



SPLC
**Southern Poverty
Law Center**



October 31, 2022

Offices of County Supervisors
Offices of Election Commissioners
Offices of Circuit Clerks
State of Mississippi

Re: Your obligations regarding poll-sites and voter notification

Dear Supervisors, Commissioners, and Clerks:

Thank you for your service to Mississippi. We are writing to you regarding your obligation to ensure that all Mississippi voters have equal and fair access to the ballot in the 2022 election. Federal and Mississippi law require you to take certain steps regarding polling places and voter notification. This letter outlines steps you can take to ensure voters can access the information they need, cast ballots without needless obstacles, and avoid election administration issues. We urge you to read this letter, verify your compliance with all applicable legal rules, and implement the recommendations below. Doing so will help ensure that all Mississippians have equal access to vote.

1. We urge you not to make last-minute changes (or closures) to polling sites unless necessary to comply with federal law, including the Americans with Disabilities Act (ADA) and the Voting Rights Act (VRA).

Changing or closing a polling place on the eve of an election risks negative consequences for voters and raises several legal issues. Several legal hurdles must be cleared for County Boards of Supervisors to legally change a polling site within your jurisdiction. Accordingly, we urge you to refrain from making last-minute changes, except as is needed to ensure compliance with federal law, including the Americans with Disabilities Act (ADA)¹ and the Voting Rights Act (VRA).²

First, Mississippi law imposes several legal requirements before any polling sites may be altered. Substantively, Mississippi law constrains your ability to close or alter voting sites or boundaries; precincts are subject to strict rules with which changes to voting sites must comply.³ Regarding process, the Board

¹ The Americans with Disabilities Act, 42 U.S.C. § 12101(b)(1) “provid[es] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities,” including in polling places.

² The Voting Rights Act, 52 U.S.C. § 10301, provides that no “prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote,” and applying to polling sites, changes, or closures.

³ For example, Mississippi Code § 23-15-285 describes precinct population requirements and how changes to election rules including boundary changes implicate this and other strictures. Additional prohibitions apply for elections involving County Supervisors. For example, Mississippi Code § 23-15-285 states “[n]o change in any supervisors district, sub-precinct or voting precinct shall take effect less than thirty (30) days before the qualifying deadline for the office of county supervisor.” Mississippi Secretary of State’s Office, *2022 Candidate Qualifying Guide* (2022),

of Supervisors alone has authority to order a change, and only if that change does not fall within the scope of other prohibitions.⁴ Further, if the Board of Supervisors attempts to change a polling site, it must inform local election commissioners of that change.⁵ The Election Commissioners must also ensure information about changed polling locations is updated in the State Election Management System (SEMS) database—and Commissioners must complete those updates *immediately*.⁶ The county Circuit Clerk must maintain copies of any changes, and the Clerk must make changes available to the public.⁷

Second, last-minute changes to polling places must comply with the VRA.⁸ Under the VRA, all election procedures, including actions related to poll sites, must preserve “equal openness” for all members of the electorate.⁹ Local officials may not take any actions, including closing or changing polling locations, that result in the abridgment of the right to vote.¹⁰ Closing or relocating polling sites on the eve of an election risks violating the VRA.¹¹ The United States Constitution also prohibits making changes in an intentionally discriminatory manner.¹² But even well-intentioned poll closures are not permitted if they have the *effect* of violating the “equal openness” standard under federal law.¹³ Put bluntly, acting in good faith is not enough—you must affirmatively verify that changes are not negatively impacting a protected group.

Even further, polling sites must comply with the ADA which requires that polling locations are equally accessible to people with disabilities.¹⁴ Last-minute changes away from accessible locations may result in inadequate access for those who require accommodation. Recent Justice Department guidance provides extensive information regarding ADA compliance.¹⁵ These include adequate parking, wheelchair

https://www.sos.ms.gov/content/documents/elections/candidate%20qualifying/2022%20Candidate%20Qualifying%20Guide_FINAL.pdf (describing deadlines).

