

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

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

PLAINTIFFS

vs.

Case No.2014 - _____

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

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

The Plaintiffs, by and through undersigned counsel, state the following for their
Complaint for Injunctive and Declaratory Relief:

I. Introduction

1. This is an action for injunctive and declaratory relief brought by citizens and residents of Pulaski County and the State of Arkansas pursuant to the Arkansas Declaratory Judgment Act, Arkansas Code Annotated §§ 16-111-102, -103, and -104, challenging sections of Act 595 passed by the Arkansas General Assembly in 2013 (hereinafter "Act 595") that placed additional qualifications and impairments on Arkansas residents before they can exercise their State constitutional right to vote.

2. The Defendants named herein are named only in their official capacities and are named as the State Officials responsible for the implementation and enforcement of Act 595.

3. The Arkansas Constitution guarantees and ensures the residents of this State the right to vote. See Ark. Const., Art. 3, § 1. Section 1 of Article 3 provides that the only legal qualifications for a voter in Arkansas are that the voter 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.

4. The framers of the Arkansas Constitution, in order to guarantee and ensure that Arkansas residents are provided the constitutional right to vote, included in Section 2 of Article 3 of the Arkansas Constitution the following:

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.

5. The Arkansas Supreme Court has opined that laws that deprive qualified voters of Arkansas the right to vote are unconstitutional. See Rison v. Farr, 24 Ark. 161 (1865).

6. In 2013 the Arkansas General Assembly passed Act 595, attached as **Exhibit 1**, which places additional qualifications, restrictions, and impairments on the ability of the residents of Arkansas to vote. Specifically, Act 595 added an additional qualification for Arkansas residents in that Act 595 now mandates that Arkansas residents provide “proof of identity” at each and every election in order to cast a vote.

7. Because the unwarranted and unconstitutional provisions of Act 595 violate Article 3, Section 1, and Article 3, Section 2, of the Arkansas Constitution, the Plaintiffs seek equitable relief from this Court in the form of a declaration that certain portions of Act 595 are unconstitutional and an Order enjoining their enforcement.

II. Jurisdiction and Venue

8. This Court has subject matter jurisdiction pursuant to Arkansas Code Annotated § 16-111-102 and Arkansas Code Annotated § 16-111-103.

9. Venue lies in Pulaski County because the Plaintiffs reside here, the cause of action arose in Pulaski County, and the Defendants are officers and officials of the State. See Ark. Code Ann. §16-60-102 and § 16-60-103.

III. Parties

10. Plaintiff Freedom Kohls is a citizen of the United States of America, a resident of the State of Arkansas, over the age of 18, and is a resident of and registered to vote in Pulaski County, Arkansas. She has the desire to vote in the upcoming May primary election along with the November 2014 general election.

11. Plaintiff Toylanda Smith is a citizen of the United States of America, a resident of the State of Arkansas, over the age of 18, and is a resident of and registered to vote in Pulaski County, Arkansas. She has the desire to vote in the upcoming May primary election along with the November 2014 general election.

12. Plaintiff Joe Flakes is a citizen of the United States of America, a resident of the State of Arkansas, over the age of 18, and is a resident of and registered to vote

in Pulaski County, Arkansas. He has the desire to vote in the upcoming May primary election along with the November 2014 general election.

13. Plaintiff Barry Haas is a citizen of the United States of America, a resident of the State of Arkansas, over the age of 18, and is a resident of and registered to vote in Pulaski County, Arkansas. He has the desire to vote in the upcoming May primary election along with the November 2014 general election.

14. Separate Defendant Mark Martin is the Secretary of State for the State of Arkansas. In that capacity, he has been identified by the State of Arkansas as its “Chief Election Official” pursuant to Ark. Const. Amend. 51 (b)(1). Separate Defendant Martin holds himself and his office out as the following:

The Elections Division speaks to the very heart of our democratic government through the services they offer to citizens. In addition to maintaining the state’s election records, the department assists county officials with conducting federal, state and district elections. Helping to ensure compliance with federal election laws such as the National Voter Registration Act and the Help America Vote Act, the division plays a central role in establishing and maintaining Arkansas’s uniform statewide voter registration system and continues to help oversee training on the state’s electronic voting systems.

15. Separate Defendant Martin is also the Chair and Secretary of the Arkansas State Board of Election Commissioners. See Arkansas Code Annotated § 7-4-101. In that role, and pursuant to Arkansas Code Annotated § 7-4-101, Separate Defendant Martin is chairman of a State Board that, among other things:

- a. Is responsible for conducting statewide training for election officers and county election commissioners;
- b. Adopts all rules regarding training of election officers and county election commissioners;

c. Formulates, adopts, and promulgates all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures;

d. Investigates alleged violations, render findings, and impose disciplinary action according to § 7-4-118 for violations of election and voter registration laws, except as to § 7-1-103(a)(1)-(4), (6), and (7), and except for any matters relating to campaign finance and disclosure laws which the Arkansas Ethics Commission shall have the power and authority to enforce according to §§ 7-6-217 and 7-6-218.

