

**HOMELAND SECURITY & EMERGENCY MANAGEMENT
FOR LAWYERS, POLICYMAKERS AND EXECUTIVES:
LESSONS FROM THE KATRINA CATASTROPHE**

**The Center for American and International Law
International Municipal Lawyers Association
ABA Section of State and Local Government Law
ABA Section of Administrative Law and Regulatory Practice**

**Maintaining Essential Services:
Elections**

**May 4, 2006
Intercontinental Hotel, New Orleans, Louisiana**

Benjamin E. Griffith*

INTRODUCTION

“This matter impacts an historic election for municipal officers of a unique city devastated by the greatest natural disaster in modern American history. Residents of this city are anxiously waiting for elected leaders to set policies which will determine their future, and this election is the first step toward that future.”¹

One may not think of the electoral process as an essential service to be restored following

¹Defendants Kathleen Blanco et al Opposition to *Wallace* Plaintiffs' Motion to Reconsider, at 2, filed Mar. 27, 2006 in Consolidated Actions.

a natural disaster. When residents of a major metropolitan area are climbing out of one of the worst natural catastrophes in modern history and are desperate for a symbol that their city is finally on its way to recovery, the electoral process may very well serve as that symbol. The electoral process in the City of New Orleans may be a vital symbol that democracy will not be denied. The electoral process is taking place about eight months after a natural disaster struck an historically majority African-American city and forced the sudden exodus of 300,000 of her citizens.

Hurricane Katrina was a natural disaster of epic proportions, resulting in great loss of life and billions of dollars of property damage inflicted upon the U.S. Gulf Coast region. Less than three months after the recovery effort had been underway in the flood-ravaged Big Easy, attention focused on the upcoming mayorial and parish elections that were to be held in February and March 2006, in which a pivotal mayorial election and a host of local offices were at stake.

We will first look at some of the immediate legislative efforts on the federal level that sought to address the effects of Hurricane Katrina on the upcoming elections in New Orleans and other communities along the Gulf Coast. Next we will turn to state emergency election statutes, including those adopted well before this disaster by the State of Louisiana. We will then examine the perceived and actual impact on those elections that may or may not have been played by FEMA, particularly in the timing and level of its response from the time Hurricane Katrina made landfall. Finally, we will review the flurry of litigation spawned by the cancellation and delaying of the approaching elections. Our focus will be on the legal basis and validity of arguments that such delay would likely result in violation of the voting rights of African-American citizens who had been ripped from their community and literally dispersed throughout the nation.

Hurricane Election Relief Act of 2005, S. 2166

S. 2166, introduced by Senator Trent Lott in the Second Session of the 109th Congress and approved by the U.S. Senate in February 9, 2006, directs the Election Assistance Commission to “make grants to States to restore and replace election administration supplies, materials, records, equipment, and technology which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita.”

The Election Assistance Commission is required to make a grant to eligible States, in such amount as the Commission considers appropriate, “for purposes of restoring and replacing supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State which were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita and ensuring the full participation in such elections by individuals who were displaced as a result of Hurricane Katrina or Hurricane Rita.”

Funds received under such a grant must be used in a manner consistent with the requirements of title III of the Help America Vote Act of 2002. For Louisiana and other states in Katrina’s path, this is significant. HAVA mandated that all state replace lever type voting systems by the congressional elections of 2006, and Louisiana purchased a new \$39 million voting system in the fall of 2–5 with federal funding to implement mainly in its rural parishes. Most metro parishes in

Louisiana were already using the new voting system and the state was very close to being HAVA-compliant, including compliance with the requirement for a statewide voter registration database. The April 1, 2006 municipal primary elections held throughout the state were conducted successfully, largely attributable to intensive training and hands-on assistance from the Elections Division of the Louisiana Department of State and local parish offices of clerks of court. The Early Voting System was also used for the first time by 34 parish registrars, with the remaining parish registrars set to move to this new system for early voting no later than the July 2006 election.²

In order to be eligible for a grant, a state must certify to the Commission that

- (1) supplies, materials, records, equipment, and technology used in the administration of Federal elections in the State were damaged, destroyed, or dislocated as a result of Hurricane Katrina or Hurricane Rita; or
- (2) the system of such State for conducting Federal elections has been significantly impacted by the displacement of individuals as a result of Hurricane Katrina or Hurricane Rita.

