

CASE NO. CV-14-462

IN THE ARKANSAS SUPREME COURT

MARK MARTIN, ET AL

APPELLANTS

V.

FREEDOM KOHLS, ET AL

APPELLEES

AN INTERLOCUTORY APPEAL FROM THE CIRCUIT COURT
OF PULASKI COUNTY, ARKANSAS

HONORABLE TIMOTHY DAVIS FOX, CIRCUIT JUDGE

BRIEF OF AMICUS CURIAE
PULASKI COUNTY CIRCUIT/COUNTY CLERK LARRY CRANE

Amanda Mankin-Mitchell (97010)
Chastity Scifres (99143)
PULASKI COUNTY ATTORNEY'S OFFICE
201 South Broadway, Suite 400
Little Rock, Arkansas 72201
(501) 340-8285
amankin@pulaskicounty.net
cscifres@pulaskicounty.net

Attorneys for Amicus Curiae

CASE NO. CV-14-462

IN THE ARKANSAS SUPREME COURT

MARK MARTIN, ET AL

APPELLANTS

V.

FREEDOM KOHLS, ET AL

APPELLEES

AN INTERLOCUTORY APPEAL FROM THE CIRCUIT COURT
OF PULASKI COUNTY, ARKANSAS

HONORABLE TIMOTHY DAVIS FOX, CIRCUIT JUDGE

BRIEF OF AMICUS CURIAE
PULASKI COUNTY CIRCUIT/COUNTY CLERK LARRY CRANE

Amanda Mankin-Mitchell (97010)
Chastity Scifres (99143)
PULASKI COUNTY ATTORNEY'S OFFICE
201 South Broadway, Suite 400
Little Rock, Arkansas 72201
(501) 340-8285
amankin@pulaskicounty.net
cscifres@pulaskicounty.net

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORTIES.....ii

STATEMENT OF INTEREST OF AMICUS CURIAE.....SoI 1

ARGUMENT.....Arg 1

 I. COUNTY CLERKS ARE NOT NECESSARY
 PARTIES.....Arg 2

 II. ACT 595 OF 2013 VIOLATES ARTICLE 3, SECTION 1
 OF THE ARKANSAS CONSTITUTION.....Arg 3

 III. ACT 595 OF 2013 VIOLATES ARTICLE 3, SECTION 2
 OF THE ARKANSAS CONSTITUTION.....Arg 8

 IV. ACT 595 OF 2013 VIOLATES AMENDMENT 51 TO THE
 ARKANSAS CONSTITUTION.....Arg 11

 a. Verification of Voter Registration and other existing
 laws are sufficient for preventing voter fraud.....Arg 13

 V. CONCLUSION.....Arg 16

CERTIFICATE OF SERVICE.....xviii

CERTIFICATE OF COMPLIANCE AND IDENTIFICATION OF
DOCUMENTS NOT IN PDF FORMAT.....xix

TABLE OF AUTHORITIES

Constitution

Ark. Const. Art. 3, §1.....Arg 1, 4, 7, 10, 12, 13, 16

Ark. Const. Art. 3, §2.....Arg 1, 8, 10, 16

Ark. Const. Amend. 51.....Arg 13, 16

Ark. Const. Amend. 51, §1.....Arg 11

Ark. Const. Amend. 51, §4.....Arg 2, 11

Ark. Const. Amend. 51, §5.....Arg 2, 11

Ark. Const. Amend. 51, §6.....Arg 12

Cases

Arkansas State Bd. of Election Com'rs v. Pulaski County Election Com'n,
2014 Ark. 236, 2014 LEXIS 367 (2014).....Arg 2

Burdick v. Takushisi, 504 U.S. 428, 112 S. Ct. 2059,
1992 LEXIS 3404 (1992).....Arg 9

Rison v. Farr, 24 Ark. 161, 1865 LEXIS 1 (1865).....Arg 5, 6, 11

Weinschenk v. State of Missouri, 203 S.W.3rd 201,
206 Mo. LEXIS 122 (2006).....Arg 9

