passed the Senate 21-12, with 2 not voting, and 52-45 in the House, with 3 not voting. (Add. 57) Act 595 did not meet the requirements for amendment of registration procedures, so, again, either Act 595 is not a registration procedure or it is violative of Amendment 51. As the Circuit Court succinctly noted: “And we’re still down to that being the ultimate question: Is it a registration issue or is it a qualification issue?” (Ab. 36) “It seems to me that there is a clear cut distinction constitutionally between the registration process which ends 30 days before the election starts.” (Ab. 27)

Defendant Martin cites four decisions from other jurisdictions, Indiana, Georgia, and Tennessee, which declared the various voter ID provisions they considered to be regulations verifying voter registration rather than voter qualifications. See *Crawford v. Marion County Election Board*, 553 U.S. 181, 128 S.Ct. 610 (2008) (plurality opinion); *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758 (Ind. 2010); *Democratic Party of Georgia, Inc. v. Perdue*, 288 Ga. 720 (2011); and *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013). Each of these decisions stem from jurisdictions where the constitutional language addressing voter qualifications is more lenient than that employed in Arkansas’ Constitution. Indeed, the wording of the respective constitutions seems to be the

litmus for the outcome of challenges to voter ID statutes.

For example, in *League of Women Voters of Indiana, Inc. v. Rokita*, 929 N.E.2d 758 (Ind. 2010), the Indiana Supreme Court upheld the Voter ID law because its Legislature had the power to “provide for registration of all persons entitled to vote” (Article 2 Section 14 of the Indiana Constitution) so long as “what (the General Assembly) requires is not so grossly unreasonable that compliance therewith is practically impossible.” *League of Women Voter of Indiana, Inc. v. Rokita*, 929 N.E.2d 758, 763. (citations omitted) The Indiana Supreme Court found the regulations were registration procedures that were not grossly unreasonable and, therefore, were constitutional.

Unlike Indiana’s Constitution, the Arkansas Constitution does not broadly permit the state legislature to regulate the registration of all persons entitled to vote. See *Faubus v. Miles*, 237 Ark. 957 (1964); Arkansas Constitution Article III. Amendment 39 (1948) granted to the General Assembly the authority “to enact laws providing for a registration of voters prior to” any election “and to require that the right to vote at any such election shall depend upon such previous registration.” Amendment 51 (1964), Arkansas’ current registration system, then “establish[ed] 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.” As previously set forth, the limitations on the Legislature’s ability to establish registration procedures is specified in Sections 4, 9, and 19 of Amendment 51. Act 595 meets none of the restrictions of Amendment 51 for voter registration procedures.

Similar to Indiana’s delegation of registration authority to its state legislature, Georgia’s Constitution grants its legislature wide discretion in identifying who meets the qualifications to vote. It is no surprise, then, that the Georgia Supreme Court upheld its voter ID bill against constitutional claims in *Democratic Party of Georgia, Inc. v. Perdue*, 707 S.E.2d 6711 (Ga. 2011).

Finally, the Tennessee Supreme Court’s decision in *City of Memphis v. Hargett*, 414 S.W.3d 88 (Tenn. 2013), upholding the constitutionality of a Voter ID requirement as “narrowly tailored to achieve the state's interest in the integrity of the election process” is not instructive here. Tenn. Const. art. IV, § 1, sets forth the qualifications of voters and authorizes the General Assembly “to enact ... laws to secure ... the purity of the ballot box.” Indeed, “the authority of the Tennessee Legislature to control the conduct of elections held in this State is manifest.” *City of Memphis v. Hargett*, 414 S.W.3d 88, 103 (Tenn. 2013). By contrast, the Arkansas Legislature is not vested with broad authority to control the conduct of elections and voter registration. *Hargett* is not instructive of the outcome here.

Unlike the Constitutions of Indiana, Georgia and Tennessee, the Arkansas



Constitution provides both a very strong, fundamental right to vote and strong protections for that fundamental right. The Arkansas Constitution's emphasis on voting is similar to the language found in the Missouri Constitution. In *Weinschenk v. State*, 203 S.W.3d 201 (Mo. 2006), the Missouri Supreme Court struck down similar "proof of identity" requirements as being in violation of the Missouri Constitution that provided:

The Missouri Constitution expressly guarantees that "all elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." *Mo. Const. art. I, sec. 25*. Additionally, rather than leaving the issue of voter qualification to the legislature, the Missouri Constitution has established an exclusive list of qualifications necessary to vote in Missouri. *Mo. Const. art. VIII, sec. 2* ("All citizens of the United States ... over the age of eighteen who are residents of this state and of the political subdivision in which they offer to vote are entitled to vote at all elections by the people, if ... they are registered within the time prescribed by law"). These constitutional provisions establish with unmistakable clarity that the right to vote is fundamental to Missouri citizens.

*Weinschenk v. State*, 203 S.W.3d at 211 (Mo. 2006).

Similar to Missouri, the Arkansas Constitution specifically sets forth the qualifications for Arkansas voters and adds further protection by prohibiting any laws that interfere with or impair a qualified citizen's right to vote.

Arkansas' Constitution, likewise, has similar language to the Pennsylvania Constitution, except that Pennsylvania delegates power to the Pennsylvania state legislature that the Arkansas Constitution does not delegate to the Arkansas

General Assembly. Pennsylvania Const. Art. 1, Sec. 5; Art. 7, Sec. 1. Pennsylvania's voter ID law was recently declared unconstitutional and permanently enjoined as violating the Pennsylvania Constitution. *See Applewhite v. Commonwealth*, 2014 WL 184988 (Pa. Commw. Ct. 2014). The *Applewhite* Court found that "the Voter ID Law as written suggests a legislative disconnect from reality." *Id.* at 22. The Pennsylvania Court went on to enjoin the Voter ID law on a clear facial challenge because it found that "the photo ID provisions in the Voter ID Law violate the fundamental right to vote and unnecessarily burden the hundreds of thousands of electors who lack compliant photo ID." *Id.*

Wisconsin's voter ID law was similarly struck down in *Frank v. Walker*, -- F.Supp.2d.--, 2014 WL 1775432 (E.D. Wisc.) as violative of the 14<sup>th</sup> Amendment and the Voting Rights Act even though the Wisconsin Constitution, unlike Arkansas', grants its legislature authority over the full scope of the voter registration process. See Wisc. Constit., Art. III, Sec. II.

#### **4. HAVA and NVRA do not compel states to adopt proof of identity requirements.**

Defendant Martin contends at pages 17-19 of his brief that Act 595 fulfills the State's requirement under the National Voter Registration Act ("NVRA") to remove the names of ineligible voters from the voter rolls. 42 U.S.C. § 1973gg-6. The Act 595 proof of identity requirement is not a removal procedure, but, as such,

it would violate the NVRA and HAVA. Defendants’ analysis of Act 595 in conjunction with the NVRA is inaccurate. The NVRA requires states to “ensure that any eligible applicant is registered to vote in an election” if they register 30 days before the election. Further, it prohibits removing voters from the rolls, except in specified circumstances. 42 U.S.C. § 1973gg-6(a). Once a voter is registered, there is a very specific, protective procedure which states must follow in order to remove that voter. See 42 U.S.C. § 1973gg-6(c). Any removal processes must be complete 90 days before a federal election, unless the removal is at the request of the registrant, by reason of criminal conviction or mental incapacity, or due to the death of the registrant. The NVRA prohibits election-day list maintenance on any other grounds, and would prohibit removals for failure or inability to show voter ID. See 42 U.S.C. § 1973gg-6(c)(2)(A); *Arcia v Detzner*, 746 F.3d 1273 (11<sup>th</sup> Cir. 2014). The voter ID requirement set forth in Act 595 cannot qualify as a NVRA registration procedure because it occurs after the voter is determined eligible and added to the voter rolls, and it would violate the NVRA if it were construed as a list maintenance or voter removal procedure.

In addition to misinterpreting the requirements of the NVRA, Defendants *severely* misstate the purpose of the Help America Vote Act (“HAVA”), 42 U.S.C. 15483(a)(2)(B). 42 U.S.C. 15483(a)(2)(A) only allows for list maintenance and removal procedures which comply with the NVRA (which the Act 595 is not). 42

U.S.C. 15483(a)(2)(B) requires that list maintenance must be conducted in a manner that ensures that “only voters who are not registered or who are not eligible to vote” are removed from the rolls. Plaintiffs are both registered and eligible. Fewer than 10 states have adopted strict photo ID requirements for voting like that imposed by Act 595. See <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx> (last visited July 24, 2014). The fact that fewer than 20% of the states have adopted such strict guidelines further demonstrates that, as a practical matter, states do NOT need to adopt photo ID requirements to comply with the NVRA and HAVA. It can't be the case that 40 states are in violation of these federal voting statutes. Defendants' argument that Act 595 merely fulfills the State's requirements under the NVRA and HAVA is without merit. Instead, the Circuit Court correctly granted Plaintiffs a preliminary injunction because Plaintiffs demonstrated that they are likely to succeed in demonstrating that Act 595 and the Rules of the ASBEC impose unconstitutional, additional qualifications on their right to vote. The Circuit Court's Order should be affirmed.

### **CONCLUSION**

Plaintiff respectfully requests that the Circuit Court's order granting a preliminary injunction and declaring that the Voter ID provisions of Act 595 are unconstitutional be affirmed, that the stay imposed be lifted, and that the case be remanded for further orders consistent with the findings of this Court.

Respectfully submitted,

Freedom Kohls, Toylanda Smith, Joe Flakes, and Barry Haas

By: /s/ Deborah Truby Riordan  
Deborah Truby Riordan (AR 93231)  
Appellate Solutions, PLLC  
d/b/a Riordan Law Firm  
425 West Capitol Ave., Suite 217  
Little Rock, AR 72201  
Telephone: (501) 235-8235  
Facsimile: (501) 235-8234  
deb@arklawoffice.com

By: /s/ Jeff R. Priebe  
Jeff R. Priebe (AR2001124)  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Telephone: (501) 372-1414  
Facsimile: (501) 372-1659  
Email: jpriebe@jamescarterlaw.com

*Attorneys for Plaintiffs/ Appellees  
on behalf of the Arkansas Civil Liberties Union Foundation, Inc.  
and the Arkansas Public Law Center*

## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the forgoing have been served via United States Mail, postage prepaid, upon the Circuit Court and the following counsel of record on this the 11th day of August, 2014:

Martha Adcock  
Justin Tate  
Arkansas Secretary of State  
500 Woodlane Ave.  
State Capitol, Suite 256  
Little Rock, AR 72201

AJ Kelly  
Deputy Secretary of State  
PO Box 251570  
Little Rock, AR 72225-1570

Honorable Timothy Davis Fox  
401 West Markham, Room 210  
Little Rock, AR 72201

David Curran  
C. Joseph Cordi  
Arkansas Attorney General  
323 Center St., Suite 200  
Little Rock, AR 72201

          /s/ Deborah Truby Riordan            
*Attorneys for Plaintiffs/Appellees*

**IN THE ARKANSAS SUPREME COURT**

**Case Name: Mark Martin, ET AL vs. Freedom Kohls, ET AL**

**Docket Number: CASE NO. CV-14-462**

**Title of Document: APPELLEES' ENTRY OF APPEARANCE  
OF CO-COUNSEL**

---

**CERTIFICATION OF COMPLIANCE AND IDENTIFICATION OF  
PAPER DOCUMENTS NOT IN PDF FORMAT**

---

**Certification: I hereby certify that:**

I have submitted and served on opposing counsel an unredacted and, if required, a redacted PDF document(s) that comply with the Rules of the Supreme Court and Court of Appeals. The PDF document(s) are identical to the corresponding parts of the paper documents from which they were created as filed with the court. To the best of my knowledge, information, and belief formed after scanning the PDF documents for viruses with an antivirus program, the PDF documents are free of computer viruses. A copy of this certificate has been submitted with the paper copies filed with the court and has been served on all opposing parties.