This legislation would authorize \$50 million to be appropriated for FY 2006 for grants, “to remain available until expended.” Having passed the Senate, S. 2166 is now in the House.

State Election Emergency Statutes

Some states have enacted legislation that addresses postponement of elections due to emergencies or disasters. In a CRS Report for Congress entitled State Election Laws: Overview of Statutes Regarding Emergency Election Postponement Within the State (RS21942, September 22, 2004)³, Paige Whitaker summarized the emergency election laws of seven states, including Louisiana, that provide a mechanism for postponing certain elections in the event of disasters or emergencies that occur shortly before or during a scheduled election. While not a comprehensive discussion of election postponement, this report does give us a good overview of proactive steps that have been taken by some states in anticipation of the possible contingency that a major natural disaster or a substantial threat of a terrorist attack were to come at or during a regularly scheduled election.

The Louisiana election emergency statute, La. Rev. Stat. § 18:401.2 (2004), provides the following statement of findings in its preamble:

Due to the possibility of an emergency or common disaster occurring before or during a regularly scheduled or special election, and in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to

²Media Advisory, Louisiana Department of State, April 4, 2006, available online at <http://www.sos.louisiana.gov/admin/press/press-index.htm>

³Available online at <http://www.fas.org/sgp/crs/RS21942.pdf>

qualify or exercise their right to vote, to minimize to whatever degree possible a person's exposure to danger during declared states of emergency, and to protect the integrity of the electoral process, it is hereby found and declared to be necessary to designate a procedure for the emergency suspension or delay and rescheduling of qualifying, absentee voting in person, and elections.

Under La. Rev. Stat. § 18:401.2 (2004), upon issuance of an executive order declaring a state of emergency or impending emergency, the governor may suspend or delay any election. The governor shall take such action only upon certification by the secretary of state that such a state of emergency exists. As chief election officer of the parish, a clerk of the court may bring to the attention of the secretary of state any difficulties occurring in his parish due to natural disasters. If any delays or suspensions are authorized by the governor, the delayed election day shall resume or be rescheduled as soon thereafter as is practicable.

Postponement of federal elections is quite another matter and requires resort to both federal statutory and constitutional authority. In a CRS Report for Congress entitled Postponement and Rescheduling of Elections to Federal Office (RL32623, October 4, 2004),⁴ Jack Maskell summarized the federal statutory and constitutional provisions that could arguably authorize postponing an election for federal office in the event of a terrorist attack directed at election facilities or voters of states shortly before or during the elections in a presidential election year. There is not express constitutional direction or any federal law which currently provides express authority to "postpone" an election. Nonetheless,

While the Constitution does expressly devolve upon the States the primary authority to administer within their respective jurisdictions elections for federal office, there remains within the Constitution a residual and superceding authority in the Congress over most aspects of congressional elections (Article I, Section 5, clause 1), and an express authority in Congress over at least the timing of the selections of presidential electors in the States (Article II, Section 1, clause 4). Under this authority Congress has legislated a uniform date for presidential electors to be chosen in the States, and a uniform date for congressional elections across the country, which are to be on the Tuesday immediately following the first Monday in November in the particular, applicable even-numbered election years.

Further, 2 U.S.C. § 8 and 3 U.S.C. § 2 regarding vacancies and the consequences of a State's failure to select on the prescribed election day could conceivably allow states to hold subsequent elections in "exigent" circumstances. As Maskell noted:

It would appear that under Congress' express constitutional authority over the timing of federal elections it could enact a federal law setting conditions, times and dates for rescheduling of elections to federal offices in the States in emergency or other exigent

⁴Available online at <http://www.fas.org/sqp/crs/RL32623.pdf>

circumstances, and with the proper standards and guidelines could delegate the execution and application of those provisions to executive branch or State officials.