Statutes and Rules

Ark. Code Ann. §7-1-101.....Arg 3

Ark. Code Ann. §7-1-10.....Arg 10

Ark. Code Ann. §7-4-101.....Arg 2

Ark. Code Ann. §7-4-109.....	Arg 14-15
Ark. Code Ann. §7-4-118.....	Arg 2
Ark. Code Ann. §7-5-103.....	Arg 15
Ark. Code Ann. §7-5-104.....	Arg 15
Ark. Code Ann. §7-5-201.....	Arg 1, 3, 7
Ark. Code Ann. §7-5-305(a)(1)-(3).....	Arg 14
Ark. Code Ann. §7-5-305(a)(4).....	Arg 14
Ark. Code Ann. §7-5-305(8)(b)(iii) –(iv).....	Arg 14, 15
Ark. Code Ann. §7-5-312(g)-(h).....	Arg 15
Ark. Code Ann. §7-5-321.....	Arg. 3
Ark. Code Ann. §7-5-322.....	Arg 3, 10
15 Delaware Code Ann. §4937.....	Arg 4
Idaho Code Ann. §34-1114.....	Arg 4
Louisiana Stat. Rev. 18 §562(A)(2).....	Arg 4
Michigan Compiled Law Ann. 168.523(1).....	Arg 4
Rhode Isl. Ann. §17-19-24.2(d).....	Arg 4
S. Dakota Codified Laws §12-18-6.2.....	Arg 4
42 U.S.C. §1971(c) and (e).....	Arg 15

Books and Treatises

<i>Black’s Law Dictionary, 6th Edition, 1990</i>	Arg 7
---	-------

INTEREST OF AMICUS CURIAE

Amicus Curiae is Pulaski County Circuit/County Clerk Larry Crane.

Pursuant to Amendment 51 of the Arkansas Constitution, a county clerk is considered the “voter registrar” for the counties of Arkansas. In addition, Act 595 (codified at Ark. Code Ann. §7-5-322(c)(1)) and the rules promulgated by the Arkansas State Board of Election Commissioners and Arkansas Secretary of State, place responsibility upon the county clerk to accept “proof of identity,” or in the alternative, an affidavit of indigency or religious objection, for those voters who did not present the requisite “proof of identity” when early voting or voting on Election Day. Furthermore, Ark. Code Ann. §7-5-322 was amended pursuant to Act 595 of 2013 to require, along with the rules promulgated by the Arkansas State Board of Election Commissioners and the Arkansas Secretary of State, the county clerk to issue “voter identification cards” upon request by those voters who did not have the requisite “proof of identity” as set out by the Act and can meet the requirements to obtain a “voter identification card”. The Pulaski County Clerk is in the unique position to speak to the significance of Act 595 and the rules promulgated by the State Board of Election Commissioners and the Arkansas Secretary of State for the citizens of Pulaski County, the largest county in this State. As an elected official who is, by oath, required to uphold the United States Constitution and the Constitution of the State of Arkansas, the Pulaski County

Clerk believes, in good faith, that this *amicus* brief is necessary in that it gives this Court another perspective concerning the constitutionality of Act 595 and the rules promulgated by the State Board of Election Commissioners and the Arkansas Secretary of State.

The various county clerks in Arkansas are responsible for administering and overseeing voter registration and absentee voting in their respective counties. As such, county clerks must follow the rules promulgated by the Secretary of State and the Arkansas State Board of Election Commissioners.

The Pulaski County Clerk contends that this Court should hold that Act 595 of 2013 and the rules promulgated by the State Board of Election Commissioners and the Arkansas Secretary of State are unconstitutional for several reasons. First, Act 595 adds an additional qualification to those voter qualifications set out by Article 3, §1 of the Arkansas Constitution by requiring “proof of identity.” Further, Act 595 violates Article 3, §2 of the Arkansas Constitution by interfering to prevent the free exercise of the right of suffrage and impairing otherwise lawful voters’ right to vote. Finally, Act 595, in essence, requires lawfully registered voters to “requalify” themselves each time they vote in an election in this State, in violation of §4 of Amendment 51 to the Arkansas Constitution.