16. In his dual capacity, Separate Defendant Martin regulates, implements, monitors and seeks to enforce the election laws for the State of Arkansas.

17. Separate Defendants Arkansas State Board of Election Commissioners, through the Commissioners, comprise a State entity that was established pursuant to Arkansas Code Annotated §§ 7-4-101, *et seq.*, and its Chairman and Secretary is Separate Defendant Martin. See Arkansas Code Annotated § 7-4-101(b).

18. Pursuant to Arkansas Code Annotated § 7-4-101, subsection (f), the Arkansas State Board of Election Commissioners, must, among other things:

- (2) Conduct statewide training for election officers and county election commissioners;
- (3) Adopt necessary rules regarding the training of election officers and county election commissioners;
- (4) Monitor all election law-related legislation;
- (5) Formulate, adopt, and promulgate all necessary rules to assure even and consistent application of voter registration laws and fair and orderly election procedures.

19. Separate Defendants Rhonda Cole, C.S. Walker, James Harmon Smith, III, Stuart Soffer, Barbara McBryde and Chad Pekron are the duly appointed and serving Commissioners of the Arkansas State Board of Election Commissioners and are named only in their official capacities (hereinafter referred to as “Separate Defendant Commissioners”).

IV. Act 595 of 2013

20. Act 595 of 2013 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, the Governor informed the Arkansas Senate that he was vetoing Senate Bill 2 because it “unnecessarily restricts and impairs our citizens’ right to vote.” The Governor’s veto was overridden first by the Arkansas Senate on March 27, 2013, and then by the Arkansas House of Representatives on April 1, 2013.

21. The language of Act 595 of 2013 provides that it is “AN ACT TO REQUIRE THAT A VOTER PROVIDE PROOF OF IDENTITY WHEN VOTING; TO PROVIDE FOR THE ISSUANCE OF A VOTER IDENTIFICATION CARD; AND FOR OTHER PURPOSES.” See **Exhibit 1**.

22. Act 595 mandates the amendment of various code sections to implement new qualifications for voters in the State of Arkansas and to provide obstacles for voters at the polling booth, including both at early voting locations, and on Election Day. One purpose of Act 595 was and is to place barriers between the ballot box and otherwise qualified Arkansas voters and prevents their ballots from being cast and/or counted.

23. The first requirement is found in Section 2 of Act 595 wherein Arkansas Code Annotated § 7-5-201 was amended to require:

(d)(1) Except as provided in subdivision (d)(2) and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present proof of identity to the election official when appearing to vote in person either early or at the polls on election day;

24. Section 6 of Act 595 also amended Arkansas Code Annotated § 7-5-418(c) to include the “proof of identity” requirement for qualified voters who desire to participate in early voting.

25. Section 1 of Act 595 provided the definition of “proof of identity” as:

- (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.

Section 1 also provided a list of acceptable documents that would meet the definition of “proof of identity”:

- (i) A driver's license;
- (ii) A photo identification card;
- (iii) A concealed handgun carry license;

- (iv) A United States passport;
- (v) An employee badge or identification document;
- (vi) A United States military identification document;
- (vii) A student identification card issued by an accredited postsecondary educational institution in the State of Arkansas;
- (viii) A public assistance identification card; and
- (ix) A voter identification card under § 7-5-322;

26. This “proof of identity” requirement is enforced pursuant to Section 4 of Act 595, wherein the Arkansas General Assembly amended Arkansas Code Annotated § 7-5-305, to mandate that the voter who is not able to provide proof of identity may only cast a provisional ballot and that the voter and the election officials must proceed according to Arkansas Code Annotated § 7-5-321. Likewise, Arkansas Code Annotated § 7-5-428(d) provides the same enforcement mechanism for voters who fail to provide “proof of identity” during early voting.

27. In Section 5 of Act 595 the Arkansas General Assembly added Arkansas Code Annotated § 7-5-321, wherein the voter who is not able to provide proof of identity may only (a) cast a provisional ballot and (b) is required to return to the County Board of Election Commissioner of the County Clerk by noon the Monday following the election and provide proof of identity or an affidavit that the voter is either “indigent” or has an religious objection to being photographed.

28. In addition to Act 595, Defendants have adopted additional rules that address and expand the new “proof of identity” requirement and has informed election officials that:

§ 801 Proof of Identity Required When Voting at the Polls

All 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.