In addition to general contest, protest and challenge statutes whereby the results of elections to federal office are initially adjudicated in the States, a handful of States have provided in State law express authority to postpone or reschedule elections within their jurisdictions based on certain emergency contingencies. The States' authority within the United States Constitution appears to be sufficient to enact legislation to deal with emergency and exigent circumstances concerning federal elections, as long as such laws do not conflict with federal law enacted under Congress' superceding constitutional authority. Federal courts have thus generally interpreted federal law to permit the States to reschedule elections to congressional office when "exigent" circumstances have necessitated a postponement.⁵

State Authority Over Election Procedures Under United States Constitution

Our federal system of shared sovereignty contemplates a division of jurisdiction and authority in the case of elections to federal office. The terms of federal offices and the qualifications of candidates for federal offices are established by the United States Constitution, unalterable by Congress alone or by any State unilaterally. Individual States have the authority under the Constitution to administer elections for federal congressional office, although Congress may generally override any such regulations. The "Times, Places and Manner" clause of Article I, Section 4, has been called as a "default provision" that invests States with the responsibility for the mechanics of congressional elections, but only to the extent Congress declines to pre-empt those state legislative choices. The Constitution confers on State legislatures authority over the "manner" in which presidential electors in their State are chosen, and within the parameter prescribed by the Constitution, States are responsible for establishing the qualifications for voting in federal elections held in each state. See generally *Powell v. McCormack*, 395 U.S. 486 (1969); *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995); *Cook v. Gralike*, 531 U.S. 510 (2001); *Foster v. Love*, 522 U.S. 67, 69 (1997); and *Roudebush v. Hartke*, 405 U.S. 15, 24 (1972).

The procedural authority of States over elections within their jurisdictions, including elections to federal office, includes the initial authority over election contests, protests and recounts. In *Roudebush v. Hartke*, the Court noted that even though Article I, Section 5 of the Constitution gives each House of Congress the final authority over the elections and returns of its own members, a State may adopt contest and recount provisions as one of the "safeguards which experience shows are necessary in order to enforce the fundamental right involved."

State legislatures are granted express authority under Article II, Section 1, clause 2, over the manner in which presidential electors are to be chosen. In *Bush v. Gore*, 531 U.S. 70 (2000), a federal court intervened to stop a state-ordered recount of the vote for presidential electors in Florida in 2000. The Supreme Court majority opinion did not disturb the authority of a state legislature

⁵*Id.*, Summary at i.

under the United States Constitution to enact election contest statutes and recount procedures applicable to elections for presidential electors, although it did find that implementation of those procedures as directed by the Florida courts violated the equal protection clause and due process clause, noting that “it is obvious that the recount cannot be conducted in compliance with the requirements of equal protection and due process without substantial additional work,” in formulating specific standards for and overseeing manual recounts, which would delay completion of the recount proceedings beyond the Florida statute’s deadline. *Id.* at 110.

Authority Under State Law to Postpone or Reschedule.

There are several state law provisions which currently purport to give to certain specified State officials the authority to “postpone” or to reschedule an election within the State, prior to the holding of an election, for a number of emergency and exigent circumstances. Furthermore, as Maskell points out, some States have general emergency powers which might be broad enough to allow the Governor or other State executive official to take action which may effect a postponement of an election in the event of a natural or man made disaster, possibly extending to postponement or rescheduling of elections to federal offices within their jurisdiction.

In *Busbee v. Smith*, 549 F.Supp. 494 (D.D.C. 1982), aff’d, 459 U.S. 1166 (1983), the district court in an opinion affirmed by the United States Supreme Court found that an exigent circumstance, such as the State of Georgia’s reapportionment plan being refused preclearance by the Justice Department under the Voting Rights Act of 1965 because of “discriminatory effects,” allowed for an election to federal office in two congressional districts to be held on a subsequent date. This reasoning would arguably allow for the postponement of an election, and the holding of the election for federal office in the State at a later date, for a number of possible “exigent” circumstances, including “natural disasters” such as hurricanes, tied votes, or fraud. Indeed the court in *Busbee v. Smith*, in acknowledging that 2 U.S.C. § 8 allows States, under certain circumstances, to hold elections at times other than those prescribed by section 7, *Id.* at 524-25, and that in addition to the circumstances it specifically enumerates — death, resignation, personal incapacity — section 8 allows states to reschedule elections “where exigent circumstances arising prior to or on the date established by section 7 preclude holding an election on that date.” *Id.* at 525. The court offered natural disasters, and the parties to the instant suit offer fraud and a tie vote as examples of ‘exigent’ circumstances warranting state rescheduling.