ARGUMENT

The factual and procedural background regarding this case is outlined in the briefing of the parties on appeal in this matter, including the Statements of the Case submitted by Appellants and Appellees. This Court’s jurisdiction and standard of review is likewise addressed by the Appellants and Appellees in this matter. Therefore, these matters will not be addressed here. On May 2, 2014, the trial court made various findings of fact and conclusions of law, which included the ruling that Act 595 of 2013 is unconstitutional on its face as being contrary to Article 3, §1 of the Arkansas Constitution by requiring an additional qualification with the “proof of identity” requirement codified at Ark. Code Ann. §7-5-201. On May 23, 2014, the trial court’s order was entered in this matter.

This Court should hold, first, that Act 595 of 2013 is unconstitutional in that it adds an additional qualification to those voter qualifications as set out in Article 3, §1 of the Arkansas Constitution, in that the Constitution states that “. . . 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.” Further, this Court should find Act 595 violates Article 3, §2 of the Arkansas Constitution by interfering to prevent the free exercise of the right of suffrage and impairing otherwise lawful voters’ right to vote. Finally, Act 595, in essence, requires lawfully registered

voters to “requalify” themselves each time they vote in an election in this State, in violation of § 4 of Amendment 51 to the Arkansas Constitution.

I. COUNTY CLERKS ARE NOT NECESSARY PARTIES

Mark Martin is the “Chief Election Official” in Arkansas pursuant to Amendment 51, §5(b)(1) to the Arkansas Constitution. As part of his duties, he serves on the Arkansas Board of Election Commissioners. The Secretary of State and the Arkansas State Board of Election Commissioners are responsible for conducting statewide training for election officers and county election commissioners; adopting rules regarding the training of election officers and county election commissioners; formulating, adopting, and promulgating all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures; and investigating alleged violations, rendering findings, and imposing disciplinary action according to Ark. Code Ann. §7-4-118 for violations of election and voter registration laws. *See*, Ark. Code Ann. §7-4-101. *See also*, *Arkansas State Bd. of Election Com’rs v. Pulaski County Election Com’n*, 2014 Ark. 236, 2014 Ark. LEXIS 367 (2014). As such, the county clerks must follow the rules set forth by the Secretary of State and the State Board of Election Commissioners as the State Board is charged with administering election law in Arkansas. Thus, as the county clerks must follow these rules, the county clerks are not necessary parties for purposes of this litigation.

II. ACT 595 OF 2013 VIOLATES ARTICLE 3, SECTION 1 OF THE ARKANSAS CONSTITUTION

Section 2 of Act 595 of 2013 (codified at *Ark. Code Ann. §7-1-101*) defines “proof of identity” as “[a] voter identification card under §7-5-322” or “[a] document or identification that shows the name of the person to whom the document was issued; shows a photograph of the person to whom the document was issued; is issued by the United States, the State of Arkansas, or an accredited postsecondary educational institution in the State of Arkansas.” Section 2 of Act 595 (codified at *Ark. Code Ann. §7-5-201*) states that “. . . any person desiring to vote in this state shall . . . present proof of identity to the election official when appearing to vote in person either early or at the polls on election day.” In the event that “proof of identity” is not presented during early voting or on election day, the otherwise qualified voter will be allowed to cast a provisional ballot under Section 5 of the Act (codified at *Ark. Code Ann. §7-5-321*). Section 5 of the Act goes on to state that the voter is given a “cure” period under the Act in which to return his/her “proof of identity” to either the county board of election commissioners or the county clerk, by 12:00 p.m. on the Monday following the election. Section 5 of Act 595 also allows the voter to file with the county clerk or the county board of election commissioners an affidavit of indigency or that the voter has a religious objection to being photographed if the voter does not have “proof of identity.” The voter must make an additional trip to either the county