⁴ Miss. Code Ann. § 23-15-283(1).

⁵ Miss. Code Ann. § 23-15-283(1) (“If the board of supervisors orders a change [] they shall notify the election commissioners who shall at once cause [the State Election Management System] to conform to the change”).

⁶ Miss. Code Ann. § 23-15-283(1) (“Election Commissioners [] shall at once cause the voter rolls as electronically maintained by [SEMS]” to reflect the change).

⁷ Miss. Code Ann. § 23-15-283(4) (“Copies of any [] changes within the county shall be maintained in the office of the circuit clerk and made available for public inspection.”).

⁸ The Voting Rights Act, 52 U.S.C. § 10301.

⁹ 52 U.S.C. § 10301(2)(b) (“[A] violation is established if . . . the political processes . . . are not equally open to participation”); *see also Brnovich v. DNC*, 142 S. Ct. 2321, 2338 (2021) (“equal openness remains the touchstone,” and the VRA may be implicated by “any circumstance that has a logical bearing on whether voting is equally open,” including polling site locations and closures).

¹⁰ 52 U.S.C. § 10301.

¹¹ For example, see *Rangel-Lopez v. Cox*, 344 F. Supp. 3d 1285 (D. Kan. 2018) (involving a lawsuit against election officials for a decision to move a poll site to a new location, and evaluating if that decision served the public interest). Further, courts themselves repeatedly express concerns regarding last-minute election changes and the risk of voter confusion and disenfranchisement; *Purcell v. Gonzalez*, 549 U.S. 1 (2006); *Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020).

¹² U.S. CONST. amend. XIV (prohibiting intentional discrimination and securing due process and equal protection); *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-67 (1977) (describing prohibition on intentional discrimination); *NAACP v. McCrory*, 831 F.3d 204, 227 (4th Cir. 2016) (finding a departure from the normal sequence of events signaled discriminatory intent in the election process).

¹³ The VRA prohibits election practices which “result” in an abridgement of the franchise and not merely those intended to do so. 52 U.S.C. § 10301.

¹⁴ 42 U.S.C. § 12101(b)(1).

¹⁵ Department of Justice, *Justice Department Issues Updated Guidance on the Americans with Disabilities Act Checklist for Polling Places* (July 1, 2016), <https://www.justice.gov/archives/opa/blog/justice-department-issues-updated-guidance-americans-disabilities-act-checklist-polling>.

access, and signage. Existing sites *must* comply with these rules (or be changed), and last-minute changes risk ADA-related oversights.

We strongly suggest notifying the public about all changes on public websites and social media. Doing so will assure stakeholders that your jurisdiction is fully compliant with the law.

2. Local officials must *immediately* report changes to polling sites in SEMS under state law.

Any changes to poll sites by the Board of Supervisors *must* be reported.¹⁶ The Board of Supervisors *must* report changes to the Secretary of State under Mississippi Code § 23-15-283(1).¹⁷ And that report must include a legal (detailed) description of the change.¹⁸ Further, this information *must* be updated in SEMS immediately.¹⁹ No polling site may be changed unless these requirements are met.²⁰

Update polling locations in SEMS. State Election Commissioners are specifically responsible for submitting updates to SEMS regarding polling locations.²¹ Commissioners must do so *immediately*.²² Under Mississippi law, Election Commissioners are responsible for electronically maintaining the voter rolls in the SEMS database and must update the rolls to reflect changes.²³ Commissioners may update that data themselves. Only with authorization from Supervisors may Clerks or other designees update SEMS data,²⁴ and even then, only officials who have completed state-mandated training may do so.²⁵ To be clear, Election Commissioners are ultimately responsible for ensuring that updates occur. Without accurate reporting, the Secretary's poll locator will contain inaccurate information, and thousands of Mississippians rely on the poll locator to identify their polling location. Compliance is critical, so no matter your office, please be proactive.

