

ROSE, JONES, RAND & ORCUTT, P. A.

ATTORNEYS AT LAW  
FIRST UNION NATIONAL BANK BUILDING  
P. O. DRAWER 2008  
WILSON, NORTH CAROLINA 27893

Z. HARDY ROSE  
BOBBY F. JONES  
WILLIAM R. RAND  
DAVID S. ORCUTT  
REBECCA W. GILES

July 23, 1981

WILLIAM A. LUCAS (1881-1967)  
OLIVER C. RAND (1895-1967)

TELEPHONE 291-3848  
AREA CODE 919

Mr. Michael Goldstein  
U. S. Commission on Civil Rights  
Washington, D. C. 20425

Dear Mr. Goldstein:

By letter dated June 22, 1981, the City of Wilson was served with a letter and other material from your office relating to the report on the Voting Rights Act of 1965, which report is being prepared by your office. By letter of Caroline Davis Gleiter dated July 7, 1981, the City of Wilson was granted an extension for receipt of the verified answer until July 27, 1981. We are enclosing that answer.

I call your attention to the fact that one of our city councilmen, A. P. Coleman, was out of town during the week and in view of the fact that your office placed a deadline on us, we were unable to obtain his signature. However, we do have the signatures of all other members of council and the mayor himself. Mr. Coleman will be in the office on July 27, 1981, and at that time he will review the response and we will advise you as to whether or not he agrees with the response or disagrees with the response. I call your attention to the fact that it has been signed by the Mayor of the City of Wilson, and has been adopted by five out of the six individual councilmen for the City of Wilson.

If you have any questions, please let us know.

Sincerely,

ROSE, JONES, RAND & ORCUTT, P. A.

By

  
Bobby F. Jones

BFJ:mm

Enclosure

NOTE: Other materials submitted with this verified answer  
are on file at the Commission

RESPONSE OF MAYOR AND CITY COUNCIL OF THE CITY OF WILSON  
TO REPORT OF U. S. COMMISSION ON CIVIL RIGHTS

Now comes the Mayor and City Council of the City of Wilson responding to certain items contained in a proposed Report by U. S. Commission on Civil Rights to Congress and allege and say:

1. Responding to Item <sup>(118 and 119)</sup> 126 and 127, the Council believes them to be true.
2. Item <sup>(120)</sup> 128 is factually true, however, Council does not know whether this is a result of lack of interest on the part of qualified candidates or whether it was for some other reason. Further, there were no black candidates running in 1969 and 1971.
3. In responding to Items <sup>121 through 125)</sup> 129 through 133, Council can only speculate as to why Mr. Butterfield lost and can only speculate as to why Mr. Coleman won. The success that Mr. Coleman has had as a candidate would be evidence that a black person can be elected to the City Council for the City of Wilson. In response to <sup>(124)</sup> Item 132, another black did outpoll A. P. Coleman in three of the four majority black districts but the votes in three of the four districts were so close as to be insignificant. Further, the third black received significantly fewer votes than the candidate ultimately elected to City Council in three of the four majority black precincts.
4. In response to Item <sup>(126 through 129)</sup> 134 through 137, we respond as follows:
  - a. Affidavits of Councilmen Bullock, Burriss, Parker, Rice and Walston verify that neither of these individuals felt that race was a factor in the selection of Mayor Pro Tem.
  - b. Affidavit of Councilman Coleman, attached hereto, confirms that he felt that race was a factor.
  - c. A copy of the election results attached hereto and a copy of the minutes showing the selection of the Mayor Pro Tem reveal that there has been only two Mayor Pro Tems in the City of Wilson since 1965 and that longevity and experience have historically been the criteria used in determining the

Mayor Pro Tem. Attention is called to the fact that the Mayor Pro Tem in 1967 and 1971 received the fifth largest number of votes and in 1973 received the sixth largest number of votes. That the Council selected the Mayor in 1973 and the Mayor received the fourth largest number of votes and in 1975 the Mayor selected by Council received the third largest number of votes. Edgar Norris served as Mayor Pro Tem for 8 years and during that period of time he tied as high vote getter once, and in the other four elections, he was not the high vote getter. The statement contained in Item 134 through 137 saying that all previous top vote getters had been made Mayor Pro Tem is inaccurate.

d. Affidavits of Councilmen Bullock, Rice and Parker confirm that there was discussion of Martha Walston being selected Mayor Pro Tem before the votes were actually counted.

5. Responding to statement <sup>(130)</sup> 138, it is obvious that it is necessary for any candidate, whether white or black, to have organizational resources and the support of both the black and white community in order to get elected. The registration books reveal that approximately one-third of the registered voters within the City of Wilson are black and two-thirds are white. The voters statistics reveal that black individuals receive votes in the white community and white individuals receive votes in the black community. There is a political philosophical difference between the "at-large system" and "ward system" of electing councilmen that has been debated through the years. In communities the size of Wilson, it appears that the majority of the communities prefer the at-large system.

6. All of the members of Council deny Item 139. <sup>(131)</sup>

7. Council does not know how to respond to Item 140 in that Council has not seen any significant demand from any area of the community to support a change in the system for selecting councilmen. The adoption of a ward system as recommended by the Report would not necessarily guarantee greater participation by blacks in City government, and could result in a City Council less responsive to the needs of the black community. Under the current at-large system, in order to be elected to City Council, candidates must campaign city wide and must receive

support from all segments of the community, both black and white. In order to insure reelection, all council members must be responsive to the needs of the entire city. Under the ward system, blacks would obtain a majority in approximately one-third of the wards. However, representatives from the predominantly white districts would have majority control of the council. These elected officials could be elected and reelected without the necessity of obtaining or having any support from the black community so long as they represent the interests of their home districts. Neither system of elections is without certain inherent flaws and difficulties. The selection of one method over another is primarily a philosophical issue which should be resolved by the people in the community. The Council specifically denies that blacks do not have a representative on City Council. Each member of Council believes that he or she represent a philosophy of good sound government for all the people and use this as the guiding star in casting their votes.

8. In 1970, the City Council annexed 2100 acres of land which had a predominantly black population. In annexing the area, it was obvious that City Council intended to provide utility services that had not heretofore been available to the area with the result of significantly increasing the number of black residents and voters in the City of Wilson. This was a positive step as far as increasing the number of black voters.

9. The City Council has been under the 1965 Voters Registration Act since its inception and as far as Council knows, the City Council has not violated any of the provisions of the Act. The Wilson County Board of Elections controls all elections within the County including that of City officials and as a result thereof, the City Council has no control over the administration of the voting.

This response duly adopted by each individual member of City Council and by the Mayor of the City of Wilson on the 22 day of July, 1981.

NORTH CAROLINA

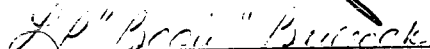
WILSON COUNTY

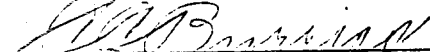
I, Ralph El Ramey, Mayor of the City of Wilson, and L. P. "Bogie" Bullock, C. C. Burriss, ~~A. P. Coleman~~, James Parker, George Rice and Martha K. Walston, Members of City Council of the City of Wilson, first being duly sworn, depose and say:

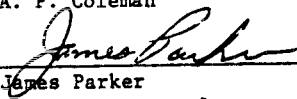
That we have read the foregoing Response and that the matters and things alleged therein are true to the best of our own knowledge except as to those matters and things alleged therein upon information and belief and as to those, we believe them to be true.

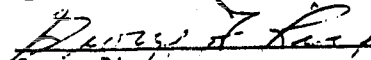
This the 22nd day of July, 1981.

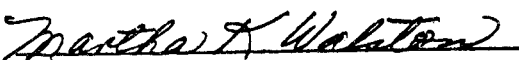
  
\_\_\_\_\_  
Ralph El Ramey

  
\_\_\_\_\_  
L. P. "Bogie" Bullock

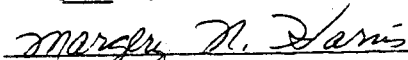
  
\_\_\_\_\_  
C. C. Burriss

\_\_\_\_\_  
A. P. Coleman  
  
\_\_\_\_\_  
James Parker

  
\_\_\_\_\_  
George Rice

  
\_\_\_\_\_  
Martha K. Walston

Sworn to and subscribed before me  
this 22nd day of July, 1981.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
Jan. 30, 1986

Councilman A. P. Coleman was out of town during the week that this response needed to be filed and was not available for signature. He will be in town the week of July 27 and at that time will review the response and you will be advised as to whether or not he adopts the response in its entirety. His individual affidavit is enclosed and made a part of this response with his permission.

NOTE: The numbers in parenthesis are the current footnote numbers referred to in the verified answer.

I, A. P. COLEMAN, a member of the City Council of the City of Wilson, have read the Response of the Mayor and City Council of the City of Wilson to the Report of U.S. Commission on Civil Rights and adopt the same as my response with the exception of paragraph 4 in that Response. In regard to the matters and things contained in paragraph 4, I refer you to my affidavit that was filed with the Response and reaffirm those things set forth in that affidavit.

This will further verify that I was out of town at the time the Response was signed by other Councilmen and mailed to the U. S. Civil Rights Commission.

This the 27th day of July, 1981.

*A. P. Coleman*

\_\_\_\_\_  
A. P. Coleman

Sworn to and subscribed before me  
this 27<sup>th</sup> day of July 1981.

*Betty S. Mullen*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

August 14, 1984

NORTH CAROLINA

WILSON COUNTY

I, L. P. (BOGIE) BULLOCK, being first duly sworn, depose and say:

That on November 6, 1979, I was elected to the Wilson City Council for the first time.

That immediately after the election, I discovered that Martha Walston had, prior to voting, contacted some of the other candidates in an effort to have them select her as Mayor Pro Tem. After some investigating, I discovered that she had already lined up enough votes to be selected Mayor Pro Tem and there was no need for anyone else to seek the job.

It appears to the undersigned that Mrs. Walston was seeking the position of Mayor Pro Tem prior to the general election and without knowing who might be the top vote getter.

In my opinion Martha Walston was elected Mayor Pro Tem without regard to any racial factors of any kind.

This the 22nd day of July, 1981.

L. P. "Bogie" Bullock (SEAL)  
L. P. (Bogie) Bullock

Sworn to and subscribed before me  
this 22nd day of July, 1981.

Margaret M. Davis  
Notary Public

My Commission Expires:

Jan 30, 1986

STATE OF NORTH CAROLINA

COUNTY OF WILSON

I, C. C. BURRISS, being first duly sworn, depose and say:

The qualified voters of the entire City of Wilson, N. C. elect the members of the City Council pursuant to Article III, Section 3.2 of the Charter of the City of Wilson. The Council thus elected by the qualified voters elect the Mayor Pro Tem from its membership at its first official meeting following the swearing in ceremonies.

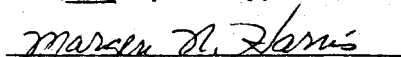
At the regular meeting of the Wilson City Council on December 13, 1979, at the call of Mayor El Ramey for nominations for Mayor Pro Tem, I placed the name of Martha K. Walston in nomination for Mayor Pro Tem. Mrs. Walston, being the only female on Council and having served with excellency during the immediate prior term as Mayor Pro Tem, it was my opinion that she should continue to serve as Mayor Pro Tem this term. There was absolutely no attention, consideration, heed, or thought of racial discrimination in my placing her name in nomination. I was only motivated by her experience and worth of service to our citizens in continuing as Mayor Pro Tem.

My nomination of Mrs. Walston was seconded by Councilman Jim Parker. The minutes of the meeting reflect that Mrs. Walston was "unanimously elected Mayor Pro Tem of the City of Wilson".

This the 22nd day of July, 1981.

 (SEAL)  
C. C. Burris

Sworn to and subscribed before me  
this 22nd day of July, 1981.

