

APR 19 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS

JAMES W. McCORMACK, CLERK  
By: *[Signature]* DEP. CLERK

UNITED STATES OF AMERICA, )  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PULASKI COUNTY; CAROLYN STALEY, in )  
 her official capacity as Pulaski )  
 County Circuit-County Clerk; )  
 JERRY LARKOWSKI, in his official )  
 capacity as Chair of the Pulaski )  
 County Board of Election )  
 Commissioners; SALLY STEVENS and )  
 CHARLES KING, in their official )  
 capacities as members of the )  
 Pulaski County Board of Election )  
 Commissioners; and the PULASKI )  
 COUNTY BOARD OF ELECTION )  
 COMMISSIONERS, )  
 )  
 Defendants. )

CIVIL ACTION NO.  
**4-04-CV-389 SWW**

CONSENT ORDER

The United States of America initiated this action on April 16, 2004, pursuant to the National Voter Registration Act of 1993 ("the NVRA"), 42 U.S.C. 1973gg et seq., and 28 U.S.C. 2201, against Pulaski County, the Pulaski County Board of Election Commissioners, and Carolyn Staley, Jerry Larkowski, Sally Stevens, and Charles King in their official capacities (collectively "Defendants"). The Complaint alleges violations of the NVRA from Defendants' voter registration practices and procedures for elections for Federal office.

The United States and Defendants, through their counsel, have conferred in good faith and have agreed to resolve this matter without further litigation. Accordingly, they have agreed to the entry of this Consent Order as an appropriate resolution of the claims alleged in the Complaint. While the Defendants do not contest that there exists a sufficient factual basis for the entry of this Consent Order, they do not admit liability and agree to a settlement of this cause of action for the purpose of avoiding the expense of litigation.

This Consent Order establishes requirements in four general areas: the processing of voter registration applications; registration list maintenance procedures; pre-election activities; and election-day activities. This Consent Order requires Defendants to take specific corrective actions with regard to the voter registration rolls and in the conduct of the 2004 and 2006 Federal elections to comply with the NVRA. The Consent Order also requires Defendants to develop and implement uniform and nondiscriminatory rules and policies governing the maintenance of an accurate and current voter registration roll for elections for Federal office that are in compliance with the Voting Rights Act of 1965, 42 U.S.C. 1973 et seq., and the NVRA. These requirements are necessary to ensure that Pulaski County will achieve and maintain compliance with Federal law during the

2004 and 2006 Federal elections.

The Court has considered the Consent Order filed by the parties. The Court finds the terms of the Consent Order fair and reasonable. Therefore, it is hereby ORDERED that Defendants and their successors in office, agents, and all persons acting on their behalf, shall implement the terms of this Consent Order as follows:

A. VOTER REGISTRATION AND LIST MAINTENANCE PROCEDURES

1. Defendant Staley shall, consistent with the requirements of Section 8 of the NVRA, as clarified by Section 903 of the Help America Vote Act of 2002, ensure that all completed applications for voter registration received not later than 30 days before the date of an election for Federal office are processed in a timely manner so eligible applicants are registered to vote for that election. Defendant Staley shall ensure that each newly registered voter's name, residential address, and eligibility to vote are accurately recorded; that each newly registered voter is assigned to the correct voting precinct and election districts based upon the voter's residential address of record; and that each newly registered voter is listed on the voter rolls of the correct precinct during absentee voting, early voting, and on election day.

2. Defendant Staley shall not remove the name of a

registrant from the official list of eligible voters except (a) at the request of the registrant; (b) as provided by State law by reason of criminal conviction or mental incapacity; or (c) as provided in this Consent Order, which implements Section 8 of the NVRA.

3. Defendant Staley shall conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official list of eligible voters by reason of the death of the registrant or a change of address of the registrant.

4. On or before April 30, 2004, Defendant Staley shall provide to the United States a list of all registered voters currently designated as inactive, and a list of all voters who have been removed from voter registration rolls since January 1, 1996, by reason of a change of address of the registrant. In the absence of any objection by the United States within two weeks after receipt, Defendant Staley shall employ this list as provided below in Paragraphs Five through Ten. Any objection by the United States shall be resolved as provided in Paragraph 24 below.