Report changes to the Secretary of State. The Board of Supervisors is statutorily obligated to notify the Office of the Secretary of State of any changes to polling sites.²⁶ This notice must include a legal description and a map of any new polling locations.²⁷ Again, reporting is critical even if the Secretary does not reach out directly to request this information. Be proactive.

¹⁶ Miss. Code Ann. § 23-15-283(1) (providing that the Board of Supervisors has the authority to “alter the boundaries of the supervisors districts, voting precincts, sub-precincts *and the voting place therein.*” (emphasis added)).

¹⁷ Miss. Code § 23-15-283(1) (“Upon the order of change in the boundaries of any voting precinct *or the voting place therein*, the board of supervisors *shall notify the Office of the Secretary of State* and provide the Office of the Secretary of State a legal description and a map of any boundary change.”) (emphasis added.).

¹⁸ *Id.*

¹⁹ Miss. Code Ann. § 23-15-283(1) (“If the board of supervisors orders a change [] they shall notify the election commissioners, who shall at once cause the voter rolls as electronically maintained by the Statewide Elections Management System of voting precincts affected by the order to be changed to conform to the change” and upon changes to “any voting precinct or the voting place therein, the board of supervisors shall notify the Office of the Secretary of State and provide the Office of the Secretary of State a legal description and a map of any boundary change.”).

²⁰ Miss. Code Ann. § 23-15-283(1)-(3).

²¹ Miss. Code Ann. § 23-15-283(1).

²² *Id.* (requiring reporting “at once”).

²³ *Id.*

²⁴ Miss. Code Ann. § 23-15-283(2) (noting that training and certification are available to the circuit clerk, county election commissioners, or anyone else designated by the board or supervisors to be responsible for updating the system).

²⁵ *Id.*

²⁶ Miss. Code Ann. § 23-15-283(1).

²⁷ *Id.*

Mississippi law clearly says that no polling place changes may be implemented unless the requirements above are met.²⁸ Failing to do so will result in needless confusion and the disenfranchisement of Mississippians. Non-compliance was a significant issue in the 2020 general election, impacting over 65,000 Mississippians,²⁹ and continued to be a problem through the 2022 primary elections.³⁰

3. Officials have an obligation to provide notice to voters about any changes to polling sites.

Fair and open elections require robust notice to voters regarding changes to their voting location. Notice is required under law.³¹ Notice is also required by the Secretary of State.³² And any changes should immediately be reported to the voters affected by the change.³³ This is part of your duty to ensure that voters receive accurate information. In particular, notice should involve:

- Notice in traditional media outlets. At a minimum, adequate notice should involve publication in media sources, including county websites and social media accounts. It should also include traditional media sources like local television, radio, and newspaper.
- Notice to all voters by phone and mail. Election Commissioners should conduct outreach to all affected voters by telephone. Telephone outreach may include a phone call, an automated text, or an automated robo-call that leaves a message with the necessary information. We recommend *all* election commissioners complete this outreach, even if no changes have been made to polling sites.
- Signage at old polling sites. The Secretary of State has directed local officials to place clear signage at old polling places to alert people where to vote.³⁴ We also recommend dispatching volunteers or

²⁸ Miss. Code Ann. § 23-15-282(1)-(3).

²⁹ Ashton Pittman, *Mississippi Officials Moved Three Times More Polling Places Than Reported for 65,000 Voters*, MISS. FREE PRESS (Oct. 31, 2020), <https://www.mississippifreepress.org/6577/mississippi-officials-moved-three-times-more-polling-places-than-reported-for-65000-voters/>.

³⁰ Ashton Pittman & William Pittman, *Mississippi Election Officials Made 70 Polling Place Changes Since 2020*, MPF Finds, MISS. FREE PRESS (June 3, 2022), <https://www.mississippifreepress.org/24350/mississippi-electionofficials-made-70-polling-place-changes-since-2020-mfp-finds> (describing continued noncompliance and misinformation).