board of election commissioners or the county clerk with the requisite documents (either “proof of identity” or an affidavit of indigency or religious objection) or the voter’s ballot will not be counted. It should be noted that most county boards of election commissioners do not have offices with permanent office staff. Those county boards without offices will be required to hold meetings to allow voters to return with the requisite “proof of identity.” Therefore, most voters will be required to provide the “proof of identity” to the various county clerks in the State. This is much more restrictive than the laws in other states which allow the voter to sign an affidavit attesting to their identity (as opposed to limited reasons for not having acceptable identification) and then cast a ballot. *See, e.g.* 15 Delaware Code Ann. §4937; Idaho Code Ann. §34-1114; Louisiana Stat. Rev. 18 §562(A)(2); Michigan Compiled Laws Ann. 168.523(1); Rhode Isl. Ann. §17-19-24.2(d); S. Dakota Codified Laws §12-18-6.2.

The trial court correctly found that Act 595 is unconstitutional as it adds an additional qualification for qualified voters not found in Article 3, §1 of the Arkansas Constitution. Article 3, §1 establishes the qualifications of voters. Pursuant to §1 of Article 3 of the Arkansas Constitution, the only legal qualifications for a voter in Arkansas to cast a vote either during early voting or on Election Day, prior to Act 595, were:

- (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.

Some courts that have addressed whether voter I.D. laws with a photo-identification requirement impose an additional qualification have held that the said laws impose merely a procedural condition on the right to vote. However, those cases have been in states where that particular state's constitution contains specific language authorizing the state's legislature to regulate elections, including policing the election process to prevent voter fraud. The Arkansas Constitution lacks language that authorizes the General Assembly to perform such duties. Article 3, §1 explicitly states the qualifications to vote in elections in Arkansas and guarantees that anyone meeting those qualifications will be allowed to vote. This Court previously addressed a similar attempt by the Arkansas General Assembly to place additional qualifications on voting and struck down the law as unconstitutional. In *Rison v. Farr*, 24 Ark. 161, 1865 Ark. LEXIS 1, (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; said oath to be administered by one of the election officers; and this act to take effect from and after its passage.

This Court expressed concern that the legislature was taking away a citizen's right to vote when the citizen met all of the qualifications to vote contained in the Arkansas Constitution. *Id.* The Court was not persuaded by the State's argument that the law was nothing more than a person making a simple oath when the State argued that:

A law requiring that the voter shall swear to support the constitution of the United States, does not restrict the right to vote, adds nothing to the qualifications required by the constitution, requires nothing more than the voter is required by law to do, and is free from the objections of unconstitutionality, and is a valid law.

Id. The Court dismissed that argument and found that it was an attempt to prevent unwanted persons from voting. The Court opined that:

And clearly, 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. This Court struck down the "oath law" as it prevented duly qualified Arkansas residents from being able to vote. In conclusion, the Court again opined on the right to vote found in the Arkansas Constitution:

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.

Based on the *Rison* decision, Article 3, §1 is an exhaustive list of voter qualifications. The fact that one must present “proof of identity” adds yet another qualification for those voters who would otherwise be considered lawful voters under Article 3, §1 of the Arkansas Constitution. Further, it must be pointed out that Ark. Code Ann. §7-5-201 is entitled “voter qualification.” Because “proof of identity” was added to this section of the Arkansas Code, it is clear the General Assembly considered the “proof of identity” requirement an additional qualification for voting in the State of Arkansas.

In addition, another problematic issue with the Act is the presentation of an affidavit of indigency or religious objection to the county clerk or the county board of election commissioners in the event the voter has no “proof of identity.” “Affidavit” is defined as “[a] written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it taken before a person having authority to administer such oath or affirmation.” *Black’s Law Dictionary, 6th Edition, 1990*. Therefore, an affidavit is required to be sworn in the presence of a notary or another official authorized to administer oaths. This presents an additional burden to qualified voters. Unless an individual knows the notary personally, some sort of photographic proof would most likely be required to obtain the notary’s certification that the person signing the document is who he/she claims to be. It would be difficult for the voter to find a notary willing

to sign an affidavit without photographic proof to confirm the identity of the person who is signing the affidavit. In addition, there is usually some cost associated with notary services. This affidavit allowed by the Act will, most likely, be a financial burden to an indigent voter, who would otherwise be considered a lawfully registered voter under the Constitution, but possesses no “proof of identity.” Even if those hurdles were cleared, the affidavit provision allows only two narrowly limited reasons for not having acceptable identification; it does not allow exceptions for natural disasters, theft, administrative delay or impossibility or any other hardship or circumstance which could cause a voter not to have acceptable identification.