  
Notary Public

My Commission Expires:

Jan. 30 1986



NORTH CAROLINA

WILSON COUNTY

I, JAMES PARKER, being first duly sworn, depose and say:

Two years ago, during the election of City Council, Martha Walston, the current Mayor Pro Tem, approached me and asked for my support for her as Mayor Pro Tem. I should point out there was competition for the office of Mayor but there was none for the six seats on Council. In my opinion, the number of votes received by those running for Council meant nothing to me because we had no competition.

The election of 1977, Martha Walston received more votes running for a Council seat than Red Benton (unopposed) received running for Mayor. This illustrates to me that if there is no opposition for a given seat, people do not bother to vote.

After the election of 1975, Red Benton (7th) and Charles Leonard (2nd) were vying for the office of Mayor. At that time, the Mayor was elected among Council members not by the vote of the people. Martha K. Walston finished first in the balloting but was not considered by Council for the office of Mayor.

During our preceding term, Martha Walston did an outstanding job as Mayor Pro Tem. She had served in this position for four years serving the City of Wilson very well. She spoke to civic groups, travelled on behalf of the City and attended the ribbon cuttings. She requested my support before the election of 1979 and I was more than happy to give her my support.

Personally, Martha and I are now senior members of Council (3 terms). I could have argued, based on seniority, that I should have been considered for the job but I did not.

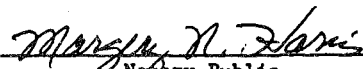
Red Benton never finished first in the vote for Council over the years but he was elected Mayor among Council members.

This the 22 day of July, 1981.

  
James Parker

Sworn to and subscribed before me

this 22nd day of July, 1981.

  
Notary Public

My Commission Expires:

Jan 30, 1986

NORTH CAROLINA  
WILSON COUNTY

AFFIDAVIT

GEORGE RICE, first being duly sworn, deposes and says:

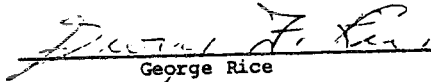
That when he was first elected to the City Council of the City of Wilson in 1977, the Mayor, Red Benton, requested that he support the election of Councilwoman Martha Walston as Mayor Pro Tem since she had served in that capacity during the preceding term and had done an excellent job. Consequently, he supported Councilwoman Walston for Mayor Pro Tem in 1977.

Prior to any ballots being cast in the 1979 election, Councilwoman Walston asked him if he would be willing to elect her as Mayor Pro Tem.

He thought she had done an excellent job as Mayor Pro Tem during the previous term, and out of respect for the job she had done, he agreed to vote for her as Mayor Pro Tem.

That he gave no thought to who was the high vote getter or low vote getter, nor did he base his opinion in any way on racial factors. His sole consideration in electing Councilwoman Walston as Mayor Pro Tem was her prior experience and the respect he had for the job she had done as Mayor Pro Tem.

This 2nd day of July, 1981.

  
George Rice

Sworn to and subscribed before me,  
this 2nd day of July, 1981.

  
Notary Public

My commission expires:

Jan 30, 1986

STATE OF NORTH CAROLINA

COUNTY OF WILSON

I, MARTHA K. WALSTON, being first duly sworn, depose and say:

When I was first elected to the City Council in November of 1975, I was the top vote getter in that election. At that time, the Mayor was elected by vote of the Council and there was some discussion about electing me as the Mayor. I requested that I not be considered for the position as Mayor because I did not feel qualified for the position having been newly elected to City Council. I was then asked to serve as Mayor Pro Tem and I agreed to so serve. I have continued to serve in that capacity after each subsequent election.

Since I had served as Mayor Pro Tem for the preceding two terms, in 1979 I determined that I would like to serve again in that capacity. Prior to the election in November of 1979, I expressed my interest in continuing to serve as Mayor Pro Tem to a number of individuals who were running for City Council, and they indicated that they would be willing to support me as Mayor Pro Tem. After the election, I was unanimously elected as Mayor Pro Tem.

At no time has race been a factor in any voting decision that I have made as a City Councilman except as Chairman of the Nominating Committee. As Chairman of the Nominating Committee, I have made every effort to see that blacks were represented on every City Board, and I have actively recruited blacks to serve on City boards and commissions.

This the 22 day of July, 1981.

Martha K. Walston (SEAL)  
Martha K. Walston

Sworn to and subscribed before me  
this 22 day of July, 1981.

Morgan N. Jones  
Notary Public

My Commission Expires:

Jan 30 1986

United States Commission on Civil Rights  
Washington, D. C.

In response to Questions or Comments dated June 22, 1981, to Wilson City Council, the undersigned, A. P. Coleman, first being duly sworn, deposes and says:

This writer would have no comments to statements 126 or 127.

In response to item 128, after having been approached by an intergrated group of interested citizens, this respondent decided to accept the group's support. Frankly, I felt honored and surprised having been approached to seek such a position in the community. I also felt that this was an excellent opportunity to secure some minority representation in City government, specifically on City Council.

This respondent would have no comments to numbers 129 thru 133.

In response to item number 134, I feel A. P. Coleman finished first in the election because he campaigned. He wanted to guard against a strong write-in vote. Further, he had successfully served the citizens for one term, he also was active in the community and was known throughout Wilson City and County. In addition to the above, he campaigned to represent all the citizens because it was an at-large election. He had demonstrated this philosophy during the pervious term in office.

In response to item 135, I stated that the top vote getter had been elected Mayor protem since during the time of my service in City government (1975). I have no official knowledge as to what happened prior to that time.

My response to item 136 is as follows: I would have to agree with my original statement at this juncture. I feel that in the election of mayor protem during the 1979 election, that race was a factor. During the 1975 and 1977 elections the top vote getter was chosen mayor protem because of the vote. During the 1979 election, the reason seemed to have changed to one of experience. I have no strong feelings concerning holding the position of mayor protem. I am concerned about how it's done. I would think we as a Council could discuss the matter openly and decide as a group.

Frankly, I am honored to know the citizens of Wilson desired to have me as one of their elected officials for two terms. I have been honest, fair and open during my tenure in office. My decisions have been based upon issues as I believe they should.

The comments made in item 137 appear to be true yet, a minority has successfully gained a seat on the Wilson City Council on two different elections - 1975 and 1979.

I would have no comments on item 138. My response to item 139 is uncertain. I am not sure a ward system would be beneficial to citizens of Wilson due to its size over a period of time. Such a system would assure greater City Council representation by areas and race as well.

As a member of City Council, I would be willing to exert some effort in exploring the pros and cons of such a system. In case a determination is made by a cross section and representative number of interested citizens that another system would better serve our community, then, I would pursue same.

Response to item 140 - I feel the City Council is opened to the public. There are citizens however, who feel different. I am a minority serving on Wilson City Council and I represent one of seven votes. I am available and very visible to the general public.

Political participation is a function of the individual. I encourage and welcome citizen participation in all public affairs in our community.

I have no comments to items 141 and 142.

A. P. Coleman  
A. P. Coleman

Affiant

Sworn to and subscribed before me  
this the 16 day of July, 1981.

Margery N. Davis  
Notary Public

My Commission Expires:

Jan 30, 1986

NORTH CAROLINA

WILSON COUNTY

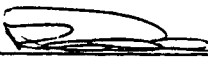
I, RALPH EL RAMEY, first being duly sworn, depose and say:

That I am the Mayor of the City of Wilson; that I have been a resident of the City of Wilson for 28 years. This is the first time I have been elected to a public office. Since I have been in Wilson, I have not notice any problems with race relations. Since I have no vote on Council except in case of a tie, the office of Mayor Pro Tem made absolutely no difference to me whatsoever. I was aware that Martha K. Walston had served as Mayor Pro Tem very well in my mind and again it matters not to me who ended up being Mayor Pro Tem.

I had recalled through memory and interest in government that the top vote getter was not always named Mayor Pro Tem and therefore the thoughts of the top vote getter being Mayor Pro Tem never entered my mind. I was not contacted by any member of Council for support nor was it ever discussed with me as to who should be Mayor Pro Tem prior to the vote. I did receive a call from Councilwoman Walston stating that she would like to continue as Mayor Pro Tem. None of the other council members contacted me at all prior to the night she was elected.

Let me state that I feel very close to all of the council members and Councilman Coleman has served our City very well.

This the 22nd day of July, 1981.

  
\_\_\_\_\_  
Ralph El Ramey

Sworn to and subscribed before me  
this 22nd day of July, 1981.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

Jan 30, 1986

MAYOR AND MAYOR PRO TEM  
SELECTION BY COUNCIL  
1965 - 1979

| <u>YEAR</u> | <u>NAME</u>     | <u>TITLE</u>  | <u>STANDING</u> |
|-------------|-----------------|---------------|-----------------|
| 1965        | Edgar Norris    | Mayor Pro Tem | 4               |
| 1967        | " "             | " " "         | 5               |
| 1969        | " "             | " " "         | Tied 1          |
| 1971        | " "             | " " "         | 5               |
| 1973        | Red Benton      | Mayor         | 4               |
|             | Edgar Norris    | Mayor Pro Tem | 6               |
| 1975        | Charles Leonard | Mayor         | 3               |
|             | Martha Walston  | Mayor Pro Tem | 1               |
| 1977        | Martha Walston  | Mayor Pro Tem | 1               |
| 1979        | " "             | " " "         | 2               |

\*Council selected Mayor in 1973 and 1975. Mayor was voted on separately in all other elections.



Wilson, North Carolina

After reviewing appropriate sections of this report relating to Wilson, North Carolina, and in light of information provided by Bobby F. Jones, Attorney for the City of Wilson, the Commission responds as follows:

- (1) Councilman Coleman continues to feel that race was a factor in the selection of mayor pro-tem after the 1979 city council elections. As now stated in the text of this report, the top vote getters in 1975 and 1977 had been appointed mayor pro-tem. In 1979, after Mr. Coleman received the most votes of all councilmembers elected, he was not appointed mayor pro-tem.
  
- (2) Another black candidate, James Stallings, outpolled Mr. Coleman in three of the four predominantly black precincts in the 1975 council elections. In these four precincts, Mr. Stallings received 954 votes to 820 for Mr. Coleman. In the remainder of the city's precincts, Mr. Stallings received 529 votes and Mr. Coleman received 1,288 votes. The point the Commission continues to make is that the present election system makes it difficult for black candidates, although they may be the first choice of the black community, to be elected in Wilson without support or sponsorship from predominantly white organizations.

BREWER, DEATON, EVANS & BOWMAN

ATTORNEYS AT LAW

107 W. MARKET STREET

P. O. DRAWER 8

GREENWOOD, MISSISSIPPI 38930

TELEPHONE:  
AREA CODE 601  
453-3445

July 14, 1981

NORMAN C. BREWER, JR. (1913-1979)

CHARLES M. DEATON  
GRAY EVANS  
BILLY B. BOWMAN  
N. CRAIG BREWER, III

Mr. Louis Nunez  
Staff Director  
United States Commission on Civil Rights  
Washington, D. C. 20425

Re: Commission Form of Government  
City of Greenwood, Mississippi

Dear Mr. Nunez:

Enclosed please find the verified answer of the City of Greenwood to a portion of a proposed report entitled The Voting Rights Act: Unfulfilled Goals to be issued in the near future by the United States Commission on Civil Rights.

Although your rules and regulations provide that an answer shall be published as an appendix to the report, I would strongly urge that the attached information be considered by your staff and that the statements obtained from plaintiffs' attorneys and their pleadings which form the bulk of your information concerning the government of the City of Greenwood be modified to eliminate the obviously biased nature of the narrative.

Very truly yours,

BREWER, DEATON, EVANS & BOWMAN



Billy B. Bowman  
Attorney for the City of Greenwood

BBB:cs

Encls.