A person who resides in a long-term care or residential care facility licensed by the state may instead provide documentation from the administrator of the facility attesting that the person is a resident of the facility in lieu of the requirement to present proof of identity before voting.¹

29. By their own rules, Defendants now place the unconstitutional burden on local election officials to not only demand a voter produce “proof of identity” but also, pursuant to § 802 Poll Worker Assessment of Validity of Proof of Identity, assess the “proof of identity” as follows:

- (1) Verify that the name on the proof of identity is consistent with the name in the Precinct Voter registration list, allowing for abbreviations and nicknames;

* * *

- (3) If 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;
- (4) If the poll worker is satisfied that the voter is the person depicted in the photograph and the name is consistent with the name in the Precinct Voter Registration List, then issue the voter a regular ballot;
- (5) If the voter’s name is different from the name in the Precinct Voter Registration List or the name as stated by the voter but the poll worker is satisfied that the voter is the person depicted in the photograph, issue the person a regular ballot after the voter completes a voter registration application form for the purpose of updating the voter’s information; and

¹See **Exhibit 2** - § 801 of the Emergency Rules for Voter Identification, Arkansas State Board of Election Commissioners, Effective January 1, 2014, Revised March 4, 2014 (emphasis added).

(6) 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.²

30. By its passage, the Arkansas General Assembly has added, pursuant to Act 595, new and unconstitutional qualifications for Arkansas residents to vote in the State of Arkansas in violation of Article 3, section 1, of the Arkansas Constitution.

31. By its passage, the Arkansas General Assembly has impaired, pursuant to Act 595, Arkansas residents' right to vote in violation of Article 3, section 2 of the Arkansas Constitution.

32. Plaintiffs hereby challenge the constitutionality of the "proof of identity" requirement and related provisions contained in Act 595.

V. Facts

33. Plaintiffs are at least eighteen years of age, citizens of the United States of America, residents of the State of Arkansas, and registered voters in Pulaski County, Arkansas.

34. Plaintiffs, with the exception of Separate Plaintiff Haas, do not have any form of photo identification that would satisfy the "proof of identity" requirement contained in Act 595.

35. Plaintiffs, with the exception of Separate Plaintiff Haas, do not have any form of photo identification that would satisfy the "proof of identity" requirement contained in Defendants' Emergency Rules for Voter Identification, Effective January 1, 2014, Revised March 4, 2014.

²See **Exhibit 2** - § 802 of the Emergency Rules for Voter Identification, Arkansas State Board of Election Commissioners, Effective January 1, 2014, Revised March 4, 2014.

36. Plaintiffs that do not have documentation that would satisfy the requirements for a “proof of identity” are similar to all other qualified Arkansas residents who do not possess such documentation. None of these otherwise qualified Arkansas residents would be allowed to vote under the provisions of Act 595.

37. In addition, Plaintiffs and otherwise qualified Arkansas residents would face financial and other burdens in having to obtain documentation that would allow them to meet the “proof of identity” requirements of Act 595 and financial and other burdens in having to meet the “cure” provisions under Arkansas Code Annotated 7-5-321.

38. Separate Plaintiff Haas has photo identification that would satisfy the “proof of identity” requirement contained in Act 595; however he has refused to provide “proof of identity” at a previous election held in Pulaski County in 2014. As a result of his refusal, Separate Plaintiff Haas was only allowed to mark a “provisional ballot” for the election; with said provisional ballot not being counted in the election results. As a result of Act 595, Separate Plaintiff Haas was denied his State constitutional right to vote as an Arkansas resident.

**COUNT 1 - Violations of Article 3, Section 1 of Arkansas Constitution
(Additional qualification)**

39. Paragraphs 1 through 38 are incorporated herein as if set out word for word.

40. Section 1 of Article 3 of the Arkansas Constitution provides the only legal qualifications for a voter in Arkansas:

- (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.

41. Section 2 of Act 595 amended Arkansas Code Annotated § 7-5-201 to include an additional qualification for a Arkansas resident to vote:

(d)(1) Except as provided in subdivision (d)(2) and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present proof of identity to the election official when appearing to vote in person either early or at the polls on election day;

42. Section 6 of Act 595 also amended Arkansas Code Annotated § 7-5-418(c) to include the “proof of identity” requirement for qualified Arkansas voters who desire to participate in early voting.

43. As Arkansas Code Annotated § 7-5-201 and § 7-5-418, pursuant to Act 595, now include an additional qualification of “proof of identity” for residents of Arkansas to vote, they are in conflict with Section 1 of Article 3 of the Arkansas Constitution and are, thus, unconstitutional.