III. ACT 595 OF 2013 VIOLATES ARTICLE 3, SECTION 2 OF THE ARKANSAS CONSTITUTION

The right to vote in Arkansas is so important, that not only does the Arkansas Constitution set forth the only legal qualifications for voting in Arkansas, it also provides that any law that in any way “infringes” on the right is unconstitutional. Article 3, §2 of the Arkansas Constitution provides that:

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

When determining whether a voter I.D. law restricts or impairs the right to vote, courts have applied a standard of review that follows a standard established

by the United States Supreme Court. The US Supreme Court has stated that requiring every voting regulation to be subjected to strict scrutiny and to be narrowly tailored does not allow States to ensure that elections are operated “equitably and efficiently”. In *Burdick v. Takushisi* , 504 U.S. 428, 112 S. Ct. 2059, 1992 U.S. LEXIS 3404 (1992), the U.S. Supreme Court held that when deciding a challenge to a state election law, courts must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interest put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights”. *Id.*

The case of *Weinschenk v. State of Missouri*, 203 S.W.3rd 201, 206 Mo. LEXIS 122 (2006) required the Missouri Supreme Court to consider whether the imposition of a photo I.D. requirement compromised the fundamental right to vote of citizens where the constitutionally mandated voter qualifications were materially indistinguishable from those in the Arkansas Constitution. The court applied the standard set out by the United States Supreme Court in the *Burdick v. Takushisi* case and determined that the challenged photo I.D. requirement severely burdened the right to vote and should be subjected to a strict-scrutiny review. The court struck the requirement based upon this review. *Id.*

The voter qualifications listed in Article 3, §1 are indistinguishable from the requirements set out in the Missouri Constitution. The proof of identity requirement of Act 595 severely impairs the right to vote of otherwise qualified voters and therefore, violates Article 3, §2 of the Arkansas Constitution. The voters most likely to have their right to vote impaired and to be disenfranchised by Act 595 are poor, minority, disabled, female, and elderly voters. There is no state office with authority or responsibility to help a voter obtain an acceptable identification or to help them with the process of obtaining identification. While Section 5 of Act 595 (codified at Ark. Code Ann. §7-5-322) makes provisions for a free “voter identification card,” as stated above, the required documents that must be shown to obtain the card, more likely than not, will cost the voter. Further, Ark. Code Ann. §7-1-102 requires every employer in the state to schedule the work hours of employees on election days so that each employee will have an opportunity to exercise the right to vote. This law does not, however, make an allowance for those voters who were required to cast a provisional ballot due to the lack of “proof of identity” to have time off to cure the deficiency.

Because voting rights are the most fundamental rights given to citizens of the United States, laws that impair or make it more difficult to vote should be justified only by the most compelling reasons. “Indeed the right of those having the constitutional qualifications to vote, is founded in the fundamental law of the land,

and cannot be legislated away. 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, 1865 Ark. LEXIS 1, (1865).

IV. ACT 595 OF 2013 VIOLATES AMENDMENT 51 TO THE ARKANSAS CONSTITUTION

Section 1 of Amendment 51 to the Arkansas Constitution states:

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

[emphasis added]. In addition, Amendment 51, §4 states that “[w]hen a voter is once registered under the provisions of this amendment, it is unnecessary for such voter again to register . . .” Section 5 of Amendment 51 declares the Secretary of State as the “chief election official” and states that the State Board of Election Commissioners are directed to prescribe, adopt, publish, and distribute rules to secure the uniform and efficient procedures to administrate Amendment 51. As stated in Section I above, county election officials are required to follow the rules as promulgated by the Arkansas State Board of Election Commissioners and the Arkansas Secretary of State.

