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STATE OF MISSISSIPPI
SECRETARY OF STATE
ERIC CLARK

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November 4, 2003

Honorable Mike Moore
Mississippi Attorney General
Carroll Gartin Justice Building
450 High St., 5th Floor
Jackson, MS 39201

Honorable Jim M. Greenlee
U.S. Attorney, Northern District
900 Jefferson Ave.
Oxford, MS 38655

Honorable Dunn Lampton
U.S. Attorney, Southern District
188 East Capitol St., Suite 500
Jackson, MS 39201

Via Facsimile

Re: Potential Violations of Election Laws

Dear Gentlemen:

My office has been made aware of serious voting irregularities which may require your review and investigation. According to reliable reports, poll watchers throughout the state have been demanding to position themselves in locations within the polling place in defiance of directives from the poll managers. These poll watchers are insisting on standing either behind the poll workers at the sign-in table or actually sitting with the poll workers at the table. Mississippi law clearly provides that poll managers are in charge of the polling place and have the sole authority to assign poll watchers their positions within the polling place. See Miss. Code Ann. § 23-15-577 (Rev. 2002). It is apparent that one potential motive for this effort by some poll watchers is to intimidate Mississippians who are attempting to exercise their right to vote.

Furthermore, there are reports that poll watchers are video taping voters in precincts. We have had a specific report that poll watchers are video taping voters in the

Honorable Mike Moore
Honorable Jim M. Greenlee
Honorable Dunn Lampton
November 4, 2003
Page Two

predominately minority precincts of Lowndes County, Mississippi. This is a direct violation of the law and constitutes a per se case of intimidation.

Finally, we have had reports that poll watchers are attempting to enter the polling both, uninvited by the voter. Such a report came into our office a few moments ago concerning precincts in the City of Canton in Madison County, Mississippi. Of course, this too constitutes a violation of law.

Those who violate these laws are subject to arrest and prosecution.

Our office has issued a memorandum to all Circuit Clerks, as well as to the chairmen of the two major parties, to provide counsel concerning this situation, a copy of which is attached for your review. I also request that your offices look into this matter. If you have any questions, please call me at (601) 359-6368.

Sincerely,



ERIC CLARK
Secretary of State

EC:chj

Enclosure

cc: Honorable Chris Herren (Via Facsimile)
Chairman Jim Herring (Via Facsimile)
Chairman Rickey Cole (Via Facsimile)




STATE OF MISSISSIPPI
SECRETARY OF STATE
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Memorandum

To: Mississippi Circuit Clerks and County Election Commission Chairs
From: Eric Clark 
Date: November 4, 2003
Re: Pollwatcher Behavior

The Secretary of State's Office has received calls from several counties this morning about pollwatchers who are stating they have the right to stand at or behind the pollworkers' tables, or sit at the pollworkers' tables, so that they can watch as the pollworkers mark the poll book as voted beside the name of the appropriate voter and to watch the voters as they sign their name.

Miss. Code Ann. § 23-15-577 states "... the managers shall provide (the pollwatcher) with a suitable position from which (the pollwatcher) may be able to carefully inspect the manner in which the election is held..." This statute does not grant pollwatchers the right to stand at or behind the pollworker's table. Pollworkers should be instructed to assign the pollwatchers a position where they can carefully observe the election process, but not where the pollwatchers can interfere, obstruct access, disturb the election, or intimidate voters.

Miss. Code Ann. § 97-13-21 makes it a misdemeanor to disturb an election. Miss. Code Ann. § 23-15-241 provides that voters who have not voted and who want to vote shall have "unobstructed access" to the polls, and requires the bailiff to prevent interference with the election. Miss. Code Ann. § 23-15-245 enables the bailiff to contact law enforcement officers to help enforce the laws in the polling place. Miss. Code Ann. § 97-13-39 makes it a felony to intimidate voters. Persons who violate these statutes are subject to arrest.

If in the judgment of the pollworkers, a pollwatcher is interfering or disturbing the election, or otherwise intimidating voters, I recommend they contact appropriate law enforcement officials for their assistance in enforcing state law in the polling place.

Additionally, we have also received complaints regarding videotaping in the polling place. Please review the enclosed letter from the U. S. Justice Department in which they state videotaping is a violation of federal law.

Finally, we have received complaints concerning pollwatchers going into the voting booth with voters uninvited. This is also a violation of the law. Voter assistance laws require

that the voter seek assistance for one of the statutory reasons. No one may violate a voter's right to cast a secret ballot unless assistance is requested according to law.

Violation of election laws constitute a crime and subject the violators to arrest. Please contact local law enforcement authorities to report any violations and to request law enforcement assistance.

Enclosure



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

June 14, 1994

The Honorable Constance Slaughter-Harvey
Assistant Secretary of State
for Elections and General Counsel
P. O. Box 136
Jackson, Mississippi 39205-0138

Dear Ms. Slaughter-Harvey:

This is in reference to your recent letter regarding the use of video cameras at the polls in Mississippi.

Your letter describes this usage as occurring under circumstances that make black voters feel uncomfortable and apprehensive about voting, highlights the levels this sort of activity has reached, and states that it is not permitted by Mississippi law. Your letter also notes that those who promote the videotaping of black voters claim that such activity is a useful tool in documenting or preventing voter fraud.