**Identification of paper documents not in PDF format:**

The following original paper documents are not in PDF format and are not included in the PDF document(s): NONE.

By:  /s/ Deborah Truby Riordan  
Deborah Truby Riordan (AR 93231)  
Appellate Solutions, PLLC  
Date: August 11, 2014

## SUPPLEMENTAL ADDENDUM INDEX

<b>DOCUMENT</b>	<b>SUPP ADD</b>	<b>RECORD</b>
Plaintiff's Response to Motion to Shorten Time	Supp Add 2	R. 143- 46
Exhibit A- Notices of Deposition to All Named Plaintiffs	Supp Add 6	R. 147- 55
Secretary of State's Reply to Plaintiff's Response to Motion to Shorten Time	Supp Add 15	R. 156- 60
Plaintiff's Motion to Quash Subpoenas	Supp Add 20	R. 172- 76
Exhibit A- Subpoena to Rick Hogan	Supp Add 25	R. 177- 79
Exhibit B- Subpoena to Breck Hopkins	Supp Add 28	R. 180- 82
Exhibit C- April 18, 2014 Correspondence transmitting Secretary of State's First Set of Interrogatories and Requests for Production	Supp Add 31	R. 183- 88
Plaintiff's Reply to the Secretary of State's Response to Motion to Quash and Response to Motion to Compel	Supp Add 37	R. 364- 72
Exhibit 1- April 21, 2014 Email among Jeff Priebe, Martha Adcock and Joe Cordi	Supp Add 46	R. 373
Exhibit 2- April 18, 2014 correspondence from Jeff Priebe to Judge Fox	Supp Add 47	R. 374
Exhibit 3- April 22, 2014 correspondence from Jeff Priebe to Judge Fox	Supp Add 48	R. 375- 76
Exhibit 4- June 19, 2013 Minutes of State Board of Election Commissioners	Supp Add 50	R. 377- 80
Exhibit 5- April 21, 2014 Email from Alex Reed to Jeff Priebe	Supp Add 54	R. 381
Exhibit 6- House Appropriations Bill 1159	Supp Add 55	R. 382- 91



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

**PLAINTIFFS' RESPONSE TO  
SEPARATE DEFENDANT MARTIN'S MOTION TO SHORTEN TIME**

Come Plaintiffs and for their *Response* to Separate Defendant Martin's *Motion to Shorten* time, state as follows:

1. Plaintiffs admit the allegations in paragraph 1 of Separate Defendant's Motion.
2. Plaintiffs admit that two days after the filing of the Complaint, Separate Defendant Martin sent each Plaintiff a set of discovery; the sum total of 26 pages of discovery being propounded on the Plaintiffs.
3. Counsel for Plaintiffs admits to receiving a proposed subpoena for discovery to the Arkansas Department of Finance and Administration from Separate Defendant Martin. Counsel for Plaintiff has attempted to discuss concerns about the

substance of the documents being subpoenaed, including the inclusion of un-necessary personal information, however to date Counsel for Separate Defendant Martin has not attempted to confer and discuss these concerns.

4. Plaintiffs understand that Separate Defendant Martin desires to take the depositions of the named Plaintiffs and understands that Separate Defendant Martin has *sua sponte* and without any advance notice, issued notices of depositions for all the named plaintiffs. See **Exhibit A**. Counsel for Plaintiffs is working to try to make Plaintiffs available.

5. Plaintiffs understand the Defendants want to shorten time for discovery, though the need for extensive discovery for purposes of a facial preliminary injunction hearing is not warranted.

6. Plaintiffs do not object to shortening the time frames listed in paragraph 6, however these time frames should apply to all parties and if Defendants are going to be allowed to conduct discovery at this early outset and take the depositions of Plaintiffs, Defendants (including Separate Defendant Martin) should also be required to file a formal answer and responses to the Complaint and Motion for Preliminary Injunction by noon on Tuesday April 30, 2014. As of today, Defendants have not formally stated their positions on this case; positions that may alleviate the need for a formal hearing if they all agree that said "proof of identity" requirements found in Act 595 are unconstitutional.

7. Plaintiffs would agree to the following shortened time frames:

- a. Responses to Interrogatories and Requests for Production of Documents – 48 hours prior to the hearing scheduled on Friday, May 2, 2014 at 1:00 p.m.;

- b. Rule 45 Subpoenas should be provided to counsel for the parties 4 hours prior to service on the recipient and recipient's are to respond to subpoenas by three days after receipt; however document production will be subject to filed objections by the parties and the Court will address any specific objections prior to the May 2 hearing; and
- c. Defendants are to file Answers to the Complaint and Responses to the Motion for Preliminary Injunction by Noon, Tuesday, April 30, 2014.

Wherefore, Plaintiffs would request that the Court grant the relief stated herein and for all other and further relief to which they are entitled.

Respectfully Submitted,

By: /s/ Jeff Priebe  
Jeff R. Priebe (AR 2001124)  
jpriebe@jamescarterlaw.com  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Telephone: (501) 372-1414  
Facsimile: (501) 372-1659

On behalf of the Arkansas Civil Liberties  
Union Foundation, Inc. and the  
Arkansas Public Law Center

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I, Jeff Priebe, certify on this 23rd day of April, 2014, that a copy of the foregoing was served via Arkansas Judiciary Electronic Filing service upon the following as indicated:

Martha Adcock, Esq., General Counsel, [martha.adcock@sos.arkansas.gov](mailto:martha.adcock@sos.arkansas.gov)  
L. Justin Tate, Esq., Associate General Counsel, [justin.tate@sos.arkansas.gov](mailto:justin.tate@sos.arkansas.gov)  
Secretary of State  
State Capitol, Suite 256  
Little Rock, AR 72201  
*Attorneys for Mark Martin, in his Official Capacity as the Secretary of State for the State of Arkansas*

/s/ Jeff Priebe



ARKANSAS SECRETARY OF STATE

MARK MARTIN

Sent via USPS and Email

April 22, 2014

Mr. Jeff Priebe  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201

Re: *Kohls v. Martin*, Circuit Court of Pulaski County, Case No. 60CV-14-1495

Dear Mr. Priebe,

Enclosed please find Notice of Deposition for each of the named Plaintiffs in the above-referenced case.

Should you have any questions, please contact me or Martha Adcock, General Counsel for Secretary Martin.

Regards,

A handwritten signature in black ink, appearing to read "Justin Tate".

Justin Tate  
Associate General Counsel

CC with enclosures: Joe Cordi, Senior Assistant Attorney General

Enclosures: As indicated

**EXHIBIT A**



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**

**NOTICE OF DEPOSITION**

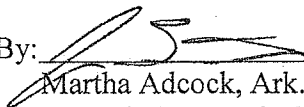
TO: Freedom Kohls  
c/o Jeff R. Priebe  
James, Carter and Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Arkansas Rules of Civil Procedure, Defendant Secretary will proceed to take the deposition upon oral examination of Plaintiff Freedom Kohls commencing at 8:00 a.m. on Friday, May 2, 2014, at the Offices of the Legal Division of the Secretary of State, 1401 W. Capitol Ave, Suite 160, Little Rock, Arkansas 72201. The deposition will be recorded by stenographic means and will continue until adjourned.

HONORABLE MARK MARTIN  
SECRETARY OF STATE FOR THE STATE OF ARKANSAS  
in his Official Capacity, Defendant  
State Capitol, Suite 256  
Little Rock, AR 72201  
Telephone: (501) 682-3401

Facsimile: (501) 682-1213  
martha.adcock@sos.arkansas.gov  
justin.tate@sos.arkansas.gov

By:



Martha Adcock, Ark. Bar No. 83002

L. Justin Tate, Ark. Bar No. 2012223

*Attorneys for Defendant, Mark Martin, Secretary of  
State for the State of Arkansas*

### CERTIFICATE OF SERVICE

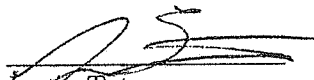
I do hereby certify that on the date set forth below, I have served the foregoing by US postal mail and email.

Jeff R. Priebe (AR 2001124)  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Jpriebe@jamescarterlaw.com

Courtesy copy also sent to:

Joe Cordi  
Senior Assistant Attorney General  
Office of the Arkansas Attorney General  
State of Arkansas  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
Joe.cordi@arkansas.ag.gov

Dated this 22<sup>nd</sup> day of April, 2014.



Justin Tate

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

NOTICE OF DEPOSITION

TO: Toylanda Smith  
c/o Jeff R. Priebe  
James, Carter and Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Arkansas Rules of Civil Procedure, Defendant Secretary will proceed to take the deposition upon oral examination of Plaintiff Toylanda Smith commencing at 10:00 a.m. on Friday, May 2, 2014, at the Offices of the Legal Division of the Secretary of State, 1401 W. Capitol Ave, Suite 160, Little Rock, Arkansas 72201. The deposition will be recorded by stenographic means and will continue until adjourned.

HONORABLE MARK MARTIN  
SECRETARY OF STATE FOR THE STATE OF ARKANSAS  
in his Official Capacity, Defendant  
State Capitol, Suite 256  
Little Rock, AR 72201  
Telephone: (501) 682-3401



Facsimile: (501) 682-1213  
martha.adcock@sos.arkansas.gov  
justin.tate@sos.arkansas.gov

By:



Martha Adcock, Ark. Bar No. 83002

L. Justin Tate, Ark. Bar No. 2012223

*Attorneys for Defendant, Mark Martin, Secretary of  
State for the State of Arkansas*

**CERTIFICATE OF SERVICE**


I do hereby certify that on the date set forth below, I have served the foregoing by US postal mail and email.

Jeff R. Priebe (AR 2001124)  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Jpriebe@jamescarterlaw.com

Courtesy copy also sent to:

Joe Cordi  
Senior Assistant Attorney General  
Office of the Arkansas Attorney General  
State of Arkansas  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
Joe.cordi@arkansas.ag.gov

Dated this 22<sup>nd</sup> day of April, 2014.



Justin Tate

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**

**NOTICE OF DEPOSITION**

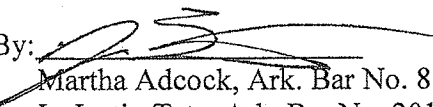
TO: Joe Flakes  
c/o Jeff R. Priebe  
James, Carter and Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Arkansas Rules of Civil Procedure, Defendant Secretary will proceed to take the deposition upon oral examination of Plaintiff Joe Flakes commencing at 1:00 p.m. on Friday, May 2, 2014, at the Offices of the Legal Division of the Secretary of State, 1401 W. Capitol Ave, Suite 160, Little Rock, Arkansas 72201. The deposition will be recorded by stenographic means and will continue until adjourned.

HONORABLE MARK MARTIN  
SECRETARY OF STATE FOR THE STATE OF ARKANSAS  
in his Official Capacity, Defendant  
State Capitol, Suite 256  
Little Rock, AR 72201  
Telephone: (501) 682-3401

Facsimile: (501) 682-1213  
martha.adcock@sos.arkansas.gov  
justin.tate@sos.arkansas.gov

By:

  
Martha Adcock, Ark. Bar No. 83002  
L. Justin Tate, Ark. Bar No. 2012223  
*Attorneys for Defendant, Mark Martin, Secretary of  
State for the State of Arkansas*

**CERTIFICATE OF SERVICE**


I do hereby certify that on the date set forth below, I have served the foregoing by US postal mail and email.

Jeff R. Priebe (AR 2001124)  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Jpriebe@jamescarterlaw.com

Courtesy copy also sent to:

Joe Cordi  
Senior Assistant Attorney General  
Office of the Arkansas Attorney General  
State of Arkansas  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
Joe.cordi@arkansas.ag.gov

Dated this 22<sup>nd</sup> day of April, 2014.