³¹ See Miss. Code Ann. § 23-15-285 (regarding notice of election changes made by Supervisors); Miss. Code Ann. § 23-15-255(2)(e) (regarding general voting rights information); Op. Atty. Gen. No. 94-0249, 1994 WL 241037 (Miss. A.G. May 25, 1994) (regarding Election Commissioner notification requirements involving precinct changes); see also 52 U.S.C. § 10301 (prohibiting “practices” including inadequate notice that “result[] in a denial or abridgement of the right of any citizen of the United States to vote” under a totality of circumstances analysis).

³² The Secretary of State himself confirmed this requirement. Ashton Pittman, *Mississippi Officials Moved Three Times More Polling Places Than Reported for 65,000 Voters*, MISS. FREE PRESS (Oct. 31, 2020), <https://www.mississippifreepress.org/6577/mississippi-officials-moved-three-times-more-polling-places-than-reported-for-65000-voters/> (“The Board of Supervisors (in each county) choose where the precincts are located. Once they do that, they are supposed to mail out or notify their voters,’ [Secretary Watson] said. ‘But also, if a precinct moves, they need to make sure there is clear notice at the old precinct, so if someone shows up, they know where to go. Make sure you’re talking to your circuit clerks and your commissioners and the secretary of state’s office.’”)

³³ Op. Atty. Gen. No. 94-0249, 1994 WL 241037 (Miss. A.G. May 25, 1994) (concluding that Election Commissioners should notify voters “of the [precinct] change so he will know that he is to vote at the polling place of the precinct where he resides”); 52 U.S.C. § 10301 (regarding “practices” including notice that “result[] in a denial or abridgement of the right of any citizen of the United States to vote” under a totality of circumstances analysis).

³⁴ Ashton Pittman, *Mississippi Officials Moved Three Times More Polling Places Than Reported for 65,000 Voters*, MISS. FREE PRESS (Oct. 31, 2020) (quoting the Secretary of State who affirmed that “the Board of Supervisors (in each county) choose where the precincts are located . . . [and] if a precinct moves, they need to make sure there is

employees in-person to old sites to personally redirect voters. This is especially important at high-traffic times, such as when the polls open in the morning and from the end of the work day until the polls close in the evening.

- Publication in meeting minutes. Under state law, the Board of Supervisors must record any changes to voting places in the minutes of the next board meeting.³⁵ These notices must be made “as soon as practicable,” and they must be “easily understood” in the minutes.³⁶

4. This matter is urgent.

Leading up to the June 2022 Primary Elections, not all polling site changes were reflected in SEMS, and some changes in SEMS were incorrect.³⁷ Because Mississippi lacks early voting and voters are only allowed to vote at their designated precinct’s polling place, failure to implement adequate notice of any changes could result in denying Mississippians equal and adequate access to the vote.³⁸ Noncompliance with the law, in short, is not an option.

These laws and recommendations are designed to assist you in serving the citizens of Mississippi and fulfilling your duty to ensure access to a fair voting process. Adopting these recommendations can avoid needless confusion and disenfranchisement and limit unintended consequences resulting from any last-minute and potentially unlawful burdens on voting. We hope this will help you serve Mississippians.

We welcome the opportunity to discuss this pressing matter ahead of the November 2022 elections. Please feel free to contact Tanner Lockhead (tlockhead@naacpldf.org) with any further questions or for assistance.

clear notice at the old precinct, so if someone shows up, they know where to go.”). *See also* Miss. Code Ann. § 23-15-255(2)(e) which requires every poll manager to post general information about voting rights, including information on who to contact if a voter’s rights have been violated.

³⁵ Miss. Code Ann § 23-15-285 (“[A]s soon as practicable after any change is made in any . . . voting place, the board of supervisors shall . . . enter [the change] on the minutes of the board in such manner as to be easily be understood.”).