Our Voting Section lawyers have spoken with you and with the Mississippi Attorney General's office about this matter during recent elections. At those times we expressed our view that the actions of white people in videotaping black voters at or near the polls could constitute a violation of Section 11(b) of the Voting Rights Act, 42 U.S.C. 1973i(b), and, under the circumstances you described, would constitute a change subject to the preclearance requirement of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

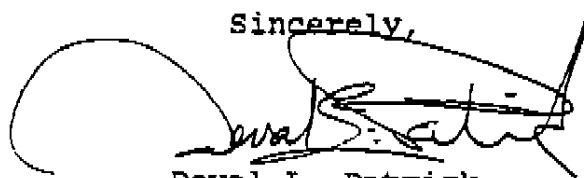
Your letter asks whether we still maintain this view. I can assure you that we do, and that we will not countenance any thinly veiled attempts to intimidate black voters at the polls. In fact, such activity also could constitute violations of 42 U.S.C. 1971, and 18 U.S.C. 594.

I am particularly aware that many black voters travel to the polls in cars that are made available for that purpose on election day, and that some of those voters who need assistance in casting their ballot are helped by the person who drove them to the polls. This activity has its roots in blacks' long lack of access to the polls and to quality education in the south, and in no way bears an assumption of fraudulent activity.

Moreover, Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6, requires that, with narrow exceptions, voters who need assistance in casting their ballot be allowed to choose the person who will help them. Any attempt to prevent those voters from being helped by the person they choose would present a likely violation of federal law.

If you have any further questions regarding this matter you may contact Barry H. Weinberg, Deputy Chief of our Voting Section, (202) 307-3266.

Sincerely,

A handwritten signature in black ink, appearing to read "Deval L. Patrick", written over a horizontal line. The signature is stylized and somewhat cursive.

Deval L. Patrick
Assistant Attorney General
Civil Rights Division

under Section 5 of the Voting Rights Act of 1965, as amended and extended, to the addition of this section by Laws, 1999, ch. 301, § 20.

§ 97-13-19. Corrupt conduct, etc., by election official.

If any manager, clerk, or any other officer whatever, assisting or engaged in conducting any election, or charged with any duty in reference to any election, shall designedly omit to do any official act required by law, or designedly do any illegal act in relation to any general or special election, by which act or omission the votes taken at any such election in any district shall be lost, or the electors thereof shall be deprived of their suffrage at such election, or shall designedly do any act which shall render such election void, or shall be guilty of any corrupt conduct or partiality in his official capacity at such election, he shall, upon conviction, be imprisoned, in the penitentiary for a term not exceeding two years.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6(9); 1857, ch. 64, art. 78; 1871, § 2542; 1880, § 3777; 1892, § 1049; Laws, 1906, § 1127; Hemingway's 1917, § 853; Laws, 1930, § 878; Laws, 1942, § 2104.

JUDICIAL DECISIONS

1. In general.

This section applies to primary elections, as well as to general and special elections. *Fanning v. State*, 497 So. 2d 70 (Miss. 1986).

An indictment charging an election officer with reporting a false account of the votes received by candidates at a primary election charged a felony covered by this section, and the state was not required to proceed on a misdemeanor count under former § 23-5-161. *Fanning v. State*, 497 So. 2d 70 (Miss. 1986).

Sentence was neither excessive nor beyond the court's authority which required the defendant, who was convicted of a violation of this section, to serve 30 days in the county jail, perform 60 days of community work, pay costs of special election, and pay costs of trial, as conditions for the suspension of a one year sentence and 2 years of probation. *Fanning v. State*, 497 So. 2d 70 (Miss. 1986).

RESEARCH REFERENCES

Am Jur. 26 Am. Jur. 2d, Elections §§ 374 et seq.
CJS. 29 C.J.S., Elections §§ 323 et seq.

§ 97-13-21. Disturbing election.

If any person shall unlawfully disturb any election for any public office, such person shall be liable to indictment, and, on conviction, may be fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding six months, or both.

SOURCES: Codes, 1857, ch. 64, art. 72; 1871, § 2536; 1880, § 2771; 1892, § 1043; Laws, 1906, § 1121; Hemingway's 1917, § 847; Laws, 1930, § 872; Laws, 1942, § 2098.

CRIMES

§ 97-13-39

RESEARCH REFERENCES

Am Jur. 12	Am. Jur. 2d, Bribery §§ 1 et seq.	CJS. 11 C.J.S., Bribery §§ 1 et seq.	
26	Am. Jur. 2d, Elections § 376.	29 C.J.S., Elections §§ 332, 333.	See 97

§ 97-13-39. Intimidating elector to prevent voting.

If any person shall, by illegal force, or threats of force, prevent, or endeavor to prevent, any elector from giving his vote, he shall, upon conviction, be punished by imprisonment in the penitentiary for a term not exceeding two years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or both.

SOURCES: Codes, Hutchinson's 1848, ch. 64, art. 12, Title 6 (12); 1857, ch. 64, art. 80; 1871, § 2544; 1880, § 2779; 1892, § 1051; Laws, 1906, § 1129; Hemingway's 1917, § 855; Laws, 1930, § 880; Laws, 1942, § 2106.

Cross References — Intimidating elector to procure vote, see § 97-13-37.

RESEARCH REFERENCES

Am Jur. 26	Am. Jur. 2d, Elections § 376.	
CJS. 29	C.J.S., Elections § 333.	