Four Hurricanes and an Election

Mother Nature and arguably FEMA played a role in the November 2004 elections in Florida. Beginning with Hurricane Charley in August, major parts of Florida were flattened in rapid succession by Frances, Ivan and Jeanne, causing damage statewide estimated to be as high as \$26 billion. Following Florida’s 2004 tangle with four hurricanes, media attention focused on the unprecedented amount of federal aid that was bestowed upon Florida’s citizens as they coped with the ravages of a deadly quartet of natural disasters. Compared to the relief effort by FEMA just over a decade earlier when Hurricane Andrew ripped through south Florida, the efforts of FEMA this time were nothing short of phenomenal. As Charles Mahtesian noted in “How FEMA Delivered

Florida for Bush,"⁶ the FEMA effort in 1992 paled in comparison to that of 2004:

In 1992, the last time a major hurricane pummeled Florida in the homestretch of a presidential election, FEMA was caught with its pants down. Its response to Hurricane Andrew was disorganized and chaotic, leaving thousands without shelter and water. Cleanup and resupply efforts were snarled in red tape. After watching the messy relief efforts unfold, lawmakers questioned whether FEMA was a Cold War relic that ought to be abolished.

For then-President George H.W. Bush, the scene proved to be a public relations nightmare. He managed to regain his footing and win Florida three months later, but his winning margin was dramatically reduced from 1988. In 2004, George W. Bush and FEMA left little room for error. Not long after Hurricane Charley first made landfall on Aug. 13, Bush declared the state a federal disaster area to release federal relief funds. Less than two days after Charley ripped through southwestern Florida, he was on the ground touring hard-hit neighborhoods.

The criticism following the 2004 FEMA effort reached a crescendo when one factored in the fact that Florida voters were soon to be going to the polls to vote for their next President. As one might expect, the bloggers piled on. One GovExec.com article entitled "FEMA: Florida Election Management Agency"⁷ opened with a line from History of the World: Part One:

Mel Brooks once said, "it's good to be king." Well when it comes to hurricanes, it's even better being the President's brother. Especially in a vital swing state. In an election year. Louisiana's Democratic Governor Kathleen Blanco is learning that the hard way. While her state suffered through a disastrous, disorganized and delayed response to Katrina from FEMA and the Bush administration, Florida governor Jeb Bush had no such problems as his state weathered four hurricanes in 2004.

An explanation for this discrepancy was provided in "How FEMA Delivered Florida for Bush"⁸ in which the motives of the President and an entire federal agency were attacked in a diatribe by Charles Mahtesian on November 3, 2004:

Now that President Bush has won Florida in his 2004 re-election bid, he may want to draft a letter of appreciation to Michael Brown, chief of the Federal Emergency Management Agency. Seldom has any federal agency had the opportunity to so directly and uniquely alter the course of a presidential election, and seldom has any agency delivered for a president as FEMA did in Florida this fall. FEMA's preparation, performance and questionable largesse during the four 2004 Florida hurricanes stands in stark contrast with its abysmal failure in