5. On or before April 30, 2005, Defendant Staley shall mail to all persons identified pursuant to Paragraph Four who prior to December 31, 2003 were designated inactive or had been removed from the rolls by reason of change of address as having

been removed from the rolls by reason of change of address a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address. All address confirmation cards shall provide notices that:

- a) if the registrant did not change his or her residence, or changed residence but remains in Pulaski County, the registrant should return the card not later than 30 days before the next scheduled election for Federal office;
- b) if the card is not returned, affirmation or confirmation of the registrant's address in Pulaski County may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters; and
- c) if the registrant has changed residence to a place outside Pulaski County, inform the registrant how he or she can remain eligible to vote.

6. Defendants may mail address confirmation notices to active voters for whom there is reason to believe there has been a change of address, subject to the same requirements as provided in Paragraph Five.

7. On or before April 30, 2004, Defendants shall restore to the voter rolls any registered voters who have been removed by reason of a change of address of the registrant since January 1,

1996, except those voters who a) have made a written request to be removed; b) have responded in person that they no longer reside in Pulaski County; or c) for whom the Defendants have received other written documentation showing that the voter is no longer eligible to vote under applicable State law in Pulaski County. Defendants may designate such restored voters as inactive.

8. During the pendency of this decree, Defendant Staley shall not remove any registered voters from the voter rolls on the ground that the registrant has changed residence, unless:

- a) the registrant confirms in person or in writing that the registrant has changed residence to a place outside the registrar's jurisdiction;
- b) Defendant Staley receives notice of registration from the registrar in another county or state; or
- c) the voter has failed to:
  - (1) respond to an address confirmation mailing described in Paragraph Five or Six that conforms to Section 8(d)(2) of the NVRA; and
  - (2) vote in two federal elections.

9. With respect to registered voters who have changed their addresses within Pulaski County, the registrar shall correct the voting registration list as provided by the procedures set forth in Section 8(f) of the NVRA, and such registrants' names may not be removed from the official list of

eligible voters by reason of such a change of address except as provided in subsection (d), 42 U.S.C. 1973gg-6(d).

10. On or before April 30, 2004, Defendant Staley shall provide to the United States an accurate street maintenance listing showing the correlation between voting precincts and address ranges within Pulaski County. This listing shall be used to assign registered voters to the correct voting precincts and election districts based upon their street address. Any objection by the United States shall be resolved as provided in Paragraph 24 below. In the absence of any objection by the United States within two weeks after receipt, Defendant Staley shall continue to employ the street maintenance listing, and keep it updated to reflect changes in precinct boundaries and street addresses, during the pendency of this Consent Order. The Defendants shall make any data processing consultants used for this purpose available to the United States.

11. On or before April 23, 2004, Defendant Staley shall provide to the United States a proposed set of uniform written rules and policies governing the following:

- a) the provision and processing of applications for voter registration for Federal office, consistent with the requirements of Section 8(a) of the NVRA, 42 U.S.C. 1973gg-6(a);
- b) the removal of the names of ineligible voters by reason of a change in the residence or death of the

registrant;

- c) the removal of the names of ineligible voters as provided by State law by reason of criminal conviction or mental incapacity;
- d) the prompt updating of voter registration records to reflect any changes made on address affirmation forms on election day;
- e) the prompt updating of voter registration records to designate as active any inactive voter whom the Clerk determines to be eligible to cast a ballot as the result of information provided by the voter, contact by an election judge, the voter's completed [address affirmation form], or the voter's change-of-address form; and
- f) the prompt assignment of accurate election districts and voting precinct information to voter registration records, including any necessary updating based on voters' change of address within the county or changes in precinct boundaries due to redistricting.

Such procedures shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965, 42 U.S.C. 1973 et seq. Any objection by the United States shall be resolved as provided in Paragraph 24 below. In the absence of any objection filed by the United States not later than May 7, 2004, Defendants shall thereafter adhere to the agreed rules and policies during the pendency of the this Consent Order. Within two weeks after agreement by the United States, Defendants shall provide in-person training in such rules and policies for all agents, employees and representatives of the Defendants responsible for voter list maintenance and the processing of voter registration



applications.