STATE OF MISSISSIPPI  
COUNTY OF LEFLORE

VERIFIED ANSWER

Comes now the City of Greenwood, by and through its undersigned attorney, and submits to the United States Commission on Civil Rights, this its verified answer to various statements concerning the City of Greenwood which are anticipated to be included in a report entitled The Voting Rights Act: Unfulfilled Goal.

On October 27, 1980, the case of David Jordan v. City of Greenwood was tried before the United States District Court for the Northern District of Mississippi. Evidence introduced during this trial showed that four blacks have run for an elected office of the City of Greenwood. The evidence concerning these candidates and their campaigns did not show that their failure to be elected was a result of racial bloc voting, but resulted from other valid non-racial reasons. Only one of these candidates, Pinky Pilcher, was defeated in a party primary. Mrs. Pilcher, who ran in the democratic primary in May, 1965, was defeated by a vote of 2,400 to 61. A review of her vote by precincts shows that she failed to receive a majority vote in any of Greenwood's three precincts. [West Greenwood, Mize 856, Pilcher 14; East Greenwood, Mize 173, Pilcher 39; North Greenwood, Mize 1371, Pilcher 8]

Two of the other black candidates, Robert Roberson and John H. Johnson testified for the plaintiffs in Jordan v. City of Greenwood. The evidence showed that both were very young, inexperienced and lacked "real" qualifications. Robert G. Roberson was 26 years old when he ran for commissioner in 1973 and had very little, if any, business experience and no experience in street construction. Mr. Roberson's opponent, Sam Bass, was a successful businessman with extensive experience in street construction, sewer line, and other matters directly related to the duties of the Street and Sanitation Commissioner.

John H. Johnson was 27 years old when he ran for Mayor of the City of Greenwood. The only work experience that Mr. Johnson

had prior to running for mayor involved working in several federal aid projects. Mr. Johnson's opponent, Clay Ewing, was considerably older than Mr. Johnson and was a successful businessman in Greenwood.

Although claiming that they lost the election because of their inability to obtain white votes, both Johnson and Roberson testified that they neither campaigned in white neighborhoods nor actively solicited white support.

It is clear that the Fifteenth Amendment does not entail the right to have a negro candidate elected. *City of Mobile, Ala. v. Bolden*, \_\_\_ U.S. \_\_\_, 64 L.Ed. 2d 47, 100 ES. Ct. 1490 (1980).

The evidence introduced during this trial clearly refuted the allegation that a commission form of government was "unresponsive to the particular needs and interests of the black community." The proof presented by the City of Greenwood showed that the commission form of government was clearly responsive to the needs of the "particularized interest" of the plaintiffs' group. It is interesting to note that plaintiffs' witnesses could not give any examples of the "particularized interest" of the black community which the Council had failed to meet other than the alleged failure of the City Council to appoint to city boards and agencies those persons nominated or suggested by plaintiffs and the political action group they represent or allow the plaintiffs' organization to select various appointees of the City of Greenwood.

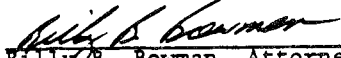
It is unquestioned that services such as streets, water, sanitation, schools, and police and fire protection are provided equally to all portions of the City of Greenwood. There was no showing that the persons, both black and white, appointed by the City Council of the City of Greenwood have not been responsible to the needs of the total community, including blacks. The proof showed that this City Council had taken great strides to see that blacks were appointed to serve on city boards or commissions which could possibly have jurisdiction over matters which would be of special interest to the black rather than the white community. The Municipal Separate School District Board of Trustees is comprised of two blacks and three whites; the Greenwood-Leflore Library Board

is composed of two blacks and three whites; the Greenwood Park Commission is comprised of two blacks and three whites; the City Election Commission is comprised of one black and two whites; the Housing Board of Adjustment and Appeals is comprised of two blacks and three whites and the Greenwood Housing Authority is comprised of one black and three whites, however, there is a vacancy on the Housing Authority which resulted from the death of a black member.

While the plaintiffs contend that a seven member city council elected by wards, drawn to insure a minimum of 60% black population majority in at least three wards would resolve many unstated problems of the black community, they produced little evidence to show that the citizens of Greenwood either wanted or desired this change of government. The only evidence produced as to the desires of the citizens of Greenwood concerning the form of government was a referendum held on this issue which overwhelmingly rejected the change to a mayor-council form of government.

On July 13, 1977, the plaintiffs presented a petition containing the names of 2,186 qualified electors seeking an election to determine if the City of Greenwood should change its form of government. This special election was held on September 6, 1977 with 2,766 electors voting for the present (Commission) form of government and 1,069 voting for the proposed mayor-council form of government.

Respectfully submitted, this the 14th day of July, 1981.

  
\_\_\_\_\_  
Billy B. Bowman, Attorney for the  
City of Greenwood, Mississippi

STATE OF MISSISSIPPI  
COUNTY OF LEFLORE

Personally appeared before me, the undersigned authority in and for the above mentioned jurisdiction, the above named BILLY B. BOWMAN, attorney for the City of Greenwood, who, upon his oath

stated that the above matters contained in the Verified Answer are true and correct as therein stated.

Billy G. Bowman  
Billy G. Bowman, Attorney for the  
City of Greenwood, Mississippi

SWORN to and subscribed before me, this the 14<sup>th</sup> day of July, 1981.

Caroline D. Howell  
NOTARY PUBLIC

My Commission Expires: 10-22-82

## Greenwood, Mississippi

After reviewing appropriate sections of this report relating to Greenwood, Mississippi, and in light of information provided by Billy B. Bowman, attorney for the City of Greenwood, the Commission responds as follows:

- (1) The Commission notes that from 1965 until 1981, six black candidates have run for office in Greenwood and all have been defeated. The primary reason for their defeat has been racial bloc voting in the context of an at-large election system where blacks are a minority of registered voters. For example, none of the six black candidates received more than 2 percent of the vote cast in the predominantly white North Greenwood Precinct. On the other hand, all of the six black candidates, with the exception of the first black to run in 1965, won majorities in the predominantly black East Greenwood Precinct.
- (2) The Commission notes that Mrs. Pinky Pilcher was defeated in all three Greenwood Precincts in her race for city commissioner in 1965. The Commission, however, also notes that this race preceded the passage of the Voting Rights Act which led to the designation of Federal Examiners to aid in the registration of minorities in the Greenwood area (Leflore County). The Department of Justice has estimated that black registration in all of Leflore County in 1964 was 281 or 2.1 percent of the black voting age population. It is therefore possible that the 61 votes that Mrs. Pilcher received in the May 11, 1965 race for commissioner reflected support from the majority of blacks in that city who were registered to vote.

- (3) The special election held on September 6, 1977 seeking to change the form of city government to a mayor-council system with seven wards also reflected racial bloc voting. Ninety-seven percent of the voters in the predominantly white North Greenwood Precinct approved of the present commission form of government while 79 percent of the voters in the predominantly black East Greenwood Precinct voted for the change.
- (4) The Commission continues to assert that black representation on Greenwood city boards and commissions is limited. As now stated in the text, there are seven city boards and commissions with one black member apiece and an additional seven boards and commissions without any black members. This information is taken from the final pretrial order of October 27, 1980 in which these facts were established by the pleadings, stipulation or admission of both parties. The City of Greenwood's figures showing a higher number of blacks on city boards and commissions may be due to appointments made subsequent to the pretrial order.



LAW OFFICES  
**FAULK & LANDREAU**

*Attorneys At Law*  
*Professional Corporation*

**BOB FAULK**  
**BUSTER LANDREAU**

1507 Broad Street  
PHENIX CITY, ALABAMA 36867

POST OFFICE BOX 837  
TELEPHONE (205) 297-1222

July 2, 1981

Honorable Louis Nunez  
United States Commission  
on Civil Rights  
Washington, D.C. 20425

Re: Town of Hurtsboro

Dear Mr. Nunez:

As Town Attorney I have been requested by the Town Council of the Town of Hurtsboro to write you in regard to recent communications you have had with the Hurtsboro Town Council. While we are unsure what you are asking for from your letter we are acting under the assumption that you desire some sort of response to the two-page summary of material which you included in the letter.

The Council's reasons for rejecting the annexation of a subdivision known as Twin Gates located just outside of the Hurtsboro City limits is well documented in the Minutes of the Council meetings of the Town of Hurtsboro. As you will note if you bother to check those Minutes the reasons for the refusal to annex this area are purely economic in nature and are not those cited in the material which you submitted to Council. A check of the Minutes of the Town Council meetings which are public records would confirm that fact and I would suggest you check those.

The Town Council further wished me to express to you the fact that the Town of Hurtsboro and the Town Council is appalled at the summary of material which you submitted to them. More particularly we are dismayed that you would compile this material solely from such biased sources as the attorney representing a group seeking the annexation and a complaint filed by that same group with the Revenue Sharing Department. This is hardly an unbiased and unprejudiced viewpoint, yet I note that you apparently failed to check your sources and failed to verify their statements by the public records which are available. The Town Council hardly feels that such biased methods of attaining information to file a report does justice to the report or to the goals of the United States Commission on Civil Rights. Should you wish to countercheck your information by interviewing members of the Council or by checking the records we will be glad to assist you.

Honorable Louis Nunez  
July 2, 1981  
Page Two.

Suffice it to say at this point that it would appear that your organization is not interested in getting a full and neutral view of the controversy concerning the annex of Twin Gates but prefers to rely solely on the unsupported statements of the parties seeking annexation. Once again, the Town Council in response to these allegations simply would like to make it clear that these allegations are simply that, bald-faced allegations not supported by facts and are entirely incorrect. Council's reasons for rejecting the annexation were economic not racial and any attempt to portray the rejection of the annexation as a racial matter does injustice both to the Town of Hurtsboro and to the United States Commission on Civil Rights.

Sincerely yours,

  
Buster Landreau

BL/bj

c: Honorable John Williams

Hurtsboro, Alabama

After reviewing appropriate sections of this report relating to Hurtsboro, Alabama, and in light of information provided by Buster Landreau, Town Attorney for Hurtsboro, Alabama, the Commission responds as follows:

- (1) The Commission expended considerable time in collecting information concerning the city's decision not to annex the Twin Gates area. Commission staff reviewed material in local newspapers on the council deliberations and interviewed a councilmember present at the deliberations. As stated in the text of this report, the economic argument made by the majority of the council was that it would be too costly to the city to provide services to this area. No data or information collected by Commission staff points to any other "purely economic" reasons for refusing to annex the Twin Gates area.
- (2) The minutes from the Hurtsboro Town Council meeting held on March 19, 1980 do not specifically state any reason for not annexing the Twin Gates subdivision. They state that "after much discussion" the motion to annex Twin Gates failed for lack of a second.



# CITY OF OPELIKA

P. O. BOX 390  
OPELIKA, ALABAMA 36802  
TELEPHONE (205) 749-3461



July 15, 1981

## BOARD OF COMMISSIONERS

D B. Jones  
President  
Finance

Guy Thompson  
Associate  
Public Works  
Light & Power

Kyle S. Drake, Jr.  
Associate  
Public Safety

## ADMINISTRATION

J. Newell Floyd  
City Clerk/Treasurer

Garry K. Pugh  
Executive Secretary  
Records Manager

Z. T. Jones  
Planning & Programs  
Coordinator

Eddie Ambrose  
Data Processing  
Manager

John James  
Personnel Director

## FINANCE

Zane E. Burleson  
Finance Director

Miriam Hamby  
Accounting Supervisor

L.E. (Eddie) Goodson  
Revenue Officer

Joe S. Jackson  
License & Tax Examiner

Linda D. LaGrand  
Supervisor  
Revenue Section

## UTILITIES BUSINESS OFFICE

Customer Services  
T. Randy Awbrey  
Assistant  
Office Manager

## BOARDS

Planning Commission  
Zoning Adjustment

United States Commission on Civil Rights  
Washington, D. C. 20425

Attention: Louis Nunez

Gentlemen:

The City of Opelika acknowledges receipt of your letter dated June 22, 1981 and the enclosed summary of material pertaining to the City of Opelika. The letter was received by us on June 26, 1981.