  
Justin Tate

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

NOTICE OF DEPOSITION


TO: Barry Haas  
c/o Jeff R. Priebe  
James, Carter and Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Arkansas Rules of Civil Procedure, Defendant Secretary will proceed to take the deposition upon oral examination of Plaintiff Barry Haas commencing at 3:00 p.m. on Friday, May 2, 2014, at the Offices of the Legal Division of the Secretary of State, 1401 W. Capitol Ave, Suite 160, Little Rock, Arkansas 72201. The deposition will be recorded by stenographic means and will continue until adjourned.

HONORABLE MARK MARTIN  
SECRETARY OF STATE FOR THE STATE OF ARKANSAS  
in his Official Capacity, Defendant  
State Capitol, Suite 256  
Little Rock, AR 72201  
Telephone: (501) 682-3401

Facsimile: (501) 682-1213  
martha.adcock@sos.arkansas.gov  
justin.tate@sos.arkansas.gov

By:

  
Martha Adcock, Ark. Bar No. 83002  
L. Justin Tate, Ark. Bar No. 2012223  
*Attorneys for Defendant, Mark Martin, Secretary of  
State for the State of Arkansas*

**CERTIFICATE OF SERVICE**


I do hereby certify that on the date set forth below, I have served the foregoing by US postal mail and email.

Jeff R. Priebe (AR 2001124)  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Jpriebe@jamescarterlaw.com

Courtesy copy also sent to:

Joe Cordi  
Senior Assistant Attorney General  
Office of the Arkansas Attorney General  
State of Arkansas  
323 Center Street, Suite 200  
Little Rock, Arkansas 72201  
Joe.cordi@arkansas.ag.gov

Dated this 22<sup>nd</sup> day of April, 2014.

  
Justin Tate

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

REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO SHORTEN TIME

Comes the Defendant Secretary, in his official capacity, by and through his counsel of record and for his Reply to Plaintiffs' Response to his Motion to Shorten Time, states as follows:

1. On Wednesday, April 16, 2014, Plaintiffs filed their Complaint for Injunctive and Declaratory Relief. On Tuesday, April 22, 2014, Plaintiffs filed their Motion for Preliminary Injunction.
2. Discovery requests propounded by Defendant Secretary on Friday, April 18, 2014, remain unanswered. To assist Plaintiffs', the same interrogatories and production requests were repeated in separate documents for each named Plaintiff. The total number of pages of discovery sent to each named Plaintiff is 5. Defendant sent the discovery requests as early as possible to give Plaintiffs ample time to respond if Plaintiffs did request a preliminary injunction hearing.
3. Again, to try and work with Plaintiffs' and their counsel, Defendant Secretary additionally sent proposed subpoenas to Plaintiffs' counsel. Defendant Secretary does not agree

with Plaintiffs characterization regarding discussion of the issues between counsel, but can affirmatively state that counsel has repeatedly communicated and are working to eliminate Plaintiffs' counsel's concerns about discovery.

4. In order to move expeditiously, Defendant Secretary did send notice to each Plaintiff for deposition on May 2, 2014, (ten days in advance), but that date was eliminated when the Court set a hearing on the Motion for Preliminary Injunction for the same date. Depositions are now tentatively set by agreement for Monday, April 28, 2014.

5. Since Plaintiffs' request for a preliminary injunction hearing has been granted and this matter has been expedited, Defendant Secretary renews its request that the Court shorten the time limits for discovery. Plaintiffs' assertion that discovery is not warranted for a "facial preliminary injunction hearing" does not appear to match Plaintiffs' motion and brief which seems to include an as-applied argument for which specific information regarding each Plaintiff is necessary.

6. Defendant Secretary would readily agree that if Plaintiffs had any outstanding discovery requests, the time set by this Court to shorten time would apply to discovery requests propounded prior to date. However, Defendant Secretary must respectfully disagree with Plaintiffs' added request in their Response to shorten the time for filing an Answer to Plaintiffs' Complaint or Response to Plaintiffs' Motion.

First, pleadings are not discovery. Since the hearing is on Plaintiffs' request for a preliminary injunction, and not a trial on the merits, there is no need to reduce the time for Defendants to file an Answer to Plaintiffs' Complaint. A Response to the Motion is also not required in order for the Court to proceed with a hearing on Plaintiffs' Motion. Second, Plaintiffs requested deadline for all Defendants to file an answer to the Complaint and Motion

for Preliminary Injunction is noon on Tuesday, April 30, 2014. Tuesday is actually April 29. Plaintiffs' counsel is well aware that the attorney for the Defendant Election Commissioners is unavailable on that date. April 29 was one of the first dates offered by the Court's staff as a potential date for a hearing, and Plaintiffs' counsel acknowledged in his letter of April 22 to the Court that counsel was unavailable on that date. Setting a pleading and response deadline for that date is patently unfair to Defendants.

Plaintiffs' proposed date is also before Plaintiffs requested date for submitting responses to the propounded discovery. Although Plaintiffs' argue that the hearing is a facial challenge, Plaintiffs Motion contained Affidavits from all four named Plaintiffs acknowledging a need for testimony to support this challenge. Defendants should be allowed to conduct discovery and use responses to that discovery in any Response to Plaintiffs' Motion and attached affidavits.

With depositions proposed for Monday, Defendants will likely not have the transcripts until Wednesday, the same day that Plaintiffs have requested for responding to discovery. Defendants need all the time before the scheduled hearing to analyze the discovery, and prepare for the Friday hearing. Defendant Secretary requests that no deadline for filing an Answer or Response to Plaintiffs' Motion be imposed, but if the Court finds that Responses are needed before the hearing then Defendant asks that the deadline for Defendants to file an Answer or Response to Plaintiffs' Motion be set no earlier than 11:59 p.m. on Thursday, May 1, 2014.

7. Defendant Secretary requests this Court to shorten the time required by Rules 33 and 34 of the Arkansas Rules of Civil Procedure for responding to Interrogatories and Requests for Production of Documents to ten (10) calendar days after receipt or forty-eight (48) hours before any hearing or deposition, whichever is earlier for any requests delivered by Friday, April 25, 2014. Defendant Secretary further requests this Court to shorten the time required by Rule 45



(4) for subpoenaing records to allow service upon Parties on the same day that the subpoena is served and any third-party response to the subpoena be provided within three (3) business days after receipt.

WHEREFORE, Defendant Secretary prays that the Motion to Shorten Time be granted; that the Court grant the relief requested herein; and for all other legal and proper relief to which he is entitled under the circumstances.

Dated this 24<sup>th</sup> day of April, 2014.

Respectfully submitted,

HONORABLE MARK MARTIN  
SECRETARY OF STATE  
In his Official Capacity, Defendant

By: /s/ Martha Adcock  
Martha Adcock  
General Counsel  
Secretary of State  
Suite 256 – State Capitol  
500 Woodlane Avenue  
Little Rock, AR 72201  
(501) 682-3401

And

By: /s/ Justin Tate  
L. Justin Tate  
Associate General Counsel  
Secretary of State  
Suite 256 – State Capitol  
500 Woodlane Avenue  
Little Rock, AR 72201  
(501) 682-3401

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was served via the Electronic Filing system on this 24<sup>th</sup> day of April, 2014, providing service to counsel of record.

/s/ Justin Tate

Justin Tate

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

**PLAINTIFFS' MOTION TO QUASH SUBPOENAS  
AND DEPOSITION NOTICES AND FOR A PROTECTIVE ORDER**

Come now Plaintiffs and pursuant to Rules 45(b) and 26(c) of the Rules of Civil Procedure, move this Court for an Order quashing three discovery pleadings: (1) the notices of depositions for the Plaintiffs; (2) the subpoena that has been or will be issued to Rick Hogan, Arkansas Department of Health; and (3) the subpoena that has been or will be issued to Breck Hopkins, Arkansas Department of Human Services:

1. A hearing is currently scheduled in this case on Plaintiffs' *Motion for Preliminary Injunction* seeking a ruling on their facial challenge to the new "proof of identity" qualifications contained in Act 595 of 2013. As alleged, those "proof of identity" qualifications are unconstitutional and have been ruled so by this Court in another case.

2. On Wednesday April 23, 2014, Counsel for Separate Defendant Martin provided Counsel for Plaintiffs a copy of a subpoena addressed to Rick Hogan, Arkansas Department of Health. See **Exhibit A** (addresses of Plaintiffs are redacted) In that subpoena, Defendant Martin sought, among other documents and information,

Any and all records indicating whether any of the individuals listed below have received any services or benefits from the Department of Health or its providers, or both, and what type of services and benefits received (i.e. WIC, etc.)

3. Information and documentation related to what governmental benefits that the Plaintiffs may or may not have received is not relevant to the issues in this action, nor is it reasonably calculated to lead to relevant, admissible, or discoverable evidence in this case. Thus, pursuant to Rule 26(b)(1) of Arkansas Rules of Civil Procedure, this subpoena should be quashed. In addition, pursuant to Rule 26(c) of Arkansas Rules of Civil Procedure, a protective order should be issued to quash the subpoena based upon the fact that the subpoena seeks information that seeks to annoy, harass, and embarrass the Plaintiffs.

4. On Wednesday April 23, 2014, Counsel for Separate Defendant Martin provided Counsel for Plaintiffs a copy of a subpoena addressed to Breck Hopkins, Arkansas Department of Human Services. See **Exhibit B** (addresses of Plaintiffs are redacted) In that subpoena, Defendant Martin sought, among other documents and information:

Any and all records indicating whether any of the individuals listed below have received any services or benefits from the Department of Human Services or its providers, or both, and what type of services and benefits received (i.e. SNAP, Medicaid, Medicare, etc.)

5. Information and documentation related to what governmental benefits that the Plaintiffs may or may not have received is not relevant to the issues in this action, nor is it reasonably calculated to lead to relevant, admissible, or discoverable evidence in this case. Thus, pursuant to Rule 26(b)(1) of Arkansas Rules of Civil Procedure, this subpoena should be quashed. In addition, pursuant to Rule 26(c) of Arkansas Rules of Civil Procedure, a protective order should be issued to quash the subpoena based upon the fact that the subpoena seeks information that seeks to annoy, harass, and embarrass the Plaintiffs.

6. None of these public benefits provide any type of documentation or identification that would qualify as "proof of identity" pursuant to Act 595.

7. In addition, on Tuesday April 22, 2014, Separate Defendant Martin sent, *sua sponte*, notices of deposition for all of the Plaintiffs for May 2, 2014. These notices were sent without any notice or agreement upon the dates, times, or location. Though counsel was working to try to reschedule these depositions, counsel for Plaintiffs must now object to these depositions. On Friday April 25, 2014, Counsel for Defendants and Counsel for Plaintiffs discussed the depositions and the lack of need for these depositions related to the motion for preliminary injunction that raises a "facial challenge." Though Counsel for Plaintiffs indicated that the *Motion for Preliminary Injunction* was based upon a facial challenge, Counsel for Defendants still desired to depose the Plaintiffs before the hearing on Plaintiffs' *Motion for Preliminary Injunction*. As this is a facial challenge, depositions of Plaintiffs are not needed at this time.

8. In addition to the subpoenas that were issued, Separate Defendant Martin propounded discovery on Plaintiffs. In that discovery, Defendant Martin sought, among

other things, Plaintiffs' state and federal tax returns. See **Exhibit C**. Plaintiffs' tax returns are of no discovery relevance or evidentiary value on this voting rights matter, especially at this juncture. Given the subpoenas and discovery, Counsel for Plaintiffs is concerned about Counsel for Defendants seeking information (whether via subpoena or by deposition) about these matters; especially given that Defendants have not answered or otherwise responded to the Complaint or the Preliminary Injunction pleadings. Thus, Plaintiffs request that said notices of depositions be quashed at this time.

9. Pursuant to Rule 26(c) of the Rules of Civil Procedure, Plaintiffs request this Court to order that the subpoenas and notices of depositions be quashed, and for a protective order prohibiting these types of discovery at this time.

WHEREFORE, Plaintiffs respectfully requests this Court grant this motion and for all other and proper relief.