B. PRE-ELECTION PROCEDURES

12. After January 1, 2004, Defendant Staley mailed voter registration cards to all active voters in the voter registration database. On or before May 4, 2004, Defendant Staley shall mail a voter registration card containing accurate voting precinct and election district information to each inactive registered voter in Pulaski County who has not responded to the address confirmation mailout by returning the pre-addressed card and whose card did not come back undeliverable, and to any active voter whose polling site has changed after January 1, 2004.

13. Defendants shall conduct a media campaign to encourage county residents to verify their address of record in the voter registration database, make any necessary corrections, and verify their polling place location, prior to the day of the election. At least once during the period 45 to 60 days prior to each Federal election, and at least once within the period between seven and ten days prior to each such election, Defendants shall issue announcements pursuant to Paragraphs 14 and 15 containing the following information:

- a) voters who have changed residences within Pulaski County since 1996 need to notify the Clerk so that their registration records can be updated;
- b) voters who have not received a voter registration card

from the Clerk within five (5) days before an election:

- 1) may have an incorrect address listed on the roll and may be removed from the voter rolls if they do not appear to vote in two consecutive federal general elections;
  - 2) need to contact the Clerk before election day to verify whether their voter registration status remains active and address is correct; and
  - 3) will be required to complete additional administrative steps prior to casting a ballot on election day if they are designated as inactive, or if their address is incorrect;
- c) voters may access a "polling place lookup" feature to identify their assigned polling place via a website and by a telephonic, automated voice recognition system, as provided in Paragraph 16 below.

14. Defendants shall issue the announcements described in Paragraph 13 in the print and radio media, including but not limited to the Arkansas Democrat-Gazette, as well as on at least two local area radio stations at peak times.

15. Defendants shall post the notices described in Paragraph 14 in a permanent, conspicuous location on the Circuit-County Clerk's Internet website:

<http://www.co.pulaski.ar.us/d0200p01.htm>.

16. Defendants shall make available on Pulaski County's website (either through the Clerk's Office or through the Election Commission) a "polling place lookup" feature whereby residents may identify their assigned polling place location

based upon their residential street address. The website shall provide this feature continuously other than for routine maintenance, and shall be made available prior to the May 2004 primary, or as soon thereafter as is practicable not later than October 1, 2004. Defendants shall ensure the functionality of the polling place lookup feature on the Pulaski County website and shall provide and/or secure all necessary authority and resources to do so. This provision will be deemed to have been met if the Secretary of State provides this service on the State website and the Pulaski County website provides a link to the State's website. Defendant Staley will also make available a telephonic, automated voice recognition system whereby voters may ascertain their polling place.

C. ELECTION DAY PROCEDURES

17. Defendant Election Commissioners shall provide election judges in each precinct with the tools necessary to determine the proper voting location for each voter (hereinafter "Polling Place Locator").

18. Defendant Election Commissioners shall ensure that the election judges in each voting precinct have ready access to a working telephone (either land-line or cellular).

19. When a voter appears at a precinct and is not listed on the precinct roster of active voters, an election judge shall

contact the Clerk to ascertain whether that voter is registered and eligible to vote. The election judge shall also confirm with either the Clerk or the polling place locator that the voter is in the correct precinct. The election judge shall then proceed as follows:

- a) If the person is registered and in the correct precinct, the voter shall be permitted to vote in the same manner as all other voters.
- b) If the person is registered and in an incorrect precinct, the election judge shall direct the voter to his or her correct polling place, and shall offer the person, in the alternative, the opportunity to cast a provisional ballot to the extent that such practice is allowed under Arkansas revised statutes Section 7-5-306 (provisional voting).
- c) If the person is registered and in the correct precinct but the record for that voter reflects an outdated or incorrect address, the election judge shall offer the voter the opportunity to correct his or her address of record, and to cast a ballot in the same manner as all other voters.
- d) If the election judge cannot confirm either the voter's eligibility or polling place, the election judge shall offer the person the opportunity to cast a provisional ballot to the extent that such practice is allowed under Arkansas revised statutes Section 7-5-306 (provisional voting), or to appear in person at the Board of Election Commissioners.