³⁶ *Id.*

³⁷ Ashton Pittman & William Pittman, *Mississippi Election Officials Made 70 Polling Place Changes Since 2020, MPF Finds*, MISS. FREE PRESS (June 3, 2022), <https://www.mississippifreepress.org/24350/mississippi-election-officials-made-70-polling-place-changes-since-2020-mfp-finds> (describing changes in polling places from the 2020 election).

³⁸ Black voters and disabled voters are particularly impacted by such changes. Ashton Pittman & William Pittman, *Madison County Moves 2,000 Black, Hispanic Voters to Crowded Precinct with Little Warning*, MISS. FREE PRESS (Oct. 29, 2020), <https://www.mississippifreepress.org/6492/madison-countymoves-2000-black-hispanic-voters-to-crowded-precinct-with-little-warning> (describing disproportionate impact of voting site changes on communities of color in Mississippi); Robert McDuff, *The Voting Rights Act and Mississippi*, 17 REV. L. & SOC. JUST. 475, 480 (2008) (describing a broader history of discrimination in voting, including through discriminatory changes in polling locations); Maggie Astor, *We Don’t Have a Voice Anymore*, N.Y. TIMES (June 14, 2021), <https://www.nytimes.com/2021/06/14/us/politics/disability-voting-rights.html> (detailing the ways disabled voters are prevented from exercising their right to vote due to voter suppression tactics).

Sincerely,

/s / Tanner Lockheed

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NAACP Legal Defense and Educational Fund, Inc. (“LDF”)

Since its founding in 1940, LDF has used litigation, policy advocacy, public education, and community organizing strategies to achieve racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. Throughout its history, LDF has worked to enforce and promote laws and policies that prohibit voter discrimination, intimidation, and suppression and increase access to the electoral process.

Co-signed by:

Mississippi Center for Justice

Mississippi Center for Justice is a nonprofit, public interest law firm committed to advancing racial and economic justice. Supported and staffed by attorneys and other professions, the Center develops and pursues strategies to combat discrimination and poverty statewide.

Disability Rights Mississippi

Our mission is to promote, protect, and advocate for the legal and human rights of all people with disabilities, and to assist them with full inclusion in home, community, education, and employment. Since 1982, Disability Rights Mississippi has provided advocacy services to people with disabilities. Our agency has helped improve the lives of thousands of lives within our state's most vulnerable population by championing their rights.

ACLU of Mississippi

The ACLU of Mississippi is dedicated to promoting, defending, and extending civil rights and civil liberties to all Mississippians with emphasis on issues related to criminal justice reform, education opportunities, equal access/equality for all, voting rights, and governmental transparency and accountability. We accomplish our mission through legislation, litigation and advocacy.

Mississippi State Conference – NAACP

The vision of the NAACP is to ensure a society in which all individuals have equal rights and there is no racial hatred or racial discrimination. The mission of the NAACP is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The Mississippi State Conference was on the forefront of all the major battles of the civil rights movement in Mississippi during the '50s, '60s, and '70s through and collaborating with other civil rights organizations to organize demonstrations, protests, selective buying campaigns, sit-ins, marches, and legal action, all aimed at securing equal rights under law for *all* citizens of the state.

One Voice

One Voice has played a pivotal role in building alliances that transcend organizational and racial boundaries. One voice grew out of the work undertaken by the Mississippi State Conference of the NAACP in response to housing, education, civil rights, and other policy needs facing historically disadvantaged communities in the wake of the 2005 hurricanes. We work to address the significant need for data that supports effective policy analysis, and to build connections between local leadership and community-based structures to sustain broad public involvement and address community needs.

Mississippi Black Women's Roundtable

Mississippi Black Women's Roundtable (MS-BWR) is an intergenerational civic engagement statewide network and the women and girls' empowerment arm of the National Coalition on Black Civic Participation (NCBCP) that champions equitable public policy on behalf of Black women and girls nationally and across the South.

Southern Poverty Law Center

The SPLC is a catalyst for racial justice in the South and beyond, working in partnership with communities to dismantle white supremacy, strengthen intersectional movements, and advance the human rights of all people.