Your letter indicates that the Commission actively solicits the response of the City to the matters referred to in said summary. Therefore, the Board of Commissioners has authorized D. B. Jones, as President of the Board, to respond to the statements contained in the summary.

I am enclosing the verified response of Mr. Jones, and the City does hereby request that his response be published as an Appendix to the report.

Yours very truly,

J. Newell Floyd  
City Clerk

JNF/gp

Enclosures

VERIFIED RESPONSE OF D. B. JONES TO SUMMARY OF MATERIAL  
ENCLOSED IN LETTER OF JUNE 22, 1981 FROM THE UNITED STATES  
COMMISSION ON CIVIL RIGHTS TO THE OPELIKA CITY COMMISSION

Before me, the undersigned authority, a notary public in and for the State of Alabama, Lee County, personally appeared D. B. Jones, who being by me first duly sworn, deposes and says as follows:

I am D. B. Jones, President of the Board of Commissioners of the City of Opelika, Alabama. I make this affidavit for the purpose of responding to a summary of certain material pertaining to the City of Opelika which the United States Commission on Civil Rights anticipates will be included in a report entitled, The Voting Rights Act: Unfulfilled Goals, hereinafter referred to as "report".

The City of Opelika is organized under the Commission Form of Government and its governing body is composed of three commissioners. Each commissioner is elected at large and serves a three-year term. All municipal board members and all departmental officials are appointed by the Board of Commissioners.

The City of Opelika adopted the Commission Form of Government in 1936. In January, 1978, the Lee County Branch of the NAACP and others brought a suit in the United States District Court for the Middle District of Alabama alleging that Opelika's Commission Form of Government is being maintained for the purpose of discriminating against blacks. The City of Opelika vigorously denied the allegations made in said complaint and denies the truth of such allegations today. The case is currently pending in the District Court. However, I am unaware of any court decision holding that the governing body of this City has discriminated against the City's black population.

It is apparent that the information in the "report" pertaining to the City of Opelika was collected entirely from the plaintiffs of the class action suit or their legal representatives. As such, it represents a grossly distorted picture of the political realities of Opelika.

Blacks have total access to participation in all phases of the election processes in Opelika. Race has not been an issue in any recent City election. Candidates campaign throughout the City and white candidates normally seek the endorsement of black organizations. Court evidence indicates that blacks have supported and voted for white candidates and that white voters have shown increasing willingness to support black candidates. Although a black has not been elected to the office of Commissioner, better-known blacks have not chosen to offer themselves for election.

Since the implementation of the Voting Rights Act, black citizens have not been impaired in their rights to register, slate candidates, and vote for candidates of their choice. In fact, voting places are, for the most part, more conveniently situated to black neighborhoods than to white neighborhoods.

The "report" cites statements made by Rev. A. L. Wilson that the City Commission has used the "informal practice" of filling Commission vacancies as device to perpetrate white power in Opelika. Section 11-44-12 of the Code of Alabama mandates that whenever any vacancy shall occur in the office of any Commissioner of any City, then his successor shall be elected by the two remaining members of the Board of Commissioners. I can recall only two such vacancies occurring on the Board of Commissioners of the City of Opelika within the last twenty years. One such vacancy occurred upon the death of a Commissioner and the second such vacancy occurred upon the resignation of a Commissioner who had been indicted for violations of Federal banking laws. The occurrence of such vacancies hardly seem the result of a conspiracy to deprive blacks of access to the political system. The two remaining members of the Commission filled such vacancies by selecting persons whom they deemed most qualified to hold the office. Because the Commission members are personally acquainted with the leaders from all segments of the community, recommendations were not sought from any group, black or white. However, on several occasions, the City Commission has requested that black organizations submit to the Commission names of qualified persons who would be willing to serve on municipal boards or committees.

The City of Opelika categorically denies that it has not been responsive to the needs of black citizens in this regard. The "report" cites problems in employment as well as problems related to access to municipal services.

The City has adopted a written policy of non-discrimination in the hiring, termination, and classification of employees. No suits have been filed against the City or any of its officials by individuals, organizations, or by the Department of Labor or the Equal Employment Opportunity Commission alleging discriminatory hiring practices. United States Census statistics indicate that in regards to black employment, the City of Opelika has consistently out-performed the private sector in this area. Referring to data introduced into evidence in the class action suit filed in January, 1978, while 27.6% of the labor market in Lee County was black, 28% of the City's work force was black. 10% of the City's clerical positions and 10% of its managerial positions were filled by blacks. Additionally, 37% of the administrative and clerical positions within the Water Board of the City were filled by blacks; 60% of the managerial positions with the Housing Authority of the City of Opelika were filled by blacks; and 29% of the principals employed by the Opelika Board of Education were black. Moreover, according to Census manpower statistics for Lee County, only a small percentage of blacks were available for employment in the skilled managerial and clerical areas of employment.

As an example of the City's unresponsiveness to the black community in access to City services, the "report" cites that in 1978 twice as many black households were located on dirt streets than were white households. While admitting the truth of this statement, this condition was not the result of governmental action. During the decade of the 1970's, the City of Opelika paved and re-surfaced with the City's own funds, 30% by mileage more streets and roads in predominately black areas of the City than in predominately white areas. Additionally, hundreds of thousands of dollars of Community Development funds were expended to pave and resurface roads in predominately black neighborhoods. During this same decade, almost all roads in predominately white neighborhoods were paved by private developers without any expenditure of public funds. The developers recouped their costs when lots were sold to new homeowners. Significantly, very few citizens of Opelika, white or black, live on unpaved roads.

In other areas of municipal service, the "report" neglects to mention that a higher percentage of black households than white households are connected to the City's sanitary sewer system and the City's water system. The City Library, City Hall, Fire Station, and Police Station are more conveniently located to predominately black neighborhoods of the City than predominately white neighborhoods.

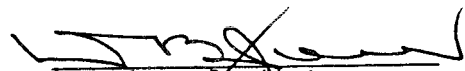
The City of Opelika runs a truly outstanding recreation program. All recreation facilities and programs are open to all citizens regardless of race. Most of the recreation facilities are closer to black neighborhoods than to most white neighborhoods. If the City is lacking in any aspect of its recreation program, it is in the development of recreation facilities in the outlying white neighborhoods of the City.

In the area of responsiveness, the City Commission has sought out the opinions of black citizens and has attempted to provide assistance on problems concerning the black community. The City Commission has channeled a disproportionately higher percentage of City funds into predominately black neighborhoods to improve municipal services.


Lack of black representation on the City Commission does not equate to an unresponsiveness of City officials to black concerns or to inaccessibility of blacks to the political system. Recognizing the truth of this last statement, the United States Constitution has never been interpreted to require that members of a minority race must be elected in numbers equal to the minority's percentage of the general population.

In conclusion, the City of Opelika denies that it has violated any of the provisions of the 14th and 15th Amendments or Section 2 of the Voting Rights Act. For a more complete explanation of the City's position, I am attaching hereto and requesting that it be incorporated as a part of the record, a copy of the City's post-trial brief filed in that certain action styled Lee County Branch of the NAACP, et al versus the City of Opelika, pending in the United States District Court for the Middle District of Alabama, Civil Action No. 78-13-E.

IN WITNESS WHEREOF I have hereunto set my hand this the 15th day of July, 1981

  
D. B. Jones, President  
Board of Commissioners of the  
City of Opelika

SWORN TO and SUBSCRIBED before me this the 15th day of July, 1981.

  
Notary Public

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
EASTERN DIVISION

LEE COUNTY BRANCH OF THE )  
NAACP; et al., )  
 )  
Plaintiffs, )  
 )  
vs. ) CIVIL ACTION NO. 78-13-E  
 )  
THE CITY OF OPELIKA, ALABAMA; )  
et al., )  
 )  
Defendants. )

DEFENDANTS' RESPONSE TO PLAINTIFFS'  
SUPPLEMENTAL PROFFER OF EVIDENCE

Introduction

Defendants are once again faced with responding to another attempt by Plaintiffs to reopen the record in this case and present additional evidence. Our recollection of the Court's rulings in the in-chambers hearing held on November 14, 1980, differ substantially from that of Plaintiffs' counsel. Plaintiffs state that the Court "indicated that it would entertain a renewed motion based on a more specific proffer [of evidence concerning the period since 1970.]" Our recollection is that, after a detailed discussion of each item of evidence, the Court stated that it would deny each and every offer of evidence thus far made but would allow the Plaintiffs an additional ten days in which to make specific showings of evidence relating to matters which occurred since 1970 and which, because of the state of the law at the time of trial, may not have been offered in evidence. In this connection, the Plaintiffs opined that they might be able to come up with some evidence involving contacts between members of their class and members of the Lee County legislative delegation.

However, in their most recent supplemental proffer of evidence, the Plaintiffs once again make a generalized request for the Court "to reopen these proceedings," and state that if that is done they can develop further evidence with additional time. Since it appears that the Plaintiffs' proffer departs



so far from the type of evidence which this Court seemed to have in mind when it granted them additional time in which to make a showing, our response will be brief.

I.  
Events Since the Trial in August, 1978

The Plaintiffs state that they wish to offer additional evidence concerning black citizens' "continued lack of access to the political process" and the "continuing unresponsiveness of the City to Blacks' needs." We call the Court's attention to the use of the term "continued." The Plaintiffs simply propose to offer repetitious and cumulative testimony of exactly the same nature as that offered at the original trial for the stated purpose of showing that things have not changed since that time. Of course, the fact that similar evidence about the same subjects was given at the original trial demonstrates that the proposed evidence does not relate to matters which were not offered into evidence because of "the state of the law at the time of trial." It is obvious, also, that the two major areas of inquiry at the original trial involved allegations of racial polarization and allegations of unresponsiveness of the City to Blacks' needs, and that a generalized inquiry into these areas would simply be an extension of the original trial for no purpose other than allegedly "confirming" the evidence they offered earlier. In Bolden the Supreme Court held that the equal protection clause does not require proportional representation and does not protect any "political group" from electoral defeat, although it does confer a substantive right to participate in elections on an equal basis with other qualified voters. The evidence which Plaintiffs propose to offer does not relate to that recognized substantive right. They have not proposed to offer any evidence that Defendants have denied or abridged the rights of Black citizens to register, vote, slate candidates of their choice, or otherwise participate on an equal basis with other qualified voters. As for the evidence of alleged discrimination by white officials, not only was

this category of evidence the subject of exhaustive testimony at trial, in Bolden, a plurality of judges agreed that such evidence is relevant only as the most tenuous and circumstantial evidence of the constitutional and validity of the electoral system under which they attain their offices. Such evidence is relevant only in accordance with the standards set forth in Zimmer v. McKeithen, although the Zimmer test has now been decisively rejected. There is certainly no reason to offer additional evidence of such a tenuous nature.

In short, the Plaintiffs' offer of proof presents nothing ~~new~~ and fails to meet the evidentiary standard enunciated by the Supreme Court in Bolden.

In a footnote, the Plaintiffs' have referred to alleged efforts by Opelika citizens to obtain a change in the form of government through legislation. We are unable to tell whether or not they seek to proffer testimony on this point. If so, as we pointed out in our last reply brief, the legislators are not parties to this suit and if they wish to attack them they should do so in a separate action with the proper parties. As the Bolden plurality noted, "the actions of unrelated governmental officials [is]...of questionable relevance." 64 L.Ed.2d 47, 63, n 20.