Amendment 51, §6(3), lists the information that is required of each applicant registering to vote in the State of Arkansas. The applicant must provide:

- (1) Full name;
- (2) Mailing address;
- (3) Residence address and any other information necessary to identify the residence of the applicant;
- (4) If previously registered, the name then supplied by the applicant, and the previous address, county, and state;
- (5) Date of birth;
- (6) A signature or mark made under penalty of perjury that the applicant meets each requirement for voter registration
- (7) If the voter is unable to sign his or her name, the name, address, and telephone number of the person providing assistance;
- (8) If the applicant has a current and valid driver's license, the applicant's driver's license number;
- (9) If the applicant does not have a current and valid driver's license, the last four (4) digits of the applicant's social security number;
- (10) If the applicant does not have a current and valid driver's license number or social security number, the Secretary of State will assign the applicant a number which will serve to identify the applicant for voter registration purposes, and this number shall be placed on the application.

Once the applicant provides the information set out under this section, the applicant is considered a lawful and qualified voter under Amendment 51 if the applicant meets the other three (3) qualifications set out under Article 3, §1 of the Arkansas Constitution (citizen of the United States, citizen of the State of Arkansas, and at least eighteen (18) years of age). Prior to the passage of Act 595, upon proving these qualifications and becoming registered, the voter was then issued a card titled "Voter I.D. Card" showing their precinct and other voting

information. Though the issued cards were labeled “Voter I.D. Card,” they do not suffice to allow a voter to vote under Act 595.

Pursuant to Act 595 of 2013, if an otherwise legally qualified voter under Article 3, §1 and Amendment 51 does not meet the “proof of identity” requirement, or, in the alternative, does not provide an affidavit of indigency or religious objection, that voter’s ballot will not be cast. This effectively renders a voter’s voter registration meaningless. While a citizen may provide all information required under Amendment 51 and, as such, is declared a registered voter in the State of Arkansas, if the voter does not provide “proof of identity” under Act 595, then the lawfully qualified voter will be unable to cast their ballot in any election in this State. The photo I.D. requirement, in essence, requires a requalification of a voter each and every time the voter wishes to exercise his/her right to vote. Further, it must be pointed out that Amendment 51 does not require photographic identification to register to vote in this State. The photo I.D. requirement under Act 595 runs afoul of Amendment 51 of the Arkansas Constitution.

a. Verification of Voter Registration and other existing laws are sufficient for preventing voter fraud.

Act 595 is not supported by a demonstrated need. The stated purpose for passing the legislation is to prevent voter fraud. Act 595 addresses voter impersonation; however, there have been no reports or evidence to indicate that voter impersonation is a credible threat in Arkansas.

Prior to the enactment of Act 595, Arkansas law required voters to verify their identity using the precinct voter registration list. This was achieved by requiring election officials to request that voters identify themselves in order to verify that their name was on the precinct voter list and then have the voter state his or her address and date of birth to the election worker. The election worker then verified that the voter's date of birth and address matched those listed on the voter precinct list. Ark. Code Ann. §7-5-305(a)(1)-(3). If the date of birth given by the voter did not match the precinct voter registration list, the election worker could then request that the voter present identification as deemed appropriate by the election worker. Ark. Code Ann. §7-5-305(a)(4). If the voter could not or chose not to provide identification, the poll worker would indicate on the precinct voter registration list that the voter did not provide identification. Ark. Code Ann. §7-5-305(8)(b)(i). Following each election, the county board of election commissioners would review the precinct voter registration lists and provide to the prosecuting attorney, for further investigation, the names of those voters not providing identification at the polls. Ark. Code Ann. §7-5-305(8)(b)(iii) and (iv).

Further, poll workers were and are required by law to live in the precinct in which they work (unless impossible to staff a sufficient number of poll workers) and this requirement makes it more likely that poll workers will know the voters and less likely that someone could impersonate another voter. Ark. Code Ann. §7-

4-109. The voter must verify their information, as stated above, and poll watchers may object or challenge a voter if they believe the voter is not eligible to vote. Ark. Code Ann. §7-5-312(g) and (h). The State routinely conducts cross-checks of the Arkansas registered voter list with databases and information in the State, as well as with other states, including death records, duplicate registrations, and felony convictions.