20. During each election Defendants shall record the number and the nature of phone calls from election judges and citizens that were processed by Defendants or their staff; the number of inactive voters who were authorized to vote on election day; the number of persons who requested but were not given authority to

vote; the number of persons who cast provisional ballots; and the number of active voters who were directed by election judges to alternate precincts on election day. These records shall be made available to any party to this action upon request.

21. Defendants shall ensure that the procedures and policies described above are implemented by preparing training manuals and election forms, distributing such manuals and forms to all election judges, and training all election judges in the procedures. At least 14 days before distributing these materials, Defendants shall provide an advance copy to counsel for the United States in order to ensure that such materials are in compliance with the terms of this Consent Order. Counsel for the United States shall communicate any concerns to the Defendants within seven days of receiving the materials. If no concerns are raised, the materials shall be deemed to meet the terms of this Consent Order.

22. Defendants shall permit attorneys from the United States Department of Justice to monitor voting procedures inside polling places and inside the Clerk's office during elections in Pulaski County. Defendants shall further permit Department of Justice attorneys to observe the training of election judges prior to elections.

23. The United States and the Defendants shall confer

during the Defendants' development of the written procedures required by Paragraph 12 as necessary to ensure that potential disagreements are minimized. If, despite the parties' best efforts, the United States objects to one or more aspects of the specified proposed procedures, the parties agree that the matter may be submitted by motion to the Court for referral to a federal magistrate or for such other resolution as the Court may deem appropriate. In any matter requiring its approval under this Consent Order, the United States shall not unreasonably withhold any such approval.

24. The terms of this Consent Order are intended by the parties to address the particular circumstances present in this case and do not necessarily represent the procedures required by the NVRA in other cases and circumstances. The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Consent Order shall not be construed so as to create such status. The rights, duties, and obligations contained in this Consent Order shall operate only between the parties to the Order, and shall inure solely to the benefit of the parties to the Order. This Order is not intended to impair or expand the right of any person or organization to seek relief against the County for its conduct or the conduct of county employees or agents; accordingly, it does not alter legal

standards governing any such claims.

25. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary to ensure compliance with the NVRA by the Defendants. Substantial compliance with each term of the Order shall fully satisfy the Consent Order. The burden shall be on the Defendants to demonstrate that they are in substantial compliance with each of the provisions of the Order. The dismissal of this case shall be conditioned upon the county's achieving substantial compliance with the entire Order and maintaining compliance through the 2006 Federal Election.

26. Defendant Pulaski County shall not unreasonably withhold contracting approval or unreasonably refuse to appropriate the funds necessary to implement this Order. All state and county purchasing laws shall apply to any contracts that are entered.

27. This Order shall be applicable to and binding upon all parties, their officers, agents, employees, assigns, and their successors in office, all in their official capacities.

Entered this 19<sup>th</sup> day of April, 2004.

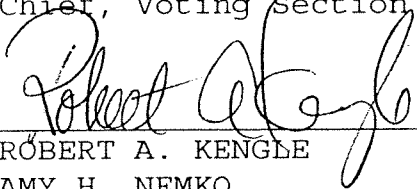
  
United States District Judge

AGREED AND CONSENTED TO:


On behalf of plaintiff  
UNITED STATES OF AMERICA:

R. ALEXANDER ACOSTA  
Assistant Attorney General  
Civil Rights Division

JOSEPH D. RICH  
Chief, Voting Section

  
ROBERT A. KENGLER  
AMY H. NEMKO  
ABEL GOMEZ  
Attorneys, Voting Section  
Civil Rights Division  
Department of Justice  
950 Pennsylvania Avenue, NW  
Room 7254, NWB  
Washington, D.C. 20035-6128  
(202) 514-3232 (telephone)  
(202) 307-3961 (facsimile)

On behalf of Defendants:  
PULASKI COUNTY Et al.

  
KARLA BURNETT  
County Attorney  
Pulaski County  
201 South Broadway, Suite 400  
Little Rock, Arkansas 72201  
(501) 340-8285 (telephone)

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ON 4-20-04 BY vt