## II Expert Testimony

It was our recollection that the Court did not intend for the Plaintiffs to respond further with respect to its decision not to reopen the case to allow the evidence proposed to be illicitly from Margaret Latimer, Larry Riehle, Dr. Currie and Dr. Maitre. We have previously responded at some length to such proposal and pointed out that Bolden, if it did anything at all, condemned rather than approved the use of such "remote evidence" in attempting to prove a discriminatory purpose, that the Bolden plurality noted that the Fifteenth Amendment "prohibits on purposefully discriminatory denial or abridgment by government of the freedom to vote on account of race, color, or previous

condition of servitude" (63 L.Ed.2d at 57), and that much of the evidence which the Plaintiffs propose to offer as to the electorate is cumulative and was or could have been offered by Plaintiffs at trial. For a more detailed discussion, we refer the Court to Defendants' Reply Brief in Opposition to Plaintiffs' Motion for Leave to Reopen the Record, pp. 6-8.

CONCLUSION

In conclusion, the Plaintiffs' Proffer of Evidence falls far short of showing that the City of Opelika conceived or operated a purposeful device to further racial discrimination. The Plaintiffs' offer of proof presents nothing new and fails to meet the evidentiary standard enunciated by the Supreme Court in Bolden. The Plaintiffs have not offered evidence which, because of the state of law at the time of the trial, was not offered.

Therefore, Defendants respectfully submit that this Court should enter an order denying the Plaintiffs' several motions to reopen and proffers of evidence and, thereafter, bring this litigation to a close by entering an order in the case in chief denying relief to the Plaintiffs and finding that Opelika's commission form of government is not being maintained by these Defendants as a purposeful device to discriminate against Opelika's black citizens.

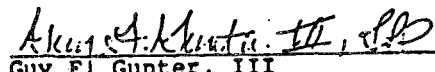
Respectfully submitted,

OF COUNSEL:

CAPELL, HOWARD, KNABE &  
COBBS, P.A.  
Post Office Box 2069  
Montgomery, AL 36197  
(205) 262-1671

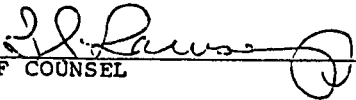
MELTON, GUNTER & MELTON  
Post Office Box 2187  
Opelika, AL 36801

  
Thomas S. Lawson, Jr.

  
Guy F. Gunter, III

CERTIFICATE OF SERVICE &

I hereby certify that I have served a copy of the foregoing upon Stephen J. Ellmann, Esq., and John L. Carroll, Esq., attorneys for Plaintiffs, 1001 South Hull Street, Montgomery, Alabama 36104, by U.S. Mail, first class postage prepaid, on this the 9<sup>th</sup> day of December, 1980.

  
OF COUNSEL

Opelika, Alabama

After reviewing appropriate sections of this report relating to Opelika, Alabama, and in light of information provided by D. B. Jones, President, Board of Commissioners of the City of Opelika, the Commission responds as follows:

- (1) The Commission agrees that blacks in Opelika often have supported white candidates. The Commission notes, however, that the primary reason for the defeat of all black candidates who have run for municipal office in Opelika is lack of support for these candidates in the white community. Since blacks first began running for office in Opelika in 1969 no black candidate has ever carried a single voting box (precinct) in a predominantly white neighborhood.
- (2) The Commission does not suggest that the Opelika city commission has violated the Code of Alabama in filling vacancies on the city commission. It does, however, note that these vacancies have been filled as a result of an informal process in which Opelika's black community had little if any input. While only two such vacancies on the commission may have been filled by appointment in the last twenty years, two of the current three commissioners first gained office in this fashion.

— — — LAW OFFICES OF

*Lola L. Bonner*

BAYVIEW PROFESSIONAL BUILDING  
ROCKPORT, TEXAS 78382

July 17, 1981

P. O. DRAWER 908  
PHONE 512/729-2353

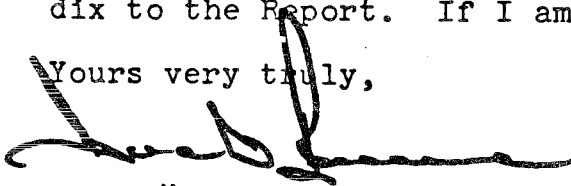
Mr. Louis Nunez, Staff Director  
United States Commission on  
Civil Rights  
Washington, D. C. 20425

Dear Mr. Nunez:

Pursuant to your recent correspondence directed to the under-  
signed, I have prepared and enclose Verified Answer to the  
information received.

If I correctly understand Section 702.18 of the Rules and  
Regulations provided me, this will be published as an appen-  
dix to the Report. If I am incorrect, please so advise.

Yours very truly,



LOLA L. BONNER

LLB:ch

cc: Caroline Davis Gleiter  
Assistant Staff Director  
United States Commission on Civil Rights  
Washington, D. C. 20425

TO THE HONORABLE UNITED STATES COMMISSION ON CIVIL RIGHTS:

NOW COMES the Aransas County Democratic Executive Committee, by and through its Chairman, LOLA L. BONNER, as pursuant to Statutes, Rules and Regulations pertaining to same, files this, its Verified Answer to the material heretofore provided and would respond as follows:

I.

The Aransas County Democratic Executive Committee was furnished with a summary of certain material, copy of which is attached hereto for reference, which the Committee understands will be included in a report prepared by the United States Commission on Civil Rights and pertaining to the Voting Rights Act.

II.

The Aransas County Democratic Executive Committee was furnished a one-page excerpt by the Staff Director and was not apprised as to where in the report it was expected to be placed. We know not in which chapter, sub-chapter or phase of the report this information is to be used and feel that it would be appropriate for us to be so advised.

III.

The third line of the excerpt states that "the local Democratic party did not endorse him...", without stating that "the local Democratic party (assuming the report is referring to the ACDEC) never supports anyone during the Democratic Party Primaries.

The ACDEC is not obligated either by statute or policy to endorse a Democratic candidate during the Democratic Primaries. It is the statutory duty of ACDEC to hold a Democratic Primary

Nomination, determine the candidate of the Democrat's choice to appear on the General Ballot and to then, under Party Rules, support and endorse such candidates over all other Parties candidates.

IV.

It is true that the Aransas County Democratic Executive Committee did not choose the Mexican American candidate to serve as the Party's nominee for the General Election and did not do so because of his general reputation in the community. The Committee did choose a member of another minority group, to-wit, a woman, to serve as the Party's nominee.

V.

The Aransas County Democratic Executive Committee, did, in all instances referred to in the excerpt, follow the applicable portions of the Texas Election Code, which portions are attached hereto and made a part hereof by reference.

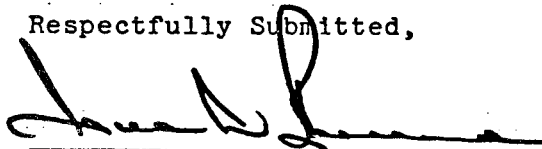
VI.

The Aransas County Democratic Executive Committee had nothing to do with advertisements referred to in the excerpt.

VII.

At the time in question, the voting precinct in question and one other one in the County had the heaviest concentration of Mexican American voters. The voters rejected the Mexican American candidate, not the Aransas County Democratic Executive Committee.

Respectfully Submitted,



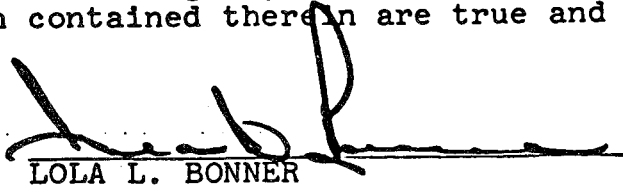
LOLA L. BONNER, Chairman  
Aransas County Democratic  
Executive Committee



THE STATE OF TEXAS §

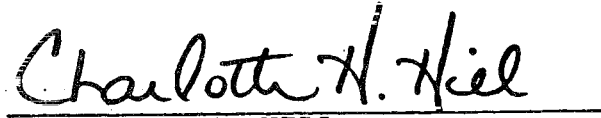
COUNTY OF ARANSAS §

BEFORE ME, the undersigned authority in and for said State and County on this day personally appeared LOLA L. BONNER, who, being by me first duly sworn, deposes and states that she has read the foregoing Answer to a Report, to be used before the United States Commission on Civil Rights, and that all of the allegations and information contained therein are true and correct.



LOLA L. BONNER

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 17th day of July, A. D., 1981.



CHARLOTTE H. HILL  
NOTARY PUBLIC in and for  
The State of Texas  
My Commission Expires: 3-2-85

(SEAL)

Art. 8.22 Death or ineligibility of candidate before election

(a) When the name of a deceased or ineligible candidate is printed on the ballot for a general or special election, as provided in Section 233 of this code,<sup>1</sup> the votes cast for him shall be counted and return made thereof; and if he receives a plurality of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate shall be certified as the two highest candidates for the runoff election.

(b) If after the 45th day preceding the first primary election, a candidate in that primary dies or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code,<sup>1</sup> to be printed on the general election ballot. If such a deceased or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If a candidate whose name is to appear on the second primary ballot dies between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code.<sup>2</sup>

Amended by Acts 1967, 60th Leg., p. 1901, ch. 723, § 32, eff. Aug. 28, 1967. Par. (b) amended by Acts 1969, 61st Leg., p. 2662 ch. 878, § 25, eff. Sept. 1, 1969; Par. (a) amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975; Par. (b) amended by Acts 1977, 65th Leg., p. 883, ch. 332, § 2, eff. Aug. 29, 1977.

<sup>1</sup> Article 13.56.

<sup>2</sup> Article 13.26a.

Synopsis of Changes—1967

The provision for keeping the name of a deceased candidate on the first primary ballot if death occurs after the deadline for filing is changed to provide for retention of his name if death occurs after the 30th day preceding the election, in keeping

with an amendment to Art. 13.12, below. The provision for keeping on the ballot the name of a nominee who has died or declined the nomination if no one is nominated to take his place is amended to include an ineligible nominee also.

Cross References

Application for place on ballot, see art. 13.12.

Death, withdrawal or ineligibility of candidate, applicability of this article, see art. 13.56(d), (f), (g).

Ineligibility to be candidate for public office, see art. 1.05.

1. Validity

Paragraph (a) of this article does not deprive voters of their constitutional right guaranteed by Const. Art. 5, § 23, to elect a sheriff. *Parker v. Nobles* (Sup.1973) 496 S.W.2d 921.

Paragraph (a) of this article does not unconstitutionally restrict the right of franchise, due process or equal protection. *Id.*

such application was not signed during the current voting year (March 1, 1970 through

SECURITY - 6, 1970.  
M-646.

**Art. 13.56 Death, withdrawal, or ineligibility of candidate; filling vacancy in nomination**

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than the 45th day before the day of the general election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments, whereupon the officer receiving the declaration shall take the necessary action to have the name of the nominee removed from the ballot. A nominee may not decline the nomination after the 45th day before election day.

(b) If on or before the 45th day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The certificate must be filed not later than the 40th day before the day of the election. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 5th day after the deadline for certification by the district committee and in any event not later than the 40th day before election day.

(d) If a party nominee dies or declines the nomination or is declared ineligible after the 45th day preceding the day of the general election, the procedure set out in Section 104 of this code shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than the 40th day before election day a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate may not withdraw after the 40th day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible before the 44th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and before the 44th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible after the 45th day before election day, his name shall

## Art. 13.56

## ELECTION CODE

be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(i) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election. Subsecs. (b), (c) and (e) amended by Acts 1967, 60th Leg., p. 1924, ch. 723, § 62, eff. Aug. 28, 1967. Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, Sept. 1, 1975; Subsecs. (a) to (f) amended by Acts 1977, 65th Leg., p. 887, ch. 332, § 5, eff. Aug. 29, 1977.

<sup>1</sup> Article 5.22.

### Synopsis of Changes—1967

Amended to make the section applicable to vacancy arising from ineligibility as well as from death or declination, and to provide for nomination by the precinct committee, created by the amendment to Art.