Respectfully Submitted,

By: /s/ Jeff Priebe  
Jeff R. Priebe (AR 2001124)  
jpriebe@jamescarterlaw.com  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Telephone: (501) 372-1414  
Facsimile: (501) 372-1659

On behalf of the Arkansas Civil Liberties  
Union Foundation, Inc. and the  
Arkansas Public Law Center

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I, Jeff Priebe, certify on this 25th day of April, 2014, that a copy of the foregoing was served via Arkansas Judiciary Electronic Filing service upon the following as indicated:

Martha Adcock, Esq., General Counsel  
martha.adcock@sos.arkansas.gov  
L. Justin Tate, Esq., Associate General Counsel  
justin.tate@sos.arkansas.gov  
Secretary of State  
State Capitol, Suite 256  
Little Rock, AR 72201  
*Attorneys for Separate Defendant Mark Martin*

/s/ Jeff Priebe  
Jeff Priebe

Issued by the  
Circuit \_\_\_\_\_ COURT  
Pulaski \_\_\_\_\_ County, Arkansas

Freedom Kohls, et al  
v.  
Mark Martin, Secretary of State, et al

**SUBPOENA IN A CIVIL CASE**  
CASE NUMBER 60cv-14-1495

TO: Rick Hogan

YOU ARE COMMANDED to appear in the \_\_\_\_\_ Court of \_\_\_\_\_ County, Arkansas, at the place, date, and time specified below to testify in the above case.

Place of Testimony	Courtroom
	Date and Time

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Place of Deposition	Date and Time
---------------------	---------------


YOU ARE COMMANDED, at the time of the trial, hearing or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

All records and documents described in Exhibit A.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure 30(b)(6).



 Attorney for Defendant 4/23/14  
Issuing Officer Signature and Title (Indicate if Attorney for Plaintiff or Defendant) Date

Justin Tate, State Capitol, Suite 256, Little Rock, AR 72201; (501) 682-3401  
Issuing Officer's Name, Address, and Phone Number

**PROOF OF SERVICE**

SERVED	Date	Place
Served On (Print Name)	Manner of Service	
Served By (Print Name)	Title	

**DECLARATION OF SERVER**

I declare, under penalty of perjury under the laws of the State of Arkansas that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_  
Date Signature of Server  
Address of Server

**NOTICE TO PERSONS SUBJECT TO SUBPOENAS**

Regardless of his or her county of residence, a witness subpoenaed for examination at a trial or hearing must be properly served with a subpoena at least two days prior to the trial or hearing, or within a shorter time if the court so orders. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the trial or hearing. Rule 45(d), Ark. R. Civ. P.

A witness subpoenaed in connection with a deposition must be properly served with a subpoena at least five business days prior to a deposition, or within a shorter time if the court so orders. The witness is required to attend a deposition at any place within 100 miles of where he or she resides, is employed, or transacts business in person, or at such other convenient place set by court order. The subpoena must be accompanied by a witness fee calculated at the rate of \$30.00 per day for attendance and \$0.25 per mile for travel from the witness' residence to the place of the deposition. Rule 45(e), Ark. R. Civ. P.

A subpoena may command the person to whom it is directed to produce for inspection any books, papers, documents, or tangible things designated in the subpoena. The person subpoenaed may ask the court to quash or modify the subpoena if it is unreasonable or oppressive or to require that the person on whose behalf the subpoena is issued pay the reasonable cost of such production. Rule 45(b), Ark. R. Civ. P. The person subpoenaed may also object in writing to inspection or copying of any or all of the designated materials or seek a protective order from the court. If a written objection is made within ten days of service of the subpoena or on or before the time specified for compliance if such time is less than ten days, the party causing the subpoena to be issued is not entitled to inspect the materials unless the court so orders. Rule 45(e), Ark. R. Civ. P.

When a witness fails to attend in obedience to a subpoena or intentionally evades the service of a subpoena by concealment or otherwise, the court may issue a warrant for arresting and bringing the witness before the court to give testimony and answer for contempt. Rule 45(g), Ark. R. Civ. P.

Exhibit A

1. Any and all records indicating whether any of the individuals listed below have received any services or benefits from the Department of Health or its providers, or both, and what type of services or benefits received (i.e. WIC, etc). Records or documents concerning health information or amount of aid received are not requested. Additionally, any record or document responsive to the subpoena that contains health information or amount of aid received may be redacted by DOH to exclude health information or amount of aid received prior to release of the document under this subpoena.
  - a. Freedom Kohls or Freedom Lynn Kohls. Date of birth is . Last known address is
  - b. Toylanda Smith or Toylanda Ann Smith. Date of birth is . Last known address is
  - c. Joe Flakes, Joe Nathan Flakes, or Joen Flakes. Date of birth is . Last known address is
  - d. Barry Haas or Barry Hansen Haas. Date of birth . Last known address is
  
2. Any and all records that indicate or specify the information that was provided by any of the individuals listed above to prove their identity when applying for or receiving services or benefits.

Issued by the  
Circuit \_\_\_\_\_ COURT  
Pulaski \_\_\_\_\_ County, Arkansas

Freedom Kohls, et al

**SUBPOENA IN A CIVIL CASE**

v.

CASE NUMBER 60cv-14-1495

Mark Martin, Secretary of State, et al

TO: Breck Hopkins

YOU ARE COMMANDED to appear in the \_\_\_\_\_ Court of \_\_\_\_\_ County, Arkansas, at the place, date, and time specified below to testify in the above case.

Place of Testimony	Courtroom
	Date and Time

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify in the taking of a deposition in the above case.

Place of Deposition	Date and Time
---------------------	---------------

YOU ARE COMMANDED, at the time of the trial, hearing or deposition described above, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

YOU ARE COMMANDED, no more than 3 business days after receiving this subpoena, to produce and permit inspection and copying of the following documents or objects (list documents or objects):

All records and documents described in Exhibit A.

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Arkansas Rules of Civil Procedure 30(b)(6).



Exhibit A

1. Any and all records indicating whether any of the individuals listed below have received any services or benefits from the Department of Human Services or its providers, or both, and what type of services or benefits received (i.e. SNAP, Medicaid, Medicare, etc). Records or documents concerning health information or amount of aid received are not requested. Additionally, any record or document responsive to the subpoena that contains health information or amount of aid received may be redacted by DHS to exclude health information or amount of aid received prior to release of the document under this subpoena.

- a. Freedom Kohls or Freedom Lynn Kohls. Date of birth is . Last known address is
- b. Toylanda Smith or Toylanda Ann Smith. Date of birth is . Last known address is
- c. Joe Flakes, Joe Nathan Flakes, or Joen Flakes. Date of birth is . Last known address is
- d. Barry Haas or Barry Hansen Haas. Date of birth . Last known address is

2. Any and all records that indicate or specify the information that was provided by any of the individuals listed above to prove their identity when applying for or receiving services or benefits.

ELECTRONICALLY FILED  
2014 APR 25 14:52:04  
60CV-14-1495  
C06D06 : 6 Pages



ARKANSAS SECRETARY OF STATE

MARK MARTIN

Sent via USPS and FAX to: 501 372 1659

April 18, 2014

Mr. Jeff Priebe  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201

Re: *Kohls v. Martin*, Circuit Court of Pulaski County, Case No. 60CV-14-1495

Dear Mr. Priebe,

Enclosed please find Interrogatories and Requests for Production of Documents for each of the named Plaintiffs in the above-referenced case from the Defendant Secretary.

Some of the information requested is personal in nature and I will be happy to work with you to prevent disclosure of the personal information beyond the parties involved in the litigation.

Also, please be advised that we will want to take the deposition of all Plaintiffs before any hearing is scheduled in the case. Should you ask for any expedited hearing, we will ask that the time to respond to our discovery requests be shortened.

It is my understanding that Joe Cordi with the Attorney General's Office will likely be representing the State Board of Election Commissioners and thus I am sending a copy to his attention.

Should you have questions, please do not hesitate to contact me or Justin Tate, Associate General Counsel at 501 682 3401.

Regards,

Martha Adcock  
General Counsel

CC with enclosures: Joe Cordi, Senior Assistant Attorney General

Enclosures: As indicated

Suite 256 State Capitol • Little Rock, Arkansas 72201-1094  
501-682-1010 • Fax 501-682-3510  
e-mail: arsos@sos.arkansas.gov • www.sos.arkansas.gov



EXHIBIT C

000183

**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**

**DEFENDANT SECRETARY OF STATE'S FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF FREEDOM  
KOHLS**

Comes now Defendant, Arkansas Secretary of State Mark Martin, pursuant to the  
Arkansas Rules of Civil Procedure, and propounds the following to Plaintiff Freedom Kohls:

**INTERROGATORIES**

INTERROGATORY NO. 1: Please identify fully the name and location of any and all  
persons Plaintiffs will or may call as an expert witness at trial (or any hearing), including  
addresses, email addresses, and business phone and cell phone numbers.

INTERROGATORY NO. 2: Please identify fully the name and location of any and all  
persons Plaintiffs will or may call as a non-expert witness at trial (or any hearing), including  
addresses, email addresses, and business phone and cell phone numbers.

INTERROGATORY NO. 15: Do you claim to have a religious objection to being photographed?

INTERROGATORY NO. 16: Have you ever received any state or federal government benefits? This includes, but is not limited to, Social Security, Medicare, Medicaid, WIC, and SNAP. If so, please identify the program(s) from which you have received benefits.

INTERROGATORY NO. 17: This first set of Interrogatories is continuing in character so as to require you to promptly amend or supplement your responses if you obtain further material information. Will you timely supplement your responses when and if new information becomes available?

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Please produce any and all documents to be used, introduced, or proffered at trial or any hearing.

REQUEST FOR PRODUCTION NO. 2: Please produce any and all documents related to the facts and allegations asserted in Plaintiffs' Complaint, motions, or response to the allegations in any of the Defendants' pleadings (and affirmative defenses).

REQUEST FOR PRODUCTION NO. 3: Please produce any correspondence between you and any other named Plaintiff since January 1, 2013 to the date of final hearing in this matter. This request is specifically meant to include, but is not limited to, letters and emails.

REQUEST FOR PRODUCTION NO. 4: Please produce any correspondence since January 1, 2013 to the date of final hearing in this matter between you and any of the following:

- a. Pulaski County Circuit/County Clerk or any employee of that office;
- b. Secretary of State or any of his employees;



- c. Any other named Defendant;
- d. Any staff member of the State Board of Election Commissioners;
- e. Any staff member of the Pulaski County attorney's office;
- f. Any member of the Pulaski County Election Commission; and
- g. Any staff member of the Pulaski County Election Commission.

This request is specifically meant to include, but is not limited to, letters and emails.

REQUEST FOR PRODUCTION NO. 5: Please produce a true and correct copy of the following documents for this Plaintiff:

- a. Driver's License (any state);
- b. Photo Identification Card;
- c. Concealed Handgun Carry License;
- d. United States passport;
- e. Employee badge or identification document;
- f. U.S. military identification document;
- g. Student identification card (any postsecondary educational institution);
- h. Public assistance identification card;
- i. A utility bill dated anytime in 2013 or 2014;
- j. A bank statement dated anytime in 2013 or 2014;
- k. Any government check received in 2013 or 2014;
- l. Any paycheck received in 2013 or 2014;
- m. Any government document showing your name and address and dated in 2013 or 2014;

- n. Birth certificate;
- o. Marriage License Application;
- p. State or Federal Tax Return filed for the current or preceding year;
- q. Paycheck stub bearing the imprinted name of your employer;
- r. A Medicare or Medicaid statement for the current or preceding year;
- s. An annual social security statement for the current or preceding year;
- t. Certified school record or transcript for the current or preceding year;
- u. Naturalization documentation;
- v. DD-214 form issued by the federal government;
- w. Currently valid residential rental contract and/or receipt for payment made within the last sixty (60) days for residential rent payments;
- x. Renters' insurance (contents) or Homeowners' insurance policy or bill for the current or preceding calendar year;
- y. Mortgage, payment coupon, deed, or real property tax bill for the current or preceding calendar year;
- z. Personal property tax bill for the current or preceding calendar year;
- aa. Current automobile registration receipt; or
- bb. W-2 issued by your employer for the preceding year.