⁶Available online at <http://www.govexec.com/dailyfed/1104/110304cm1.htm>

⁷Available online at <http://www.perspectives.com/blog/archives/000246.htm>

⁸Available online at <http://www.govexec.com/dailyfed/1104/110304cm1.htm>

New Orleans in the wake of Katrina. While severe, the four Florida hurricanes (Charley, Frances, Ivan and Jeanne) caused under 100 deaths and \$22 billion in damage, a fraction of Katrina's destructive force. Yet FEMA's proactive role and President Bush's timely and personal involvement in Florida bear no relation to 2005: ... Hurricane Charley in August 2004 saw FEMA, National Guard troops, relief supplies and President Bush on stand by before the storm even made landfall. As the St. Petersburg Times reported on August 17th, 2004, "Governor Jeb Bush sought federal help Friday while Charley was still in the Gulf of Mexico. President Bush approved the aid about an hour after the hurricane made landfall." Cargo planes flew FEMA supplies supplies from a Georgia Air Force base to a staging area in Lakeland, and the U.S. Army Corps of Engineers had stockpiled 11 truckloads of water and 14 truckloads of ice. Guy Daines, the former Pinellas County director of emergency services, was pleased and impressed with the rapid response of the National Guard and the delivery of pre-positioned supplies, stating "It amazed me how they got over 4,000 National Guard troops in there that quick. Rather than sit there and react, they are trying to get a jump-start on everything." .. FEMA again prepositioned personnel, supplies, and equipment for the Frances, which struck in the first week of September. A FEMA press release offered a laundry list description of preparations for Frances. 30,000 tarps, 100 truckloads of water and 100 truckloads of ice were already in place. Emergency medical teams and four urban search and rescue teams were already in place. By September 6, 900,000 Meals Ready to Eat (MRE's) were stockpiled in Jacksonville. President Bush himself got into the act, distributing ice to Florida hurricane victims with brother Jeb. ... This performance was repeated for Ivan and Jeanne, which hit two and three weeks later, respectively. Again, FEMA was in place with food, ice, water, and financial aid in advance of the arrival of the storms. By September 29, FEMA was providing detailed daily updates on its relief efforts, including over \$360 million in aid to individuals. This assistance was augmented by the IRS, which granted tax relief for Florida hurricane victims. ... Large and timely federal recovery funding was never an issue for the Florida Four. Congress passed \$13 billion in recovery spending for the 2004 hurricanes, the bulk of which went to Florida. By August of 2005, \$5.6 billion had been spent.

The wisdom of these expenditures by FEMA under the leadership of FEMA director Michael Brown was the subject of a hearing on May 18, 2005, before the Senate Committee on Homeland Security and Government Affairs. The hearing addressed waste and corruption in the Florida programs and was reported in "FEMA's Response to the 2004 Florida Hurricanes: A Disaster for Taxpayers?" Senators grilled Michael Brown over FEMA's largesse to Florida residents, and heard details of numerous frauds allegedly perpetrated by Brown at FEMA, including over \$31 million in payouts, some for home and car repairs in Miami-Dade County, which had been virtually unaffected by the storms. FEMA paid the costs of over 300 funerals statewide, even though medical examiners attributed only 123 to the hurricanes. As Mahtesian concluded in the GovExec.com article:

The rest, as they say, is history. Bush carried Florida over John Kerry by a surprisingly comfortable margin. Bush later made a handful of other Florida visits to review storm-related damage, but the story on the ground was not Bush's hand-holding. Rather, it was FEMA's performance. It's impossible to know just how much of an effect FEMA had

on the Florida vote...Even so, in a closely contested state where hundreds of thousands of voters suffered storm-related losses, it's equally hard to imagine that they didn't notice the agency's outreach.⁹

Comparing the predicament of Louisiana Governor Blanco to the treatment accorded Florida Governor Jeb Bush, Mahtesian made this observation in the GovExec.com article stated:

As for Louisiana Governor Blanco, she shouldn't expect the Jeb treatment any time soon. In fact, portraying her and other state local officials as the bogeymen in the Katrina disaster is essential to the White House's strategy for Bush's political survival. As the AP reported on Monday, Blanco is instead already getting the Rove treatment: "Blanco was not told when Bush would visit the state, nor was she immediately invited to meet him or travel with him. Blanco's office didn't know Bush was coming until told by reporters."

As Mahtesian concluded in this GovExec.com article, "It's impossible to know just how much of an effect FEMA had on the Florida vote. Many of the citizens the agency served there presumably had more important things to worry about. It's also hard to imagine that, even with its shock-and-awe hurricane response, a bureaucracy like FEMA pleased all its customers. Even so, in a closely contested state where hundreds of thousands of voters suffered storm-related losses, it's equally hard to imagine that they didn't notice the agency's outreach.

Unprecedented Displacement of Voters: Diaspora '05

Two of the most intense hurricanes ever recorded during the hurricane season intensified to Category 5 storms while in the Gulf of Mexico before making landfall as Category 3 storms. Hurricane Katrina made landfall on August 29, 2005, followed by Hurricane Rita almost one month later. With the displacement of over 300,000 New Orleans residents¹⁰ following Hurricane Katrina and mayorial and other local elections looming just months away, litigation over the election process, and whether and how to proceed with those elections, was inevitable.