13.18a, where the vacancy is for an office of a justice or commissioners precinct. Also rewords the provision on power of the state committee to name a nominee for a district office.

### Cross References

Conduct of elections, death or ineligibility of candidate before election, see art. 5.22.

State officers and employees, financial statement of nominees under this article, see Vernon's Ann.Civ.St. art. 6252--5b, § 3(f).

### 8. Mandamus

In mandamus action in which relator sought to compel county chairman of political party to certify relator as nominee of party for office of county commissioner of precinct of county, to order county clerk to place relator's name on ballot, and to enjoin county clerk from placing name of respondent on ballot, granting writ of mandamus was precluded by existence of factual issue as to whether relator had ever been nominated by party for office after death of individual who had been elected as nominee in primary election. *Stroud v. Beggerly* (Civ.App.1975) 542 S.W.2d 229.

### Supplementary Index to Notes

Mandamus 3

## Art. 13.57 Party name

No new political party shall assume the name of any preexisting party; and the party name printed on the official ballot shall not consist of more than three words. As used in this section, the term "preexisting party" does not include a political party which is no longer in existence.

Amended by Acts 1969, 61st Leg., p. 2662, ch. 373, § 36, eff. Sept. 1, 1969.

Aransas County, Texas

After reviewing appropriate sections of this report relating to Aransas County, Texas, and in light of information provided by Ms. Lola L. Bonner, Chairman, Aransas County Democratic Executive Committee, the Commission responds as follows:

- (1) The Commission does not suggest that the Aransas County Democratic Executive Committee has violated the Texas State Election Code. As now stated in the text, this is made clear. The Commission, however, notes that the Aransas County Democratic Executive Committee did not nominate a Mexican American candidate in a situation where it had the opportunity to do so. Rather than nominate the Mexican American, who was the only living candidate on the ballot, the Executive Committee nominated an Anglo who was not on the ballot.
  
- (2) The Commission notes that there is not sufficient evidence to support the implication that Mr. Zambrano, the Mexican American candidate, was rejected by both Anglo and Mexican American voters. Subsequent Commission research has revealed that Mexican Americans comprise 18 percent of the registered voters of the precinct in question and Mr. Zambrano received 26 percent of the vote. Unless individual ballots could be identified by ethnicity, voting trends of Anglos versus Mexican Americans cannot be determined. Therefore, an equally plausible conclusion could be that most of Mr. Zambrano's support came from Mexican American voters.

**Defame/Degrade Responses: Chapter 7**



# City and County of Denver

## ELECTION COMMISSION

414-14th Street, Room 118 • Denver, Colorado 80202 • 303/575-2351

DONALD M. NICHOLSON, President  
F.J. SERAFINI, Commissioner  
SYLVIA R. DENNIS, Commissioner  
DALE E. NOFFSINGER, Director

July 1, 1981

Mr. Louis Nunez  
Staff Director  
U. S. Commission on Civil Rights  
Washington, D. C. 20425

Dear Mr. Nunez,


We are in receipt of your letter dated June 22nd and also a letter dated June 24th from Caroline Gleiter of your office.

With one exception, there is nothing in the information enclosed with your letter that we see a need to respond to, in that the quotations are personal opinions of various individuals.

The exception, is the statement that, "in Colorado bilingual material at the polls must be requested". In Denver that statement is untrue. Sample ballots printed in both English and Spanish are lying in plain sight on the table where an elector must start in the voting process, at a Precinct Polling place.

Please be advised that I am speaking only for the City and County of Denver.

Sincerely,

  
Dale E. Noffsinger  
Director

DEN:bj

cc: Betty Chronic  
Secretary of State



MARY ESTILL BUCHANAN  
Secretary of State  
State Capitol Building

DEPARTMENT OF STATE  
1575 Sherman Street — Second Floor  
Denver 80203

|                            |          |
|----------------------------|----------|
| ADMINISTRATION             | 866-2761 |
| CORPORATIONS               | 866-2361 |
| ELECTIONS                  | 866-2041 |
| LICENSING &<br>ENFORCEMENT | 866-2461 |
| LOBBYIST REGISTRATION      | 866-2021 |
| NOTARIES PUBLIC            | 866-2355 |
| UNIFORM COMMERCIAL<br>CODE | 866-2563 |

July 10, 1981

Mr. Louis Nunez  
Staff Director  
U.S. Commission on Civil Rights  
Washington, D.C. 20425

Dear Mr. Nunez:

Dale E. Noffsinger, Director of the Denver Election Commission, forwarded this office a copy of the interview with Laura DeHerrera, State Representative, held on November 20, 1980.

We object to the total inaccuracy of the statement: "Representative DeHerrera said that in Colorado bilingual material at the polls must be requested, but this was impractical because ...if the people don't know its there, how do they know to ask?"

Colorado has 34 counties covered pursuant to the language provision of the Voting Rights Act. Representative DeHerrera represents one of 65 legislative districts, a portion of Denver County. To the best of our knowledge, based on reports from Denver election judges, Representative DeHerrera remained within her district on general election day, primarily within one precinct. Our knowledge was gained from election judges who complained about her presence the entire day when she was not an election judge nor a watcher.

Since her comments referred to the state of Colorado, we believe it is our responsibility to present the facts, and yours to include them in any future record.

First, Mr. Noffsinger's comments concerning the availability of material on the table in polling places in Denver are true. An attorney from the U.S. Justice Department was an observer at several Denver polling places. In one polling place, an elderly election judge had placed the spanish language facsimile ballots in the wastebasket, thinking they were incomplete. Accompanied by Assistant Attorney General, Stephen Kaplan, I responded to the observer's phone calls, visiting that precinct personally. The facsimiles were located and placed on the table; and I discussed this usage with both the supply judge, Josephine Thatch, and the bilingual judge in the precinct, Florence Padilla.

No other complaints were made by the Justice Department observer.



In reference to the other 33 counties and the availability of bilingual material, please be advised that county clerks met with the Secretary of State prior to the 1980 election to plan for meeting bilingual requirements. Colorado counties select their own voting equipment. Some use electronic (C.E.S. or Data Vote) equipment, others use mechanical voting machines (Shoup or A.V.M.) and a final group uses paper ballots.

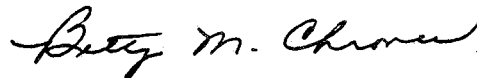
Counties also vary greatly in size and concentration of population. Each county clerk made a commitment to careful and sensitive compliance with bilingual requirements. Some used facsimile ballots, others printed a combination english/spanish ballot. Facsimile ballots are posted, out on registration tables, etc. with english sample ballots. Obviously, bilingual ballots are available automatically on receipt of a ballot.

Voting materials (notices, voter signature cards, instructions) are printed in both spanish and english, as are all voter registration materials in use in the 34 covered counties. Since our office approves all forms and only one printer in Colorado prints forms, we are able to maintain a continuous monitoring of materials. No materials needed to be requested. They were in use, posted, or out in plain sight.

Colorado, like other western states, has a resident population of spanish sur-named citizens whose families, in many instances, were the original residents of our state. By preference, spanish is spoken in the home and family members are fluent in both spoken english and spanish. Many of these persons do not read spanish; therefore, county clerks and recorders place heavy emphasis on the recruitment of office personnel and election judges who speak both languages. In many counties most election judges are bilingual. In others, at least one judge per precinct speaks spanish.

Since reading spanish is a problem, oral assistance in voting will continue to be our first priority, but with full availability and use of required written materials, including ballots.

Yours very truly,



Betty M. Chronic  
Director, Licesning and Elections

BMC/jc

Enclosure

cc: Mary Estill Buchanan  
Dale Noffsinger  
Marjorie A. Guipre  
- Earl G. Sawyer

City and County of Denver, Colorado

After reviewing appropriate sections of Chapter 7 relating to Colorado, and in light of information provided by Dale E. Noffsinger, Director, City and County of Denver Election Commission and Betty M. Chronic, Director of Licensing and Elections for the Colorado Department of State, the Commission responds as follows:

The Commission notes that the statements of Representative De Herrera were part of an interview conducted with a minority community organization and minority individuals who are active in the community and knowledgeable as to the concerns and problems of language minorities. Representative De Herrera's statement reflected her opinion as to the need for more publicity regarding the availability of minority language assistance. Her general comments and opinions were not made or reported by the Commission in relation to any specific election, polling location or jurisdiction.

June 30, 1981

United States Commission on Civil Rights  
Washington, D.C. 20425

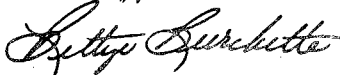
Attention: Louis Nunez

In reply to your letter dated June 22, 1981 concerning Cherokee Indian voting information. Cherokee County Election Board has tried to work with the tribe in registering American Natives. It has been published on several occasions that an interpreter will be placed at the Election Board, also each inspector is informed that the service is available and are to contact us if the service is needed. In the three precincts that are heavily populated with Cherokees, we have election workers that fluently speak the Cherokee language.

Cherokee County did employ seven interpreters when the Voters Act was brought into law. As the service was not needed, the Election Board voted to employ one interpreter to be placed in our office from seven a.m. to seven p.m. on election days, and due notice was given to each inspector. In the future we will publicize this more, hoping to reach those that are interested. With the help of the Cherokee Nation, this will be more effective. In reply to the question on why we do not interpret the questions on the ballots, I feel that it would be the responsibility of the Cherokee Tribe to advertise the questions in the Tribal Newspaper, both in Cherokee and English. Since the establishment of the Voters Act, to our knowledge we have never had to use the services of an interpreter.

Cherokee County Election Board Officials will work with the Cherokee Tribe in all areas of voter information to alleviate any problems that might arise in future elections. At this time we feel that the one centralized interpreter can serve all voters who might need assistance.

Sincerely,



Bettye Burchette  
Secretary  
Cherokee County Election Board

Enclosure

**ON SUNDAY**  
**Indians**  
**Bilingual**

By United Press International  
Dozens of bilingual Oklahoma Indians - who will probably not even answer one telephone call - have been placed on standby duty at county election boards across the state in anticipation of next week's general election.

As a result of the federal Voters Rights Act of 1975, local and state elections officials are required to provide either bilingual ballots or interpreters in areas where at least 50 percent of the population is Spanish-speaking. Asian American, Alaskan natives or American Indians.

In Oklahoma, with at least 15,000 Indians from 30 federally recognized tribes, 23 counties - mostly in eastern and southcentral Oklahoma - are forced to hire interpreters and pay them a minimum fee of \$17.

"Since the law was implemented, we have never had use for an interpreter," Rip Straton, of the Oklahoma Election Board, said. "They have been available but there has never been a request for one. It's an absurd situation."

Indian leaders say the law hurts many Oklahoma Indians, most of whom read, write and understand English as well as the lawmakers themselves.



**Galen Larson,  
Registrar of Voters**

**DATE: July 15, 1981**

**MEMORANDUM**

**TO: UNITED STATES COMMISSION ON CIVIL RIGHTS  
ATTN: CAROLINE BLIETNER OR MICHAEL GOLDSTEIN**

**FROM: GALEN LARSON, FRESNO COUNTY CLERK**

**RE: VOTING RIGHTS ACT**

Please find enclosed our response to your letter dated June 22, 1981,  
which we received June 29, 1981.

If you have questions call (209) 488-3246.

  
By  
Norma Logan  
Elections Manager

GL:nl:rh

Enclosure

July 15, 1981

From 1976 when the Voting Rights Act requirements were put into effect, until 1978, we attempted to place a bilingual election officer in each precinct. We recruited by calling voters with Spanish surnames from the voters indexes, calling bilingual people known to us personally, asking election officers for referrals, contacting Mexican-American organizations, putting announcements on both Spanish and English language radio and TV, and in newspapers.