REQUEST FOR PRODUCTION NO. 6: This first set of Requests for Production of Documents is continuing in character so as to require you to promptly amend or supplement your responses if you obtain further material information. Will you timely supplement your responses when and if new information becomes available?

Dated this 18th day of April, 2014.

Respectfully submitted,

HONORABLE MARK MARTIN  
SECRETARY OF STATE  
In his Official Capacity, Defendant

By: Martha Adcock  
Martha Adcock  
General Counsel  
Secretary of State  
Suite 256 - State Capitol  
500 Woodlane Avenue  
Little Rock, AR 72201  
(501) 682-3401

And

By: L. Justin Tate  
L. Justin Tate  
Associate General Counsel  
Secretary of State  
Suite 256 - State Capitol  
500 Woodlane Avenue  
Little Rock, AR 72201  
(501) 682-3401

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

**PLAINTIFFS' REPLY TO SEPARATE DEFENDANT MARTIN'S MOTION TO QUASH  
AND RESPONSE TO THE OTHER MATTERS ARGUED IN HIS RESPONSE**

Come Plaintiffs and for their *Reply* to Separate Defendant Martin's *Response to the Motion to Quash* and to respond to other matters set forth in his *Response*, state as follows:

**REPLY TO DEFENDANT MARTIN'S RESPONSE TO THE MOTION TO QUASH**

1. In Separate Defendant Martin's *Response to Plaintiff's Motion to Quash*, Separate Defendant Martin admits that he is seeking information concerning:
  - a. Information as to whether Plaintiffs received any state and federal benefits and what "identification" Plaintiffs provided in order to receive those benefits; and
  - b. The tax returns for the Plaintiffs for the last two years.

2. Separate Defendant Martin provides no reasons or rationale to explain how whether the Plaintiffs receive benefits from Medicaid, Medicare, or other federal or state programs, is somehow relevant to the fact that Act 595 mandates photo identification in order to vote. Separate Defendant Martin also requests to know what identification Plaintiffs have in order to receive those federal and state benefits. However, Separate Defendant Martin has failed to point to any rule, regulation, statute, or other authority that provides that Plaintiffs must present similar photo identification in order to receive benefits from these programs. As typically no photo identification is required to obtain the various state and/or federal benefits, the subpoenas should be quashed as this information is not related to the issues in this case. In addition, even if Plaintiffs filed tax returns (a point that they neither admit nor deny), Plaintiffs are unaware of any rule, regulation, statute, or other requirement that they must present photo identification in order to file federal or state tax returns. In short, Plaintiffs believe that no such requirement exists. Additionally, Separate Defendant Martin has no time limit in his request and appears to be requesting all records for the Plaintiffs' entire lives and any application that has ever been submitted. Given the clear overreaching request set forth in the subpoenas, this Court should quash.

3. It was clear by Plaintiffs' motion and the attached exhibits that counsel for Plaintiffs has tried to confer with counsel for Separate Defendant Martin to stop the unwarranted intrusion into the private lives of the Plaintiffs, however, counsel for Separate Defendant Martin has refused to reconsider the subpoenas or agree to not seek the information and documentation requested.

4. As Separate Defendant Martin has failed to provide any rationale or basis for the discovery of tax returns, information related to the receipt of state and/or federal programs, and any precedent that mandates that Plaintiffs provide photo identification in order to file tax returns or accept federal or state benefits, Plaintiffs' motion should be granted and this Court should deny Separate Defendant's unwarranted intrusion into their lives.

### **RESPONSE TO MOTION TO COMPEL**

5. Separate Defendant Martin's *Motion to Compel* should be denied. As was stated to counsel for Separate Defendant Martin, as this is a facial challenge, discovery is not needed at this time. Indeed all counsel discussed this issue and appeared to be in agreement that discovery was not needed for a facial challenge as is being presented in the motion for preliminary injunction.

6. Plaintiffs do not deny that Separate Defendant Martin (as well as all parties) may be entitled to discovery, depending upon the conclusion of the hearing on Plaintiffs' *Motion for Preliminary Injunction*, however discovery must still meet the requirements of the Arkansas Rules of Civil Procedure and should be relevant to the issues in this action, or reasonably calculated to lead to relevant, admissible, or discoverable evidence.

7. As the time frames for responding to Separate Defendant Martin's discovery have not passed, Separate Defendant Martin's motion to compel is premature and should be denied.

## RESPONSE TO MOTION TO STRIKE AND TO EXCLUDE

8. Separate Defendant Martin's *Motion to Strike / Motion to Exclude* is without legal or factual support and should be denied.

9. Pursuant to Rule 65 of the Arkansas Rules of Civil Procedure, a Court can issue an injunction based upon affidavits alone. See *Fort Smith Symphony Orchestra, Inc. v. Fort Smith Symphony, Ass'n, Inc.*, 686 S.W.2d 418 (Ark. 1985). In fact, the applicable Rules provide trial courts with great discretion regarding what evidence or other considerations are given in granting preliminary injunctive relief. The trial court also has great discretion in setting a hearing on a request for preliminary injunction; settings in this case were delayed at the request of attorneys for Separate Defendants State Board of Election Commissioners. See **Exhibit 1** (email from counsel indicating unavailability until May 2, 2014).

10. Though Separate Defendant Martin cites to Rule 26, Separate Defendant Martin fails to explain how that Rule provides him with authority for his motion or the requested relief. Separate Defendant Martin previously sought a motion to shorten time for discovery, however Separate Defendant has not sought to have that motion decided or ruled upon prior to the hearing. In addition, though Separate Defendant Martin filed the motion, Separate Defendant Martin has subsequently requested that this Circuit Court recuse on this matter. This request came immediately after this Court's ruling in a similar case in which this Court ruled that Act 595 was unconstitutional. As Separate Defendant Martin's request referenced facts that were known to him even prior to Plaintiffs filing of the Complaint, the only change that occurred prior to the recusal request was this Court's ruling that Act 595 was unconstitutional.

11. In addition, though Separate Defendant Martin cites to Rule 37, Separate Defendant Martin has not shown how that rule is applicable in this situation or this case. As the time frames for responding to discovery propounded by Separate Defendant Martin have not passed, this Rule is not applicable to this situation.

12. Separate Defendant Martin's request to strike or exclude the affidavits should be denied.

### RESPONSE TO MOTION FOR CONTINUANCE

13. Even prior to filing the *Motion for Preliminary Injunction*, Plaintiffs informed counsel for Separate Defendant Martin that the motion would be forthcoming and the Plaintiffs would be seeking a hearing date. See **Exhibit 1** (email on April 21, 2014, from counsel for Separate Defendant Martin) and **Exhibit 2** (letter to the Court dated April 18, 2014). Separate Defendant Martin was also on notice of the request for injunctive relief, as his office was formally served with the Complaint, the day after it was filed. See Affidavit of Service on Separate Defendant Martin previously filed in this case. Thus, Separate Defendant Martin was well aware that injunctive relief was being sought.

14. In addition, Plaintiffs sought the earliest date possible from the Court in regard to a hearing on the request for injunctive relief. See **Exhibit 2** (letter to the Court dated April 18, 2014); **Exhibit 3** (letter to the Court dated April 22, 2014), and **Exhibit 1** (email between counsel regarding hearing date). Pursuant to communications, Friday May 2, 2014, was the earliest available hearing date for counsel for all Defendants. Though Plaintiff would have been agreeable to an earlier hearing date, Defendants sought the delay until May 2.



15. Besides allegations, there is no evidence that Plaintiffs “delayed” the filing of the lawsuit or that counsel cannot prepare for a hearing on a facial challenge. It was Separate Defendant Martin that unilaterally chose to implement Act 595 on January 1, 2014 (see section 5 of Act 595 regarding the effective date of Act 595) and Separate Defendants State Board of Election Commissioners chose to implement their regulations on January 1, 2014. See **Exhibit 4** (Minutes of June 19, 2013, meeting of the State Board of Election Commissioners).

16. Section 7 of Act 595 provided an effective date of the later of January 1, 2014 or “the appropriation and availability of funding to the Secretary of State for the issuance of voter identification cards under Section 5 of this act.” When asked, Separate Defendant Martin’s office indicated that the only “appropriation” bill addressing Act 595 was Act 1376 of 2013. See **Exhibit 5** (email from Alex Reed dated April 21, 2014). However, when reviewing Act 1376, see **Exhibit 6**, there is no specific appropriation for Voter ID with the exception of Section 16 which provided:

SECTION 16. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. VOTER ID RULES AND REGULATIONS AND REPORTING. The Secretary of State shall promulgate rules and regulations regarding the issuance of a voter identification card that may be requested by an individual to be used as proof of identity when appearing to vote in person upon prior review by the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council or Joint Budget Committee. In addition, the Secretary of State shall also report for review by the Arkansas Legislative Council or Joint Budget Committee a report outlining in detail the total amount of monies expended by the Secretary of State to implement the voter identification program. Further, the Secretary of State shall also report to the Arkansas Legislative Council or Joint Budget Committee within 60 days after the next General Election, the number of persons who obtained a Voter ID.

The provisions of this section shall be in effect only from July 1, 2013 through June 30, 2014.

17. Thus, by the plain language of Acts 595 and 1376, as there has been no specific appropriation for the payment and requirements of Act 595, the only option that is left is that Separate Defendant Martin unilaterally decided to implement Act 595 on January 1, 2014, and the "Proof of Identity" provisions contained therein. As Separate Defendant Martin choose to allow Act 595 to become effective and to implement the "proof of identity" qualifications of Act 595, given the constitutional questions posed by both the Governor and the Arkansas Attorney General, Separate Defendant Martin cannot now argue that his office needs more time to respond to similar constitutional questions that were presented on at least two different occasions in 2013.

#### **RESPONSE TO REQUEST FOR JUDICIAL NOTICE REQUEST**

18. Rule 201(e) of the Arkansas Rules of Evidence contains no deadline for the taking of judicial notice. By its own wording, the Rule allows the taking of judicial notice at "any stage of the proceeding." For purposes of the upcoming hearing, Plaintiffs may request that the Court take judicial notice of the following:

- a. The Court's ruling of April 24, 2014, wherein this Court in another case ruled that Act 595 was unconstitutional;
- b. That early voting for the 2014 May primary in Arkansas begins on Monday, May 5, 2014;
- c. That the 2014 May election day is on Tuesday, May 20, 2014;
- d. That Separate Defendant Mark Martin chose that the effective date of Act 595 to be January 1, 2014; and

e. March 25, 2013, Veto Letter from the Arkansas Governor.

19. Plaintiffs reserve the right to request the Court take judicial notice of any other fact that may arise prior to, during, and after the scheduled hearing.

Wherefore, Plaintiffs would request that the Court grant the relief stated herein, deny Separate Defendant Martin the relief he requests, and for all other and further relief to which Plaintiffs are entitled.