Displaced New Orleans voters were faced with what many saw as an imminent threat of deprivation of their right to vote in the aftermath of Hurricane Katrina, due in part to the confusion and chaotic events that surrounded so many citizens being forced to leave their homes, particularly the ones in the predominantly Lower Ninth Ward. Most of these displaced voters were

⁹*Id.*

¹⁰The U.S. Census estimated that the New Orleans population was about 462,269 in July 2004. The Greater New Orleans Community Data Center estimated the population in January 2006 was 156,140. Class Action Complaint for Declaratory and Injunctive Relief, ¶24, *ACORN et al v. Blanco et al.*, Civil Action No. 06-0611 (E.D. La., filed Feb. 9, 2006)[“*Acorn* Complaint”].

African-American.¹¹ Residents of predominantly African-American Orleans Parish were scattered among and relocated in almost every state, with high concentrations of displaced persons in Texas, Georgia, Arkansas, Mississippi, Alabama, Tennessee, California and Florida.

A significant number were concentrated in Houston, Texas and Atlanta, Georgia, 317 and 429 miles, respectively, from the Orleans Parish. These displaced residents had voted for, and up until now were represented by, the Mayor of New Orleans, a member of the U.S. House of Representatives, eight members of the Louisiana House of Representatives, three members of the Louisiana Senate, and four members of the New Orleans city council, all African-American elected officials. The pre- and post-Katrina demographics prompted the Washington Post to predict that the massive displacement of population would have “seismic political implications for Louisiana, which faces a near-certain reduction of its congressional delegation and a likely loss in black-voter clout that could severely affect the state’s elected Democrats.”¹²

Initial Legislative Effort: Emergency Plan

Louisiana Governor Kathleen Babineaux Blanco was faced with inadequate state election procedures. On September 14, 2005, she issued Executive Order KBB 2005-36, postponing and delaying special proposition elections scheduled for November 12, 2005, in Orleans Parish. Governor Blanco called an emergency session of the Louisiana legislature and asked that the state election laws be amended to address the effects of Hurricane Katrina and Hurricane Rita. This special session was held in November 2005.

During that session and the 2006 special session that followed it, major changes were made in the state election laws. Act 40 of the 1st Extraordinary Legislative Session of 2005 authorized the Secretary of State, upon declaration of disaster or emergency by the Governor or both houses of the Legislature, to formulate and establish a special emergency election plan addressing polling places and poll workers needed for the proper conduct of elections. Act 40 authorized the Secretary of State to address “technical, mechanical, or logistical problems impairing the holding of elections with respect to the relocation or consolidation of polling places within the parish, potential shortages of commissioners and absentee commissioners, or shortages of voting machines.”

Existing state election laws did provide some measures to respond to the effects of Hurricane Katrina, but additional legislation was needed. Act 40 was a good start, but not enough. For example, La. R.S. 18:401.1 and 18:401.2 provided for a “procedure for the emergency suspension or delay and rescheduling of absentee voting in person and elections” when such action was deemed necessary “in order to ensure maximum citizen participation in the electoral process and provide a safe and orderly procedure for persons seeking to qualify or exercise their right to vote, to minimize

¹¹The lower Ninth Ward was about 95.7% African-American before Katrina. *Id.*, ¶22.

¹²“Storms Alter Louisiana Politics,” Washington Post, A07, October 14, 2005, online at http://www.washingtonpost.com/wp-dyn/content/article/2005/10/13/AR2005101301729_pf.html.

to whatever degree possible a person's exposure to danger during declared states of emergency, and protect the integrity of the electoral process." These and other existing state election laws authorized the Secretary of State and local election officials to take measures to address emergency conditions upon proper advance notice, relocate polling places due to emergency,¹³ permit precincts with less than 300 voters under extraordinary and unforeseen conditions,¹⁴ and change polling places due to an emergency caused by an act of God or when private property used as a polling place became unavailable through no fault of the government.¹⁵

When the 2005 special session ended, Governor Blanco, upon certification by Secretary of State Al Ater, issued Executive Order KBB 2005-96 on December 9, 2005, postponing and delaying the qualifying period scheduled for December 14 through 16, 2005, the proposition election and primary elections scheduled for February 4, 2006, and the general elections scheduled for March 4, 2006 in Orleans Parish for Civil Sheriff, Criminal Sheriff, Civil Clerk of Court, Criminal Clerk of Court, Assessors, Coroner, Mayor and City Council of New Orleans.