In 1978 a representative of the Calif. Sec. of State's office compiled a list of precincts requiring bilingual election officers. This identification of bilingual precincts enabled us to be more effective in placing the bilingual officers that we had recruited where they were needed. Great effort is made to place bilingual officers in these precincts.

Attached is a report for the November 4, 1980 election of bilingual precinct officer placement. As you can see, of the 25 bilingual precincts not filled when appointments were made, 12 were filled by election time, and of the 35 bilingual election officer dropouts, 19 were filled by election day. The others were not filled due to the continuing difficulty in recruitment, and time and staff limitations.

Note that there were many non-bilingual precincts that had bilingual election officers. We do place bilingual election officers out of their home areas in order to fill needs, but if there is a transportation or distance problem, or the election officer would just rather work near her own home, we appoint her there.

Also note that some precincts have 2, 3, and 4 bilingual election officers. We feel that these last two factors show appropriate community representation.

In 1977, Fresno County developed a Voter Outreach program. With this group we have made a concerted effort in the area of registration, voter education and employment of minorities for precinct boards. We have representatives in the community every day who are working to reach our goals. They are in frequent contact with the bilingual radio and TV stations, and have made many presentations on radio and TV, and at schools and organizations.

MEMORANDUM FOR THE DIRECTOR

DROPOUT REPORT FOR NOVEMBER 4, 1980

|  | Bilingual | Inspectors | Other | Total |
|--|-----------|------------|-------|-------|
| Not placed before appointments were sent               | 25        | 14         | 67    | 106   |
| Dropouts between time appointments were sent & 11-3-80 | 24        | 45         | 171   | 240   |
| Dropouts 11-3-80, the day before the Election.         | 3         | 2          | 22    | 27    |
| Dropouts on Elections Day                              | 8         | 1          | 7     | 16    |
| Total  | 60        | 62         | 267   | 389   |

There were 516 precincts with 4 Election Officers each.

**BILINGUAL ELECTION OFFICER REPORT**

**11-4-80**

**Total Precincts - 516**

**Bilingual Precincts - 165**

**Bilingual precincts having bilingual election officers - 136**  
**(Using a total of 178 bilingual election officers)**

**Bilingual precincts having no bilingual election officers - 29**  
**(Bilingual election officers never appointed - 13)**  
**(Bilingual election officers appointed & dropped out - 16)**

**Non-bilingual precincts having bilingual election officers - 67**  
**(Using a total of 76 bilingual election officers)**

**Total number of bilingual election officers working - 254**



Office of the Secretary of State  
March Fong Eu

Executive Office  
1230 J Street  
Sacramento, California 95814

(916) 445-6371

July 1, 1981

Mr. Louis Nunez, Staff Director  
United States Commission  
on Civil Rights  
Washington, D.C. 20425

Re: Answer to Report dated June 22, 1981 (section 102(e)  
and Rules and Regulations section 702.18)

Dear Mr. Nunez:

Thank you for the opportunity to respond to certain testimony recently collected by the Commission in connection with its study of the Voting Rights Act. I am pleased to answer as follows:

(1) State Ballot Pamphlet

California is one of the few states which provides voters with detailed information concerning measures to be presented to the electorate prior to elections. The pamphlet is required to contain a title and summary for each state measure, a complete copy of each state measure, the text of the provisions to be repealed or revised, if any, a copy of the arguments and rebuttals for and against each measure, an analysis of each state measure, and such other materials designed to make the ballot pamphlet easier to understand or more useful for the average voter.

The required analysis is prepared by the Legislative Analyst and must "be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible." Government Code section 88003. A copy of the applicable law is marked as Exhibit "A" and is attached hereto.

A copy of the pamphlet is sent to every household in California wherein a registered voter resides and in some counties to every registered voter. In those counties covered by the minority language provisions of the Voting Rights Act of 1965 as amended in 1975, a person who has requested that he or she receive a translated version of the pamphlet is sent an appropriate version (Spanish or Chinese -- whichever is appropriate).



July 1, 1981

A voter indicates a desire to receive translated elections materials in California by indicating such a desire at the time of registration in the space provided for such information (see Exhibit "B"), by returning a bilingual postage prepaid postcard included in the English version of the pamphlet (see Exhibit "C"), or otherwise requesting the appropriate official to provide such material. The availability of translated material is prominently indicated in the foreign language on the cover of the pamphlet (see Exhibit "D").

Mr. Der is apparently unfamiliar with the conduct of elections in California. If a voter wishes to receive translated elections materials, the voter presumably would have indicated such desire at the time of registration. If the voter failed to do so but nevertheless wanted to receive it, the voter would be able to note the availability of the material by glancing at the voters pamphlet cover, which contains bilingual information to that effect. In this context, the statement "Why would someone who doesn't read English even bother to flip through it?" is nonsensical.

I share the concern of Mr. Trasvina and Ms. Aguirre with regard to the comprehensibility of much of the ballot pamphlet material. Indeed, parts of it are difficult to understand simply because the law itself is difficult to comprehend and explain on occasion. Yet, the Legislative Analyst does attempt to follow the dictates of the law which requires that his analysis be written so as to be understood by the average voter, and the arguments for and against are typically written by lay people in common parlance.

I'm afraid that the alternative to the sometimes legalistic ballot pamphlet material may be to provide no information at all. That, in my opinion, would not be desirable. In any case, this problem has nothing whatsoever to do with the Voting Rights Act.

(2) Elections Code section 304

California law does, indeed, mandate my office to promulgate regulations requiring counties to design and implement outreach plans. I have done so (see Exhibit "E"). The state currently is spending approximately \$200,000 annually to reimburse counties for implementation costs.

The extent to which the City and County of San Francisco should engage in voter outreach activities beyond the

Mr. Louis Nunez

July 1, 1981

minimum required by state regulations has been the subject of frequent dispute over the past several years. Chinese for Affirmative Action and other community groups have worked with state and local officials frequently to maximize voter outreach in San Francisco. Mr. Der apparently feels that these efforts are insufficient. The current Registrar of Voters is sensitive to the criticism of Mr. Der and others, including this office, and is making significant efforts to expand voter outreach programs within the confines of staff and budgetary limitations.

In any case, it should be noted that Elections Code section 304 is a state law and that its implementation has nothing whatsoever to do with the Voting Rights Act.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Los Angeles, California on July 2, 1981.



MARCH FONG EU

California Government Code

Chapter 8. Ballot Pamphlet. § 88000 - 88007

- § 88000. Responsibility.
- § 88001. Contents.
- § 88002. Format.
- § 88003. Duties of Legislative Analyst.
- § 88004. Manner, Form of Printing Measures.
- § 88005. Printing Specifications.
- § 88005.5. Duties of Legislative Counsel.
- § 88006. Public Examination of Pamphlet.
- § 88007. Amendment of Chapter by Legislature.

88000. Responsibility. There shall be a state ballot pamphlet which shall be prepared by the Secretary of State.

88001. Contents. The ballot pamphlet shall contain:

- (a) A complete copy of each state measure;
- (b) A copy of the specific constitutional or statutory provision, if any, which would be repealed or revised by each state measure;
- (c) A copy of the arguments and rebuttals for and against each state

Exhibit A

measure;

- (d) A copy of the analysis of each state measure;
- (e) Tables of contents, indexes, art work, graphics and other materials which the Secretary of State determines will make the ballot pamphlet easier to understand or more useful for the average voter;
- (f) A notice, conspicuously printed on the cover of the ballot pamphlet, indicating that additional copies of the ballot pamphlet will be mailed by the county clerk upon request.

*History: Amended by Stats. 1977, Ch. 520, effective January 1, 1978.*

**88002. Format.** The ballot pamphlet shall contain as to each state measure to be voted upon, the following in the order set forth in this section:

(a) Upon the top portion of the first page and not exceeding one-third of the page shall appear:

- (i) The identification of the measure by number and title.
- (ii) The official summary prepared by the Attorney General.
- (iii) The total number of votes cast for and against the measure in both the State Senate and Assembly if the measure was passed by the Legislature.

(b) Upon the lower portion of the first left page and upon the top half of the right page, if necessary, shall appear the analysis prepared by the legislative analyst.

(c) If arguments for and against the measure have been submitted, then the text of the measure shall appear on the right page facing the analysis. If the text does not fit on this page, it shall be continued in the back of the pamphlet. Arguments for and against the measure shall be placed on the next left and right pages respectively. The rebuttals shall be placed immediately below the arguments.

(d) If no argument against the measure has been submitted, the argument for the measure shall appear on the right page facing the analysis. The text of the measure shall be printed in the back of the pamphlet.

(e) The text of the measure shall contain the provisions of the proposed measure and the existing provisions of law repealed or revised by the measure. The provisions of the proposed measure differing from the existing provisions of law affected shall be distinguished in print, so as to facilitate comparison.

(f) The following statement shall be printed at the bottom of each page where arguments appear: "Arguments printed on this page are the opinions of the authors and have not been checked for accuracy by any official agency."

**88003. Duties of Legislative Analyst.** The Legislative Analyst shall prepare an impartial analysis of the measure describing the measure and including a fiscal analysis of the measure showing the amount of any increase or decrease in revenue or cost to state or local government. Any estimate of increased cost to local governments shall be set out in boldface

print in the ballot pamphlet. The analysis shall be written in clear and concise terms which will easily be understood by the average voter, and shall avoid the use of technical terms wherever possible. The analysis may contain background information, including the effect of the measure on existing law and the effect of enacted legislation which will become effective if the measure is adopted, and shall generally set forth in an impartial manner the information which the average voter needs to understand the measure adequately. The Legislative Analyst may contract with professional writers, educational specialists or other persons for assistance in writing an analysis that fulfills the requirements of this section, including the requirement that the analysis be written so that it will be easily understood by the average voter. The Legislative Analyst may also request the assistance of any state department, agency, or official in preparing his analysis. The title of the measure which appears on the ballot shall be amended to contain a summary of the Legislative Analyst's estimate of the net state and local government financial impact.

*History: Amended by Stats. 1975, Ch. 486, effective September 2, 1975.*

**88004. Manner, Form of Printing Measures.** Measures shall be printed in the ballot pamphlet, so far as possible, in the same order, manner and form in which they are designated upon the ballot.

**88005. Printing Specifications.** The ballot pamphlet shall be printed according to the following specifications:

- (a) The pages of the pamphlet shall be not smaller than 8½ x 11 inches in size;
- (b) It shall be printed in clear readable type, no less than 10-point, except that the text of any measure may be set forth in 8-point type;
- (c) It shall be printed on a quality and weight of paper which in the judgment of the Secretary of State best serves the voters;
- (d) The pamphlet shall contain a certificate of correctness by the Secretary of State.

**88005.5. Duties of Legislative Counsel.** The Legislative Counsel shall prepare and proofread the texts of all measures and the provisions which are repealed or revised.

**88006. Public Examination of Pamphlet.** Not less than twenty days before he submits the copy for the ballot pamphlet to the state printer, the Secretary of State shall make such copy available for public examination. Any voter may seek a writ of mandate requiring any such copy to be amended or deleted from the ballot pamphlet. A peremptory writ of mandate shall issue only upon clear and convincing proof that the copy in question is false, misleading or inconsistent with the requirements of this chapter or the Elections Code, and that issuance of the writ will not substantially interfere with the printing and distribution of the ballot pamphlet as required by law. Venue for a proceeding under this section shall be exclusively in Sacramento County. The Secretary of State shall be named as the respondent and the state printer and the person or official

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who authored the copy in question shall be named as real parties in interest. If the proceeding is initiated by the Secretary of State, the state printer shall be named as the respondent.

88007. Amendment of Chapter by Legislature. Notwithstanding the provisions of Section 81012, the Legislature may without restriction amend this chapter to add to the ballot pamphlet information regarding candidates or any other information.

19055. Voter Registration Card.

(a) Postal Forms.

(1) Affidavit of Registration Portion.