Respectfully Submitted,

By: /s/ Jeff Priebe  
Jeff R. Priebe (AR 2001124)  
jpriebe@jamescarterlaw.com  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, AR 72201  
Telephone: (501) 372-1414  
Facsimile: (501) 372-1659

On behalf of the Arkansas Civil Liberties  
Union Foundation, Inc. and the  
Arkansas Public Law Center

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I, Jeff Priebe, certify on this 1st day of May, 2014, that a copy of the foregoing was served via Arkansas Judiciary Electronic Filing service upon the following as indicated:

Martha Adcock  
martha.adcock@sos.arkansas.gov

L. Justin Tate  
justin.tate@sos.arkansas.gov

Arkansas Secretary of State  
State Capitol, Suite 256  
Little Rock, AR 72201

*Attorneys for Mark Martin, in his Official Capacity as the Secretary of State for the State of Arkansas*

David Curran  
david.curran@arkansasag.gov

Joe Cordi  
joe.cordi@arkansasag.gov  
Arkansas Attorney General's Office

323 Center Street,  
200 Catlett-Prien Building  
Little Rock, AR 72201-2610

*Attorneys for the Arkansas State Board of Election Commissioners*

/s/ Jeff Priebe

Jeff Priebe

**Jeff Priebe**

**From:** Joe Cordi [Joe.Cordi@arkansasag.gov]  
**Sent:** Monday, April 21, 2014 3:00 PM  
**To:** Jeff Priebe; Martha Adcock  
**Subject:** RE: Kohls v. Martin, et al

Jeff,

I'm not available for a hearing until May 2.

Joe

Joe Cordi  
Senior Assistant Attorney General  
Arkansas Attorney General's Office  
323 Center Street, Suite 200  
Little Rock, AR 72201  
Phone: (501) 682-1317  
Fax: (501) 682-2591  
Email: [joe.cordi@arkansasag.gov](mailto:joe.cordi@arkansasag.gov)

---

**From:** Jeff Priebe [mailto:[jpriebe@jamescarterlaw.com](mailto:jpriebe@jamescarterlaw.com)]  
**Sent:** Monday, April 21, 2014 2:18 PM  
**To:** Joe Cordi; Martha Adcock  
**Subject:** Kohls v. Martin, et al

Counsel,

I have spoken with the Case coordinator and understand that the Court has available April 23 and April 29 for a hearing on the preliminary injunction in this case. I wanted to check your availability for April 29 at 1:30 p.m. Please let me know so that I can advise the Court.

If you have any questions, please feel free to contact me.

Jeff

Jeff Priebe  
James, Carter & Coulter, PLC  
500 Broadway, Suite 400  
Little Rock, Arkansas 72201  
Email: [jpriebe@jamescarterlaw.com](mailto:jpriebe@jamescarterlaw.com)  
Telephone: (501) 372-1414  
Direct Dial: (501) 492-3874  
Facsimile: (501) 372-1659

JAMES, CARTER & COULTER, P.L.C.

ATTORNEYS AT LAW

ARVEST BANK BUILDING  
500 BROADWAY, SUITE 400  
LITTLE ROCK, ARKANSAS 72201  
TELEPHONE (501) 372-1414  
FACSIMILE: (501) 372-1659

www.jamescartercoulterlaw.com

JEFF R. PRIEBE  
jpriebe@jamescarterlaw.com  
DIRECT DIAL: (501) 492-3874

U.S. MAIL:  
POST OFFICE BOX 907  
LITTLE ROCK, ARKANSAS 72203-0907

April 18, 2014

VIA FACSIMILE: 340-6047

The Honorable Judge Tim Fox  
Pulaski County Circuit Court, Sixth Division  
401 West Markham, Room 210  
Little Rock, Arkansas 72201

Re: Freedom Kohls, et al. v. Mark Martin, Arkansas Secretary of State, et al.  
Pulaski County Circuit Court, Case No. 60CV-14-1495

Dear Judge Fox:


As the Court may be aware, I, on behalf of the Plaintiffs in this case, recently filed a *Complaint for Declaratory and Injunctive Relief*. In this complaint, we have requested injunctive relief from the new "proof of identity" voting requirements in anticipation of the upcoming May primary election. We anticipate filing a more formal motion for preliminary injunction and supporting brief early next week and would also like to inquire about the availability of a preliminary injunction hearing before the Court in the next couple of weeks. I anticipate that we would need a half-day hearing.

Thank you for the Court's attention to this matter. I am copying counsel that has appeared of record for the Arkansas Secretary of State's Office, counsel for the Arkansas State Board of Election Commissioners, and the Arkansas Attorney General's Office.

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

JAMES, CARTER & COULTER, PLC



Jeff R. Priebe

JRP/cm

cc: Martha Adcock, Arkansas Secretary of State's Office (fax 683-3862)  
Tim Humphries, Arkansas State Board of Election Commissioners (fax 682-1782)  
Joe Cordi, Arkansas Attorney General's Office (fax: 682-2591)

EXHIBIT 2

SUPP. ADD. 47

000374

JAMES, CARTER & COULTER, P.L.C.

ATTORNEYS AT LAW

ARVEST BANK BUILDING  
500 BROADWAY, SUITE 400  
LITTLE ROCK, ARKANSAS 72201  
TELEPHONE (501) 372-1414  
FACSIMILE: (501) 372-1659

U.S. MAIL:  
POST OFFICE BOX 907  
LITTLE ROCK, ARKANSAS 72203-0907

JEFF R. PRIEBE  
jpriebe@jamescarterlaw.com  
DIRECT DIAL: (501) 492-3874

www.jamescartercoulterlaw.com

April 22, 2014

VIA FACSIMILE: 340-6047

The Honorable Judge Tim Fox  
Pulaski County Circuit Court, Sixth Division  
401 West Markham, Room 210  
Little Rock, Arkansas 72201

Re: Freedom Kohls, et al. v. Mark Martin, Arkansas Secretary of State, et al.  
Pulaski County Circuit Court, Case No. 60CV-14-1495

Dear Judge Fox:

I wanted to respond to the letter from counsel for Separate Defendant Mark Martin. As a courtesy, I had previously informed counsel for Defendant Martin that the Plaintiffs would be filing a *Motion for Preliminary Injunction* and *Brief in Support* seeking an injunction to prevent the enforcement of the "proof of identity" qualifications set forth in Act 595 of 2013. The motion, brief, and supporting documents were filed this morning via electronic filing. In support of the request for a preliminary injunction, there are affidavits from each Plaintiff setting forth their particular circumstances that will prohibit them from casting valid ballots in the upcoming May primary election.

I would again renew my request for an expedited hearing on this motion. As Plaintiffs are seeking an injunction that is primarily legally based (a facial challenge to the "proof of identity" requirements in Act 595 that contradict with the Arkansas Constitution), Plaintiffs believe that such hearing could take place in sufficient time for the Court to rule and for the ruling to take effect if the Court grants an injunction prior to the May primary and prior to the beginning of early voting on May 5. I understand that an attorney for the Arkansas State Board of Election Commissioners is unavailable for either the April 23 or 29 dates, therefore Plaintiffs are left with no choice but to ask the Court to set this matter at the Court's convenience prior to the beginning of early voting.

I am willing to work with Defendants on expedited discovery; however I believe that at this juncture, the issues are more legal than factual. Defendants should have sufficient information from the affidavits attached to the motion for preliminary injunction in which to address the factual issues at this point. While I anticipate that additional discovery will need to

JAMES, CARTER & COULTER, PLC

The Honorable Judge Tim Fox

April 22, 2014

Page 2

be performed prior to a hearing on a permanent injunction, I do not believe that such extensive discovery is necessarily needed for a preliminary hearing.

Regarding the assertions concerning the timing of the filing of the Complaint, we disagree that there is not sufficient time in which to conduct a preliminary injunction. Part of the problem with the law is that the Defendants have failed to adequately educate the public on the new and mandatory changes to the law and their rules for voter identification. As this new and mandatory "proof of identity" qualification changed long standing Arkansas law, Defendants were responsible for educating the voters of Arkansas. As seen by recent press articles, at least Separate Defendant Martin agrees that his hands were tied when it came to being able to educate Arkansas residents on this new "proof of identity" qualification.

Thank you for the Court's attention to this matter. I am copying counsel that has appeared of record for the Arkansas Secretary of State's Office, counsel for the Arkansas State Board of Election Commissioners, and the Arkansas Attorney General's Office on this communication.

Should you have any questions or comments, please do not hesitate to contact me.

Very truly yours,

JAMES, CARTER & COULTER, PLC



Jeff R. Priebe

JRP/cm

cc: Martha Adcock, Arkansas Secretary of State's Office (fax 682-1213)  
Tim Humphries, Arkansas State Board of Election Commissioners (fax 682-1782)  
Joe Cordi, Arkansas Attorney General's Office (fax: 682-2591)





## STATE BOARD OF ELECTION COMMISSIONERS

501 Woodlane, Suite 401N  
Little Rock, Arkansas 72201  
(501) 682-1834 or (800) 411-6996

MINUTES OF JUNE 19, 2013

### I. Roll Call

Acting Chairman Barbara McBryde called the meeting to order at 1:00 p.m.

#### Members Present:

Rhonda Cole  
Chad Pekron  
Stuart Soffer  
C.S. Walker  
Barbara McBryde  
J. Harmon Smith

#### Others Present:

Justin Clay, SBEC Director  
Karan Skarda, SBEC Deputy Director  
Tim Humphries, SBEC Legal Counsel  
Bernetta Levy, SBEC Election Coordinator  
Martha Adcock, Secretary of State, Legal Counsel  
Justin Tate, Secretary of State, Elections  
Evelyn Gomez, Secretary of State, Legal Department  
Ginna Watson, Garland County Election Commissioner  
Carolyn Salsman, Garland County Election Commissioner  
Susan Inman  
Bryan Poe, Pulaski County Election Commission  
Shana Woodard, Pulaski County, County Clerk's Office  
Andrew DeMillo, Associated Press  
Jacob Kauffman, KUAR  
Jason Pederson, KATV  
Chuck Wilson, KATV  
Mike Wickline, AR Democrat-Gazette  
Josh Morgan, KARK  
Drew Petrimoulx, KARK

#### Members Absent:

Chairman Mark Martin

### II. Approval of the Minutes of March 8, 2013

Commissioner Cole moved to approve the minutes of March 8, 2013. Commissioner Walker seconded the motion. The motion passed unanimously.

### III. Rules for Nonpartisan Office Filing Fees

Director Justin Clay reported that proposed changes include:

- 1) Striking the term "judicial";

- 2) Establishing filing fees for the office of prosecuting attorney;
- 3) Addressing a legislative change regarding filing fees; and
- 4) Setting forth requirements for distributing funds into the Trial Court Administrative Assistant Fund.

An additional change to the definition of filing fee to include the office of district judge was recommended by Commissioner Pekron. After discussion, Commissioner Cole moved to approve for public comment the proposed changes to the Rules on Nonpartisan Office Filing Fees. Commissioner Soffer seconded the motion. The motion passed unanimously.

#### IV. Rules for Poll Worker Training

Director Clay reported that proposed changes include:

- 1) Establishing an advanced training program for experienced poll worker trainers;
- 2) Addressing a legislative change requiring that all poll workers be trained prior to serving as a poll worker during regularly scheduled elections; and
- 3) Changes in language for clarity.

After discussion, Commissioner Soffer moved to approve for public comment the proposed changes to the Rules on Poll Worker Training. Commissioner Pekron seconded the motion. The motion passed unanimously.

#### V. Rules for Reimbursement of Expenses for State Funded Elections

Director Clay reported that proposed changes include:

- 1) Removing the auxiliary funding category;
- 2) Striking language providing contingencies in the event state funding is insufficient to cover reimbursable expenses; and
- 3) Striking language providing that new funding categories would not be paid if funds are insufficient to cover expenses under current rules.

Commissioner Walker moved to approve for public comment the proposed changes to the Rules on Reimbursement of Expenses for State Funded Elections. Commissioner Pekron seconded the motion. The motion passed unanimously.

#### VI. Rules on Poll Watchers, Vote Challenges, and Provisional Voting

Tim Humphries, Legal Counsel, reported that proposed changes include:

- 1) Adding definitions for identification documents;
- 2) Redefining "provisional ballot";
- 3) Setting forth requirements for proof of identity and other identification requirements;
- 4) Amending procedures for voting a provisional ballot;
- 5) Amending the "At the Poll" notice requirement;

- 6) Amending the notice sent to voters;
- 7) Providing procedures for the consideration of provisional ballots cast by voters who failed to present proof of identification at the polls; and
- 8) Setting forth changes to the provisional ballot forms.