44. As Arkansas Code Annotated § 7-5-321 also includes an additional qualification requiring residents of Arkansas without proof of identity to make a second trip to either their county board of election commissioners or their county clerk and swear by affidavit that they are too “indigent” to obtain or have other reasons why they do not have proof of identity, it is in conflict with Section 1 of Article 3 of the Arkansas Constitution and is, thus, unconstitutional.

45. As Arkansas Code Annotated § 7-5-201 and § 7-5-418 are unconstitutional for the reasons stated herein, so are Defendants’ Emergency Rules for

Voter Identification, Effective January 1, 2014, Revised March 4, 2014, that require voters to produce “proof of identity.”

**COUNT 2 - Violation of Article 3, Section 2 of Arkansas Constitution
(Impairment)**

46. Paragraphs 1 through 45 are incorporated herein as if set out word for word.

47. Section 2 of Article 3 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.

48. Section 2 of Act 595 amended Arkansas Code Annotated § 7-5-201 to require an additional qualification for an Arkansas resident to vote:

(d)(1) Except as provided in subdivision (d)(2) and subsection (e) of this section, any person desiring to vote in this state shall:

(A) Present proof of identity to the election official when appearing to vote in person either early or at the polls on election day;

49. Section 6 of Act 595 also amended Arkansas Code Annotated § 7-5-418(c) to include the “proof of identity” requirement for qualified Arkansans who desire to participate in early voting.

50. As Arkansas Code Annotated § 7-5-201 and § 7-5-418 now include an additional qualification of “proof of identity” for residents of Arkansas to vote, they are in conflict with Section 2 of Article 3 of the Arkansas Constitution and are, thus, unconstitutional.

51. As Arkansas Code Annotated § 7-5-321 also includes qualifications and impairments requiring residents of Arkansas without proof of identity to make a second trip to either their county board of election commissioners or their county clerk and swear by affidavit that they are too “indigent” to obtain or have other reasons why they do not have proof of identity, it is in conflict with Section 2 of Article 3 of the Arkansas Constitution and is, thus, unconstitutional

52. As Arkansas Code Annotated § 7-5-201, § 7-5-305, § 7-5-321, and § 7-5-418 now prohibit and/or impair the ability of Plaintiffs and other Arkansas residents to cast valid votes in Arkansas, they are in conflict with Section 2 of Article 3 of the Arkansas Constitution.

53. As Arkansas Code Annotated § 7-5-201, § 7-5-305, § 7-5-321, and § 7-5-428 are in conflict with Section 2 of Article 3 of the Arkansas Constitution, they are unconstitutional.

54. As the above Arkansas Code Annotated sections are unconstitutional for the reasons stated herein, so are the related provisions contained in Defendants’ Emergency Rules for Voter Identification, Effective January 1, 2014, Revised March 4, 2014.

RELIEF SOUGHT

55. As the “proof of identity” qualification and requirements contained in Act 595 are unconstitutional, Plaintiffs seek an Order from this Court seeking to prevent Defendants from enforcing any “proof of identity” requirements on Plaintiffs and all other Arkansas residents in all future elections, including the May 20, 2014, primary election and November 4, 2014, general election.

56. Plaintiffs request that this Court enter an Order declaring the “proof of identity” and related requirements in Act 595 to be unconstitutional, unenforceable, and invalid.

57. In turn, Plaintiffs request that this Court enter an Order declaring the “proof of identity” and related requirements contained in Defendants’ Emergency Rules for Voter Identification to be unconstitutional, unenforceable, and invalid.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Enter judgment in their favor on their Complaint in its entirety and against Defendants;
2. Declare the “proof of identity” and related requirements and qualifications contained in Act 535 to be unconstitutional and invalid under the Arkansas Constitution;
3. Award Plaintiffs all relief allowed by law and equity, including but not limited to declaratory, preliminary and permanent injunctive relief;
4. Award Plaintiffs’ attorneys’ fees and costs;
5. Award any other relief the Court deems proper.

Respectfully Submitted,

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ATTORNEYS FOR PLAINTIFFS

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

CERTIFICATE OF SERVICE ON THE ARKANSAS ATTORNEY GENERAL

I do hereby certify that pursuant to state law regarding constitutional challenges to the validity of legislative acts and statutes, the Attorney General of the State of Arkansas has been served a true and correct copy of the foregoing pleading via facsimile and U.S. Mail, postage pre-paid, this 16th day of April, 2014:

The Honorable Arkansas Attorney General
Office of the Arkansas Attorney General
State of Arkansas
323 Center Street, Suite 200
Little Rock, Arkansas 72201

Jeff Priebe