PRINT IN INK—ESCRIBA EN LETRA DE MOLDE EN TINTA

1 Optional - Opcional—  Mr/Sr (first name)  Mrs/Sra (middle, segundo)  Miss/Srta (last, apellido)  Ms

2 Residence - Domicilio (No.) (Street - Calle) (Apt. No. - Núm. del Apt.)

3 City - Ciudad 4 Zip Code - Zona Postal

5 If no street address, describe location of residence: (cross streets, route, box, section, range, township, etc. - Si le calle no tiene núm. describa la localidád: (Calle que atraviesan, etc.)

6 Mailing Address (if different) - Dirección Postal (si diferente) (Rite or Box)

7 Political Party - Partido Político (Check One - Indique uno)  American Independent  Democratic  Peace and Freedom  Republican  Decline to State - Se niega a declarar  Other - Otro

8 Date of Birth - Fecha de nacimiento 9 State or country of birth - Estado o país de nacimiento

10 Occupation - Profesión u oficio

11 Telephone (Optional) - Teléfono (Opcional)

Social Security No. (Optional) - Núm. de seguro social (Opcional)

12  I prefer election materials in English  Prefiero materiales electorales en español

13 Signature - firma

14 George A. Mann, Registrar of Voters - Recordbr Deputy - Empadronador

Accel. No. Núm. de Cuenta 15

WARNING: Perjury is punishable by imprisonment in State prison of not less than 1 nor more than 1 1/2 yrs. § 126 Penal Code, 2015.5 Civil Proc.

AVISO: El juramento en falso es castigado, encarecimiento en la prisión del estado, no menor de un año ni más de uno y medio años. § 126 Penal Code, 2015.5 Civ. Proc.

I am a citizen of the United States and will be at least 18 years of age at the time of the next election. I am not imprisoned or on parole for the conviction of a felony which disqualifies me from voting. I certify under penalty of perjury that the information on this affidavit is true and correct.

Soy ciudadano de los Estados Unidos y tendré por lo menos 18 años de edad para la próxima elección. No estoy preso o bajo el régimen de libertad provisional por un crimen que me prive del derecho de votar. Juro bajo pena de falso juramento que la información en esta Declaración Jurada es verdadera y correcta.

Subscribed in County of - Firmado en Condado de

Date - Fecha

PRIOR REGISTRATION PORTION: PORC: I DE PRE-EMPADRONAMIENTO: Are you currently registered to vote? ¿Este ud. empadronado para votar actualmente?  Yes—SI  No (IF YES, fill in below — Si afirmativo, rellena los espacios abajo)

NAME - NOMBRE

Former Address - Dirección Anterior

City - Ciudad County - Condado

Political Party - Partido Político A 9 9 9 9 9

STATE OF—ESTADO DE CALIFORNIA  
COUNTY OF—CONDADO DE  
SANTA CLARA

AFFIDAVIT OF REGISTRATION—  
DECLARACION JURADA  
DE EMPADRONAMIENTO

Exhibit B

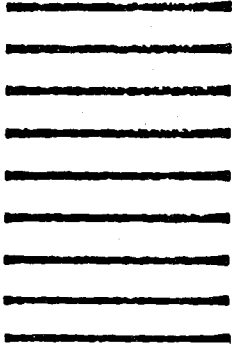


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NECESSARY  
IF MAILED  
IN THE  
UNITED STATES

**BUSINESS REPLY MAIL**  
FIRST CLASS PERMIT NO. 5037 SACRAMENTO, CA

POSTAGE WILL BE PAID BY

SECRETARY OF STATE  
P.O. BOX 726  
SACRAMENTO, CALIFORNIA 95805  
ELECTIONS DIVISION



DO NOT USE THIS CARD FOR ABSENT VOTER BALLOT REQUEST.  
USE TO REQUEST SPANISH PAMPHLETS ONLY.

Favor de enviarme un folleto en español y en el futuro todos los materiales electorales en español.  
Print in ink — *Escriba en letra de molde en tinta*

|                               |                       |
|-------------------------------|-----------------------|
| Name — <i>Nombre</i>          |                       |
| Address — <i>Residencia</i>   |                       |
| City — <i>Ciudad</i>          | State — <i>Estado</i> |
| Zip Code — <i>Zona Postal</i> |                       |

\_\_\_\_\_  
Signature — *Firma*

NOTE: If this card cannot be mailed by May 23, 1980, contact your county clerk or registrar of voters for a translated pamphlet.

NOTICIA: Si no se puede mandar esta tarjeta a lo menos el día 23 de mayo de 1980, sírvase llamar al secretario del condado o al registrante de votantes para recibir un folleto traducido.

Exhibit C



# California Ballot Pamphlet

General Election  
November 4, 1980



Compiled by March Fong Eu  
Secretary of State

Analysis by William G. Hamm  
Legislative Analyst

Exhibit D

AVISO

Una traducción al español de este folleto de la balota puede obtenerse si completa y nos envía la tarjeta con porte pagado que encontrará entre las páginas 40 y 41. Escriba su nombre y dirección en la tarjeta en LETRA DE MOLDE y regrésela a más tardar el 23 de octubre de 1980.

**19059. Languages.**

The forms prescribed in Section 19055 shall be printed in the following languages:

- (a) Monolingual English versions
- (b) Bilingual versions
  - (1) English-Spanish
  - (2) English-Chinese

**Article 3. County Programs to Identify and Register Qualified Electors****20000. General.**

All counties shall design and implement programs intended to identify qualified electors who are not registered voters, and to register such persons to vote, hereinafter referred to as outreach programs.

*NOTE: Authority cited for Article 3 (Sections 20000-20006): Section 202, Elections Code. Reference: Section 202, Elections Code.*

**20001. Minimum Requirements.**

As a minimum, each county's outreach program shall contain the following components which shall be described in an outreach program plan:

- (a) Consultation. Each program shall include systematic effort by the clerk to consult on a continuing basis all persons who exhibit interest and special knowledge in any outreach methods contemplated by the clerk. This effort shall include, but not be limited to, a gathering of source lists of persons whose interest, knowledge, or experience suggests the potential for meaningful contribution to increased voter registrations in the county.
- (b) Publicity. Each program shall make specific provision for publicity on all phases of voter registration, including the training and deputizing of registrars.
- (c) Focus; Balance. Each program shall establish priorities for the direction of its outreach efforts. These priorities shall reflect the clerk's assessment as to which specific outreach methods will be the most cost-effective in the county. Each plan shall be reasonably balanced in the allocation of outreach efforts and resources among the major pools of unregistered voters.
- (d) Budget. Each program shall include a budget with sections for personnel, equipment and materials for each outreach effort proposed.
- (e) Schedule. Each program shall contain a schedule of critical dates and deadlines associated with each outreach effort proposed. This schedule shall be supported by contractual and voluntary commitments, if any, from those responsible for providing products or services to meet these dates.
- (f) Solicitation of Local Assistance. Each program shall provide for the solicitation of assistance from local offices of all levels of government and of private entities in providing the incidental use of their premises and/or personnel for the purpose of outreach. The offices and entities whose assistance is solicited shall include those which, in the opinion of the county clerk, come into frequent contact with unregistered electors who would be least likely to register under county registration practices in effect prior to July 1, 1976.
- (g) Distribution Controls. Each program shall establish orderly limits upon bulk distributions of registration affidavit forms. Such controls should include, but not be limited to, record keeping, training, and contingency plans for form allocation in the event that supplies become depleted.

Administrative Code; Title 2  
Division 7. Secretary of State

All requests for more than 50 registration forms shall be accompanied by a brief statement of distribution plans, which shall be a necessary condition to issuance of the voter registration cards. This statement shall designate the name and address of the person or persons proposing such a distribution plan. This statement shall contain declarations executed under penalty of perjury that reasonable steps will be taken to insure that:

(1) The person or persons distributing such cards to potential registrants will not neglect or refuse to give a voter registration card to any elector requesting one for the purpose of registering to vote; and

(2) The voter registration cards issued will not be altered, defaced, or changed in any way, other than by the insertion of a mailing address and the affixing of postage, if mailed, or as otherwise specifically authorized by the Secretary of State, prior to distribution to prospective registrants and that the affidavit portion of the voter registration cards will not be marked, stamped, or partially or fully completed by anyone other than an elector attempting to register to vote or by another person assisting such elector after being requested by such elector to assist in completing the affidavit.

A copy of all statements for requests exceeding 2000 forms shall be sent to the Secretary of State.

**20002. Program Emphasis.**

Each outreach program shall stress the solicitation of voter registrations by persons whose daily activities place them in frequent contact with potential registrants.

Selection of outreach methods shall consider maximum cost-effectiveness in view of the population of unregistered electors intended to be reached. Selection of methodology shall consider not only the level of effort expended, but also the likelihood of actual registrations obtained thereby.

Nothing in these regulations shall be construed to limit the use of deputy registrars of voters, including bilingual registrars, pursuant to Sections 302 and 303 of the Elections Code. Outreach programs adopted pursuant to these regulations shall provide for the continued use of deputy registrars when a population of unregistered electors requires personal assistance in registration and the continued use of deputy registrars is therefore reasonably appropriate.

Each county shall provide for the solicitation of registrations by personnel of state agencies, to the extent that the state agency has made its personnel available for an outreach program.

**20003. Submission of Plan for Outreach Program.**

No later than 20 days after the effective date of this Article, each county shall submit to the Secretary of State a plan describing its proposed outreach program. Each program shall be deemed to have met the minimum requirements if the Secretary of State has not interposed an objection within 21 days after such program has been submitted.

**20004. Evaluation.**

Annually in July, the Secretary of State will evaluate the county's program on the basis of two criteria:

- (a) adherence to the adopted plan for the meeting of minimum requirements.
- (b) effectiveness in terms of increase in number of registered voters over statistical/historical expectations.

**20050.**

Administrative Code; Title 2  
Division 7. Secretary of State

**20005. Cost/Savings Comparison Reports.**

On or before August 31 of each year, the county shall report to the Secretary of State its actual net cost of complying with Chapter 704, Statutes of 1975, as amended, including any program adopted pursuant to Section 304 of the Elections Code, for the immediately preceding fiscal year along with an estimated net cost for the forthcoming fiscal year.

For the purposes of these regulations, net cost is defined as total cost as offset by any savings which may accrue as the result of Chapter 704, Statutes 1975, as amended.

For the purposes of these regulations, a fiscal year is defined as the period of time from July 1 of the calendar year through June 30 of the following calendar year.

*NOTE: Authority cited: Statutes 1975, Chapter 1119, Section 4; Section 12172, Government Code. Reference: Statutes 1975, Chapter 704, Section 91.*

**20006. Reimbursement of Net Costs.**

Pursuant to Section 91 of Chapter 704, Statutes of 1975, any demonstrable net costs shall be reimbursed through the normal budget process.

**Article 4. Overseas Citizens Registration and Voting**

**20050. Overseas Citizen Affidavit of Registration.**

The affidavit of registration for overseas citizens shall be in substantially the following form:

San Francisco, California

After reviewing appropriate sections of Chapter 7 relating to California, and in light of information provided by March Fong Eu, Secretary of State, the Commission responds as follows:

In reviewing Exhibit D to Ms. Eu's letter, the Commission found that the notice concerning the availability of translated material on the California ballot pamphlet for the November 4, 1980 election was only translated in Spanish. A telephone interview was held with Mr. Der on August 7, 1981 to get further clarification of his statement in light of the information furnished by Ms. Eu. Mr. Der stated that the California ballot pamphlet for San Francisco had a Chinese translation on the cover noting that if the voter wanted to receive translated material they needed to send in a card that was in the middle of the English material. He said that his statement referred to the fact that a non-English speaking person would be overwhelmed by the amount of English material and would not bother to flip through it to find the card.

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## The Voting Rights Act: Unfulfilled Goals - Link Page

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