After discussion, Commissioner Cole moved to approve for public comment the proposed changes to the Rules on Poll Watchers, Vote Challenges, and Provisional Voting. Commissioner Smith seconded the motion. The motion passed unanimously.

#### VII. Rules for Voter Identification

Tim Humphries, Legal Counsel, reported that proposed changes include:

- 1) Adding definitions for identification documents;
- 2) Setting forth requirements to show "proof of identity";
- 3) Providing procedures for accessing the validity of proof of identity;
- 4) Setting forth requirements for certain first time voters to provide additional identification documents;
- 5) Setting forth requirements for voters who do not submit proof of identity or certain first time voters who do not present required additional ID;
- 6) Setting forth procedures for a voter who failed to present proof of identity at the polls;
- 7) Setting forth procedures for the county clerk or county board of election commissioners to provide a receipt to a person who presents proof of identity or an affidavit post-election;
- 8) Requiring the county clerk to provide a copy of the voter's proof of identity or the original affidavit to the county board of election commissioners;
- 9) Providing that absentee voters must present a copy of certain forms of ID when casting a ballot and for notice of the ID requirement to be printed on the absentee ballot application and the absentee voter statement; and
- 10) Setting an effective date for the rules of January 1, 2014.

After discussion, Commissioner Soffer moved to approve for public comment the proposed Rules on Voter Identification. Commissioner Cole seconded the motion. The motion passed unanimously.

#### VIII. Rules for Appointment of Certified Election Monitors

Tim Humphries, Legal Counsel, reported that proposed changes include:

- 1) Setting forth requirements for persons requesting that the State Board of Election Commissioners send election monitors to a county;
- 2) Providing for the Director to determine if the request meets requirements and for the State Board of Election Commissioners to determine whether to send monitors;
- 3) Setting out qualifications of monitors;
- 4) Providing that monitors be trained and certified;
- 5) Setting forth monitors' duties; and
- 6) Providing for reimbursement of expenses and compensation.

(10) Commissioner Soffer moved to send a letter to the Chairman of the Democratic and Republican Parties of Arkansas soliciting the names of two potential election monitors from each Congressional District. Commissioners Pekron seconded the motion. The motion passed unanimously.

After discussion, Commissioner Soffer moved to approve for public comment the proposed Rules on Appointment of Certified Election Monitors. Commissioner Cole seconded the motion. The motion passed unanimously.

IX. Director Comments

Director Clay advised that a training session for newly elected Commissioners is scheduled for July 30. He informed that the agency has two vacant positions. The Administrative Analyst position has been posted to the state jobs website and a Hiring Freeze Exemption has been submitted for the position of Educational Services Manager. Director Clay also discussed the Rule Making process and its impact on the schedule for updating publications and training materials.

X. Approval of AASIS Reports for January 2013, February 2013, March 2013, and April 2013

Commissioner Cole moved to approve AASIS Reports for January 2013, February 2013, March 2013, and April 2013. Commissioner Soffer seconded the motion. The motion passed unanimously.

XI. Board Member Comments

No board member comments were forthcoming at this time.

XII. Public Comments

No public comments were forthcoming at this time.

XIII. Confirmation of Next Scheduled Meeting of the Board

The next meeting of the State Board of Election Commissioners was tentatively scheduled for Wednesday, August 21, 2013 at 1:00 p.m.

XIV. Adjournment

The meeting was adjourned at 3:15 p.m.

**Jeff Priebe**

**From:** Alex Reed [alex.reed@sos.arkansas.gov]  
**Sent:** Monday, April 21, 2014 1:21 PM  
**To:** Jeff Priebe  
**Cc:** Martha Adcock; Mark Myers  
**Subject:** FW: act 1376

Jeff,

Below is the email I sent on the 10<sup>th</sup> regarding the act number for the appropriation. I was, and am still, under the impression that you just need the act number for the appropriation for Act 595. It was Act 1376. As we discussed on the phone, there were no other appropriation bills that were tied into Act 595. This is the only bill. I apologize that I have not received any messages about the subject. If you need anything else please let me know.

Alex Reed

**From:** Alex Reed  
**Sent:** Thursday, April 10, 2014 2:15 PM  
**To:** Jeff Priebe  
**Subject:** act 1376

**EXHIBIT 5**

Stricken language will be deleted and underlined language will be added.  
Act 1376 of the Regular Session

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

As Engrossed: H4/1/13  
**A Bill**

HOUSE BILL 1159

5 By: Joint Budget Committee  
6

7 **For An Act To Be Entitled**

8 AN ACT TO MAKE AN APPROPRIATION FOR PERSONAL SERVICES  
9 AND OPERATING EXPENSES FOR THE SECRETARY OF STATE FOR  
10 THE FISCAL YEAR ENDING JUNE 30, 2014; AND FOR OTHER  
11 PURPOSES.  
12

13 **Subtitle**

14 AN ACT FOR THE SECRETARY OF STATE  
15 APPROPRIATION FOR THE 2013-2014 FISCAL  
16 YEAR.  
17

18  
19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

22 SECTION 1. REGULAR SALARIES - OPERATIONS. There is hereby established  
23 for the Secretary of State for the 2013-2014 fiscal year, the following  
24 maximum number of regular employees.  
25

26				Maximum Annual
27			Maximum	Salary Rate
28	Item		No. of	Fiscal Year
29	No.	Title	Employees	2013-2014
30	(1)	SEC OF STATE CHIEF DEPUTY	1	\$109,730
31	(2)	SEC OF STATE DEPUTY	2	\$100,044
32	(3)	SEC OF STATE GENERAL COUNSEL	1	\$92,671
33	(4)	SEC OF STATE SENIOR INFO TECHNICIAN	1	\$85,811
34	(5)	SEC OF STATE INFO TECHNICIAN	1	\$82,969
35	(6)	SEC OF STATE DEPARTMENT DIRECTOR	7	\$80,557
36	(7)	SEC OF STATE ASSOCIATE COUNSEL	1	\$80,557



**EXHIBIT 6**

01-24-2013 11:31:51 WLC051

1	(8)	SEC OF STATE CAPITOL POLICE CHIEF	1	\$80,557
2	(9)	SEC OF STATE SYSTEMS ANALYST	1	\$69,195
3	(10)	SEC OF STATE PUBLIC EVENTS COORD	1	\$67,691
4	(11)	SEC OF STATE CAPITOL POLICE CAPTAIN	1	\$67,095
5	(12)	SEC OF STATE SENIOR SUPERVISOR	1	\$66,300
6	(13)	SEC OF STATE DEPARTMENT MANAGER	1	\$65,323
7	(14)	SEC OF STATE BUDGET ANALYST	1	\$64,260
8	(15)	SEC OF STATE PROGRAMMER ANALYST	1	\$62,210
9	(16)	SEC OF STATE ASSISTANT DIR ELECTIONS	2	\$61,694
10	(17)	SEC OF STATE POLICE SERGEANT	3	\$58,852
11	(18)	SEC OF STATE TRADE SUPERVISOR	2	\$58,670
12	(19)	SEC OF STATE FINANCE MANAGER	1	\$58,140
13	(20)	SEC OF STATE INFO TECH ANALYST	1	\$57,654
14	(21)	SEC OF STATE ELECTION COORDINATOR	5	\$56,318
15	(22)	SEC OF STATE DEPARTMENT SUPERVISOR	2	\$56,218
16	(23)	SEC OF STATE MASTER TRADESPERSON	2	\$53,914
17	(24)	SEC OF STATE CREATIVE SPECIALIST III	1	\$53,879
18	(25)	SEC OF STATE INFO TECH ADMINISTRATOR	3	\$53,842
19	(26)	SEC OF STATE PROJECT COORDINATOR	2	\$53,185
20	(27)	SEC OF STATE CUSTOMER SVCS COORD III	3	\$51,757
21	(28)	SEC OF STATE BUSINESS ACCOUNTANT II	3	\$51,199
22	(29)	SEC OF STATE INFO TECH SPECIALIST	2	\$50,468
23	(30)	SEC OF STATE CUSTOMER SVCS COORD II	3	\$49,906
24	(31)	SEC OF STATE CORPORAL	16	\$49,512
25	(32)	SEC OF STATE VOTER SVCS ADMINISTRATOR	2	\$49,439
26	(33)	SEC OF STATE CREATIVE SPECIALIST II	2	\$49,439
27	(34)	SEC OF STATE EXECUTIVE ASSISTANT	4	\$48,887
28	(35)	SEC OF STATE CUSTOMER SVCS COORD I	1	\$47,867
29	(36)	SEC OF STATE BLDG SVCS COORDINATOR	1	\$47,867
30	(37)	SEC OF STATE BLDGS & GRND SUPERVISOR	2	\$47,849
31	(38)	SEC OF STATE MAINTENANCE WORKER II	3	\$45,128
32	(39)	SEC OF STATE TRADESPERSON	2	\$44,459
33	(40)	SEC OF STATE CORPORATIONS REP III	4	\$43,258
34	(41)	SEC OF STATE RECORDS SPECIALIST	2	\$42,377
35	(42)	SEC OF STATE BLDGS & GRND SUPERVISOR	1	\$42,314
36	(43)	SEC OF STATE CREATIVE SPECIALIST I	2	\$41,779

1	(44)	SEC OF STATE INMATE CREW GUARD II	1	\$41,658
2	(45)	SEC OF STATE ADMINISTRATIVE ASST III	6	\$41,142
3	(46)	SEC OF STATE ADMINISTRATIVE ASST II	3	\$39,390
4	(47)	SEC OF STATE ACCOUNTANT I	1	\$39,013
5	(48)	SEC OF STATE BUSINESS ASSISTANT I	3	\$38,534
6	(49)	SEC OF STATE CORPORATIONS REP II	12	\$37,064
7	(50)	SEC OF STATE ADMINISTRATIVE ASST I	2	\$36,687
8	(51)	SEC OF STATE INMATE CREW GUARD I	4	\$36,273
9	(52)	SEC OF STATE MAINTENANCE WORKER I	5	\$35,424
10	(53)	SEC OF STATE CORPORATIONS REP I	4	\$34,037
11	(54)	SEC OF STATE CUSTODIAN II	1	\$33,037
12	(55)	SEC OF STATE DISPATCHER	3	\$31,904
13	(56)	SEC OF STATE BLDG SVCS REPRESENTATIVE	2	\$28,848
14	(57)	SEC OF STATE CUSTODIAN I	8	\$28,848
15	(58)	SEC OF STATE HOUSEKEEPER	6	\$28,030
16	(59)	SEC OF STATE MAIL CLERK	1	\$28,011
17	(60)	SEC OF STATE RECEPTIONIST I	<u>1</u>	\$27,458
18		MAX. NO. OF EMPLOYEES	162	

SECTION 2. EXTRA HELP - OPERATIONS. There is hereby authorized, for the Secretary of State - Operations for the 2013-2014 fiscal year, the following maximum number of part-time or temporary employees, to be known as "Extra Help", payable from funds appropriated herein for such purposes: forty-five (45) temporary or part-time employees, when needed, at rates of pay not to exceed those provided in the Uniform Classification and Compensation Act, or its successor, or this act for the appropriate classification.