As stated above, prior to the passage of Act 595, the county board of election commissioners could review the precinct voter registration list and then provide the names of voters who did not provide identification to the prosecuting attorney. The prosecuting attorney could then investigate possible voter fraud. Ark. Code Ann. §7-5-305(8)(B)(iii) and (iv). If a voter provides false information on registration, absentee forms, or when voting, they may be charged and convicted of perjury and subject to a \$10,000 fine or imprisoned up to 10 years under state and federal laws. *See*, Ark. Code Ann. §§7-1-103; 104 and 42 U.S.C. §1971(c) and (e). Though Act 595 created a new “voter identification card,” there is no statewide database of voter identification cards issued under the Act 595 and to know how many cards have been issued and to whom requires a request to all 75 county clerks of the State of Arkansas.

As stated above, there have been no recorded instances of voter impersonation and no credible threat of this type of voter fraud in Arkansas.

Arkansas law provided a sufficient means of preventing voter fraud prior to the passage of Act 595 through the voter registration process and the verification of voter registration information at the polls. Act 595 is overreaching and unnecessary, in addition to creating an additional voter qualification and impairing the right the vote.

IV. CONCLUSION

Based on the foregoing, it was not necessary for all 75 county clerks to be named as parties to this matter as the county clerks must follow the rules promulgated by the Arkansas State Board of Election Commissioners and the Arkansas Secretary of State, both of which are parties in this action. Further, it is clear that Act 595 of 2013 violates Article 3, §1 of the Arkansas Constitution by adding another qualification to those already set out by Article 3 by requiring photographic identification for those voters who are otherwise lawfully qualified electors in this State. Moreover, Act 595 violates Article 3, §2 of the Arkansas Constitution by interfering with the fundamental right to vote of those persons who meet the qualifications under Article 3, §1 of the Arkansas Constitution. In addition, Act 595 of 2013 runs afoul of Amendment 51 of the Arkansas Constitution by effectively rendering voter registration meaningless if the voter does not present “proof of identity” when voting. As stated above, there are sufficient safeguards in place under Amendment 51 to protect against voter

impersonation in elections in the State of Arkansas. Therefore, Amicus Curiae Pulaski County Circuit/County Clerk Larry Crane respectfully requests that this Court declare Act 595 of 2013 unconstitutional.

Respectfully Submitted,

PULASKI COUNTY ATTORNEY'S OFFICE
201 South Broadway, Suite 400
Little Rock, Arkansas 72201
(501) 340-8285

By: _____
Amanda Mankin-Mitchell, ABN 97010
amankin@pulaskicounty.net

And

Chastity D. Scifres, ABN 99-143
cscifres@pulaskicounty.net

*Attorneys for Amicus Curiae Pulaski County
Circuit/County Clerk Larry Crane*

CERTIFICATE OF SERVICE

I, Amanda Mankin-Mitchell, hereby certify that a true and correct copy of the foregoing Brief of Amicus Curiae Larry Crane, Pulaski County Circuit/County Clerk was sent to the following via U.S. Mail, Postage Prepaid, this _____ day of August, 2014:

David A. Curren
Deputy Attorney General
And
C. Joseph Cordi, Jr.
Senior Assistant Attorney General
323 Center Street, Suite 800
Little Rock, AR 72201

The Honorable Timothy Davis Fox
Sixth Division Circuit Court
Pulaski County Circuit Court
401 West Markham, Suite 210
Little Rock, AR 72201

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

Martha Adcock
General Counsel
L. Justin Tate
Associate General Counsel
Secretary of State
Suite 256 – State Capitol
500 Woodlane Avenue
Little Rock, AR 72201

Amanda Mankin-Mitchell

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

Case Name: Martin, et al. v. Kohls, et al.
Docket Number: CV-14-462
Title of Document: Brief of Amicus Curiae Larry Crane, Pulaski County
Circuit/County Clerk

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 document(s) 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

Amanda Mankin-Mitchell
Attorney for *Amicus Curiae*