On January 23, 2006, Secretary of State Ater released an emergency plan for Orleans Parish Municipal Elections, with provisions for voting machines, polling places, commissioners and outreach. The emergency plan deputized the staff of the Secretary of State to assist the New Orleans' Registrar's office with what was certain to be a high volume of requests for absentee ballots by mail; called for daily runs between the Secretary of State's office and the New Orleans' Registrar's office, called for the multiple polling centers to be established in addition to regular polling places, and requested additional commissioners and absentee commissioners to assist in tabulating absentee votes. Under the emergency plan, notice of the election, the date of the election, the date of the early voting period and its locations, the date for submitting applications for absentee voting, and polling place relocations were to be publicized through several avenues, including placing notices in the official parish journal, weekly area newspapers, the Secretary of State's website¹⁶ and at prior polling places. The emergency plan also provided that the Secretary of State would inform displaced voters of the election by an outreach campaign that included a letter accompanying each application for an absentee by mail ballot. The Secretary of State's 1-800 number would be staffed with personnel trained in the election process. Public service announcements were to be broadcast and newspaper advertisements were to be published in areas where there was a high concentration of displaced persons.

On January 24, 2006, Governor Blanco issued executive order KBB 2006-2, rescheduling

¹³La. R.S. 18:401.2

¹⁴La. R.S. 18:532

¹⁵La. R.S. 18:534

¹⁶Hurricane Displaced Voter Information available online at <http://www.sos.louisiana.gov/elections/elect-absentee.html>. See Spring Elections-Frequently Asked Questions online at <http://www.louisiana.gov/elections/DisplacedVoterFAQs.htm>

the Orleans Parish primary election for April 22, 2006 and the general election for May 20, 2006. This executive order further provided that “if any polling place in the parish of Orleans is determined destroyed, inaccessible, or unsafe ..., the parish clerk of court in conjunction with the local parish governing authority shall designate alternate emergency polling places.”¹⁷ Municipal elections, including those for the office of Mayor of the City of New Orleans, were rescheduled for April, with the municipal primary election to be held April 1, 2006, and the municipal general election April 29, 2006.

On January 30, 2006, Governor Blanco called another special session of the legislature¹⁸, including a request for legislation to authorize displaced voters who registered to vote by mail to vote for the first time by absentee mail¹⁹ and to allow voters under the emergency election plan to cast their ballots during an early voting period for the affected elections at the registrar of voters offices in Louisiana parishes other than the parish in which they were registered.²⁰

The 2006 special session lasted 12 days and was almost as stormy as Katrina. When a house bill to set up satellite voting centers for displaced citizens of New Orleans was defeated, the Louisiana Legislative Black Caucus tried unsuccessfully to close down the session and then walked out from the House chamber amidst charges by at least one black representative that opponents of the house bill for satellite voting centers were like segregationists who opposed voting rights for African-Americans a generation ago.²¹ The Louisiana Legislature ultimately took additional steps with respect to the Orleans elections. H.B. 12 was enacted to allow first time voters who registered by mail after the last presidential election and before Hurricanes Katrina and Rita to vote by mail without having to vote in person. H.B. 50 was enacted to enable displaced voters the opportunity to vote in the same manner as members of the military. H.B. 22 established satellite absentee voting locations in the ten most populated parishes outside New Orleans, enabling displaced Orleans voters

¹⁷Section 2, Executive Order KBB 2006-2, issued Jan. 24, 2006.

¹⁸Executive Proclamation No. 12 KBB 2006, Convening of Legislature in Extraordinary Session, January 30, 2006.

¹⁹*Id.*, Item No. 19.

²⁰*Id.*, Item No. 20.