SECTION 3. APPROPRIATION - OPERATIONS. There is hereby appropriated, to the Secretary of State, to be payable from the State Central Services Fund, for personal services and operating expenses of the Secretary of State - Operations for the fiscal year ending June 30, 2014, the following:

ITEM	FISCAL YEAR
<u>NO.</u>	<u>2013-2014</u>
(01) REGULAR SALARIES	\$7,838,000



1	(02) EXTRA HELP	144,909
2	(03) PERSONAL SERVICES MATCHING	2,773,965
3	(04) OVERTIME	33,000
4	(05) MAINT. & GEN. OPERATION	
5	(A) OPER. EXPENSE	3,002,396
6	(B) CONF. & TRAVEL	65,651
7	(C) PROF. FEES	265,012
8	(D) CAP. OUTLAY	194,425
9	(E) DATA PROC.	0
10	(06) MANDATORY PUBLICATIONS	214,038
11	(07) PETITION VERIFICATION	350,000
12	(08) PUBLISH LEGAL NOTICES	650,000
13	(09) RECORDS MANAGEMENT	933,977
14	(10) STATEWIDE VOTER REGISTRATION SYSTEM	1,438,029
15	(11) FLAGS	131,250
16	(12) CAPITOL GROUNDS IMPROVEMENTS	161,184
17	(13) SPECIAL MAINTENANCE	700,048
18	(14) BUILDING INSURANCE	<u>223,278</u>
19	TOTAL AMOUNT APPROPRIATED	<u>\$19,119,162</u>

20

## 21 SECTION 4. APPROPRIATION - HELP AMERICA VOTE ACT - TITLE 2 - FEDERAL.

22 There is hereby appropriated, to the Secretary of State, to be payable from  
 23 the federal funds as designated by the Chief Fiscal Officer of the State, for  
 24 expenditures requiring state matching for maintenance, operating expenses and  
 25 associated costs for the Help America Vote Act for the fiscal year ending  
 26 June 30, 2014, the following:

27

28	ITEM	FISCAL YEAR
29	<u>NO.</u>	<u>2013-2014</u>
30	(01) HELP AMERICA VOTE ACT	<u>\$4,683,300</u>

31

32 SECTION 5. APPROPRIATION - HELP AMERICA VOTE ACT - STATE. There is  
 33 hereby appropriated, to the Secretary of State, to be payable from the cash  
 34 fund deposited in the State Treasury as determined by the Chief Fiscal  
 35 Officer of the State, for state match for maintenance and operating expenses  
 36 and associated costs for the Help America Vote Act for the fiscal year ending

1 June 30, 2014, the following:  
2

3 ITEM	FISCAL YEAR
4 NO.	2013-2014
5 (01) HELP AMERICA VOTE ACT-STATE MATCH	<u>\$619,193</u>

6  
7 SECTION 6. APPROPRIATION - ELECTION ASSISTANCE FOR DISABLED - FEDERAL.  
8 There is hereby appropriated, to the Secretary of State, to be payable from  
9 the federal funds as designated by the Chief Fiscal Officer of the State, for  
10 grants, aid and professional fees and services for election assistance for  
11 the disabled for the fiscal year ending June 30, 2014, the following:  
12

13 ITEM	FISCAL YEAR
14 NO.	2013-2014
15 (01) ELECTION ASSISTANCE FOR THE DISABLED	<u>\$161,321</u>

16  
17 SECTION 7. APPROPRIATION - CAPITOL GROUNDS MONUMENT/MEMORIAL  
18 PRESERVATION. There is hereby appropriated, to the Secretary of State, to be  
19 payable from the Capitol Grounds Monument And Memorial Preservation Fund, for  
20 various construction and operating expenses for the preservation of Monuments  
21 and Memorials on the State Capitol Grounds by the Secretary of State for the  
22 fiscal year ending June 30, 2014, the following:  
23

24 ITEM	FISCAL YEAR
25 NO.	2013-2014
26 (01) VARIOUS OPERATING & CONSTRUCTION 27 EXPENSES FOR MONUMENT/MEMORIAL 28 PRESERVATION	<u>\$50,000</u>

29  
30 SECTION 8. APPROPRIATION - ARKANSAS STATE CAPITOL BUILDING AND GROUNDS  
31 RESTORATION - CASH. There is hereby appropriated, to the Secretary of State,  
32 to be payable from the cash fund deposited in the State Treasury as  
33 determined by the Chief Fiscal Officer of the State, from contributions and  
34 donations for maintenance and restoration projects by the Secretary of State  
35 for the fiscal year ending June 30, 2014, the following:  
36

ITEM	FISCAL YEAR
NO.	2013-2014
(01) MAINT. & GEN. OPERATION	
(A) OPER. EXPENSE	\$25,000
(B) CONF. & TRAVEL	0
(C) PROF. FEES	0
(D) CAP. OUTLAY	0
(E) DATA PROC.	<u>0</u>
TOTAL AMOUNT APPROPRIATED	<u><u>\$25,000</u></u>

10

11 SECTION 9. APPROPRIATION - PARKING - CASH. There is hereby  
 12 appropriated, to the Secretary of State, to be payable from cash funds as  
 13 defined by Arkansas Code 19-4-801 of the Secretary of State, for various  
 14 operating and associated expenses for parking activity, major emergency  
 15 repairs necessary to continue agency operations and security of the premises  
 16 of the Secretary of State for the fiscal year ending June 30, 2014, the  
 17 following:

18

ITEM	FISCAL YEAR
NO.	2013-2014
(01) VARIOUS PARKING, MAJOR EMERGENCIES & SECURITY EXPENSES	<u>\$375,000</u>

23

24 SECTION 10. APPROPRIATION - FEE AND TAX REFUNDS. There is hereby  
 25 appropriated, to the Secretary of State, to be payable from the Miscellaneous  
 26 Revolving Fund, for refunds and reimbursements of corporate filing fees and  
 27 franchise taxes for the fiscal year ending June 30, 2014, the following:

28

ITEM	FISCAL YEAR
NO.	2013-2014
(01) REFUNDS/REIMBURSEMENTS	<u>\$550,000</u>

32

33 SECTION 11. APPROPRIATION - COUNTY VOTING SYSTEM GRANT FUND. There is  
 34 hereby appropriated, to the Secretary of State, to be payable from the County  
 35 Voting System Grant Fund, for grants, aid and professional fees and services  
 36 for upgrading or purchasing county voting systems for the fiscal year ending

1 June 30, 2014, the following:

2

3 ITEM	FISCAL YEAR
4 <u>NO.</u>	<u>2013-2014</u>
5 (01) COUNTY VOTING SYSTEM GRANTS	<u>\$1,500,000</u>

6

7 SECTION 12. APPROPRIATION - FEDERAL VOTING ASSISTANCE PROGRAM. There  
 8 is hereby appropriated, to the Secretary of State, to be payable from the  
 9 federal funds as designated by the Chief Fiscal Officer of the State, for  
 10 research and development on providing ballot access to Arkansas voters  
 11 stationed overseas for the fiscal year ending June 30, 2014, the following:

12

13 ITEM	FISCAL YEAR
14 <u>NO.</u>	<u>2013-2014</u>
15 (01) RESEARCH & DEVELOPMENT	<u>\$94,000</u>

16

17 SECTION 13. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
 18 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW.  
 19 REIMBURSEMENT. The Miscellaneous Revolving Fund shall be reimbursed in the  
 20 manner provided by law.

21 The provisions of this section shall be in effect only from July 1, ~~2012~~  
 22 2013 through June 30, ~~2013~~ 2014.

23

24 SECTION 14. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
 25 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. STATE  
 26 CAPITOL POLICE. In the event that sufficient revenues, in the judgment of  
 27 the Secretary of State exist, the Secretary is hereby authorized to make  
 28 additional salary payments from such funds to those employees who have  
 29 attained law enforcement certification above the basic certificate level, as  
 30 defined by the Arkansas Commission on Law Enforcement Standards. It is the  
 31 intent of this Section that such payment shall be optional, at the discretion  
 32 of the Secretary, dependent on sufficient revenues and shall not be  
 33 implemented using funds specifically set aside for other programs within the  
 34 Department.

35 Employees shall be eligible for all or a portion of additional salary  
 36 payments scheduled as follows:

- 1 I. General Certificate - \$ 300 annually  
 2 II. Intermediate Certificate - \$ 600 annually  
 3 III. Advanced Certificate - \$ 900 annually  
 4 IV. Senior Certificate - \$1,200 annually

5 Payment of such funds may be made monthly, quarterly, semiannually or  
 6 annually depending upon the availability of revenues and shall be restricted  
 7 to the following classifications:

- 8 1. Sec. of State Capitol Police Chief  
 9 2. Sec. of State Police Sergeant  
 10 3. Sec. of State Corporal  
 11 4. Sec. of State Capitol Police Captain

12 Payments made under this Section which are awarded as partial or lump sum  
 13 payments shall not be considered as salary for purposes of retirement  
 14 benefits but shall be subject to withholding of all applicable federal and  
 15 state taxes. Payments made under this Section shall not be construed as  
 16 exceeding the maximum annual salary of the employee.

17 The provisions of this section shall be in effect only from July 1, ~~2012~~  
 18 2013 through June 30, ~~2013~~ 2014.

19  
 20 SECTION 15. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
 21 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. TRANSFER  
 22 PROVISION. After receiving approval from the Chief Fiscal Officer of the  
 23 State, and prior review by the Arkansas Legislative Council, the Agency is  
 24 authorized to transfer appropriation from any line item authorized in Section  
 25 3 Operations to any other line item authorized in Section 3.

26 The provisions of this section shall be in effect only from July 1, ~~2012~~  
 27 2013 through June 30, ~~2013~~ 2014.

28  
 29 SECTION 16. SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS  
 30 CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. VOTER ID  
 31 RULES AND REGULATIONS AND REPORTING. The Secretary of State shall promulgate  
 32 rules and regulations regarding the issuance of a voter identification card  
 33 that may be requested by an individual to be used as proof of identity when  
 34 appearing to vote in person upon prior review by the Administrative Rules and  
 35 Regulations Subcommittee of the Arkansas Legislative Council or Joint Budget  
 36 Committee. In addition, the Secretary of State shall also report for review

1 by the Arkansas Legislative Council or Joint Budget Committee a report  
2 outlining in detail the total amount of monies expended by the Secretary of  
3 State to implement the voter identification program. Further, the Secretary  
4 of State shall also report to the Arkansas Legislative Council or Joint  
5 Budget Committee within 60 days after the next General Election, the number  
6 of persons who obtained a Voter ID.

7 The provisions of this section shall be in effect only from July 1, 2013  
8 through June 30, 2014.

9  
10 SECTION 17. COMPLIANCE WITH OTHER LAWS. Disbursement of funds  
11 authorized by this act shall be limited to the appropriation for such agency  
12 and funds made available by law for the support of such appropriations; and  
13 the restrictions of the State Procurement Law, the General Accounting and  
14 Budgetary Procedures Law, the Revenue Stabilization Law, the Regular Salary  
15 Procedures and Restrictions Act, or their successors, and other fiscal  
16 control laws of this State, where applicable, and regulations promulgated by  
17 the Department of Finance and Administration, as authorized by law, shall be  
18 strictly complied with in disbursement of said funds.

19  
20 SECTION 18. LEGISLATIVE INTENT. It is the intent of the General  
21 Assembly that any funds disbursed under the authority of the appropriations  
22 contained in this act shall be in compliance with the stated reasons for  
23 which this act was adopted, as evidenced by the Agency Requests, Executive  
24 Recommendations, and Legislative Recommendations contained in the budget  
25 manuals prepared by the Department of Finance and Administration, letters, or  
26 summarized oral testimony in the official minutes of the Arkansas Legislative  
27 Council or Joint Budget Committee which relate to its passage and adoption.

28  
29 SECTION 19. EMERGENCY CLAUSE. It is found and determined by the  
30 General Assembly, that the Constitution of the State of Arkansas prohibits  
31 the appropriation of funds for more than a one (1) year period; that the  
32 effectiveness of this Act on July 1, 2013 is essential to the operation of  
33 the agency for which the appropriations in this Act are provided, and that in  
34 the event of an extension of the legislative session, the delay in the  
35 effective date of this Act beyond July 1, 2013 could work irreparable harm  
36 upon the proper administration and provision of essential governmental

1 programs. Therefore, an emergency is hereby declared to exist and this Act  
2 being necessary for the immediate preservation of the public peace, health  
3 and safety shall be in full force and effect from and after July 1, 2013.  
4  
5

6 */s/Joint Budget Committee*  
7  
8

9 *APPROVED: 04/19/2013*  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36