²¹“Blanco Bills Go Up in Flames,” The Times-Picayune, Feb. 14, 2006, available online at <http://www.nola.com/printer.ssf?/base/news-5/1139901379172530.xml>. See [ACORN] Plaintiffs' Omnibus Reply and Objection to Defendants' Responses to *Wallace* Plaintiffs' Request for Injunctive Relief at *10, Feb. 20, 2006, *ACORN v. Blanco*, No-06-cv-00611 (noting that one representative whose district encompassed part of New Orleans stated that the house bill's defeat was ‘an embarrassing display of racism clouded behind some arguments that didn't make any sense at all.’)

to vote in person at the registrar of voters offices in those locations during an early voting period that would be held for 12 days to 6 days before the election.

On February 13, 2006, the emergency plan was approved by the Legislature and promptly submitted to the Attorney General of the United States for preclearance pursuant to Section 5 of the Voting Rights Act of 1965. It was thereafter precleared.

These extraordinary legislative measures were put in place by the State of Louisiana in 2005 and 2006 to assure that all eligible voters would be afforded a reasonable opportunity to participate in the upcoming Orleans elections. That was not enough for three groups of plaintiffs.

Wallace v. Chertoff, ACORN v. Blanco, & Tisserand v. Blanco: Voting Rights Violations?

In the midst of chaotic conditions that prevailed during the months following the massive destruction of property and displacement of people, voting rights litigation erupted. Three separate civil actions were filed, two in the latter part of 2005 and a third in early 2006. The litigation was more than just another distraction for a state government trying to extricate itself from a catastrophe. It proved to be a catalyst for state executive and legislative action that ultimately led to the scheduling and holding of elections under adverse conditions never before faced by any state or local government in this nation. Amidst repeated charges that minority voting rights were being trampled upon, and faced with a resolute United States District Judge who kept the Governor's and state legislature's collective feet to the fire, something resembling a reasonable, principled solution came into being.

Litigants faced with the perceived emasculation of minority voting rights through election delay, cumbersome absentee ballot procedures, FEMA's refusal up to that point to release information identifying the whereabouts of displaced Orleans Parish residents, inadequate voter notification procedures, and the lack of out-of-state satellite voting locations, turned to the United States District Court for the Eastern District of Louisiana as the last line of defense for the voting rights of the people of Orleans Parish. All three civil actions were consolidated and assigned to District Judge Ivan L. R. Lemelle, an African-American jurist appointed to the federal bench by President Clinton.

Judge Lemelle, himself displaced by Hurricane Katrina, moved with a speed that made the rocket docket of the Eastern District of Virginia look lethargic. He acknowledged the inherent difficulties of holding an election on the heels of massive chaos and displacement resulting from Hurricane Katrina, but at the same time advised the litigants that he had "a burning desire for wholesomeness, completeness, normalcy" and that it was essential for the municipal and parish primary elections and municipal and parish general elections to take place on schedule.²² A detailed

²²The municipal primary election was April 1, with the municipal general election on April 29, 2006. The parish primary election was April 22, with the parish general election on May 20, 2006. "Black Activists Support Judge's Ruling to Hold New Orleans Elections on

examination of the litigation history would fill volumes, but it is sufficient for our purposes here to outline the specific contours of the electoral litigation that led up to the New Orleans Mayorial election and other municipal and parish primary and general elections held in April and May. This was a feat many pundits and prognosticators said just could not be done so soon after the devastating catastrophe of Hurricane Katrina.

Sausage and Laws: Fast Track

To appreciate the complexity, speed and earnestness with which the various groups of plaintiffs approached the ensuing litigation, and the speed, thoughtfulness and thoroughness with which their claims were resolved by Judge Lemelle, one must start with Louisiana's finest and most popular sausage. It is used in red beans and rice, gumbo and jambalaya. The starting point is lean, cured ham, chopped and highly seasoned, the hotter and spicier the better, then smoked in a hickory wood burning smokehouse. As we review the course of proceedings in this unusual triplet of Louisiana electoral lawsuits pending before Judge Lemelle, it would be wise to bear in mind a cajun version of Will Rogers' old adage: those who love laws and Andouille sausage should watch neither being made.

Alleged Denial of Voting Rights and Demands for Relief

The plaintiffs in the first civil action, *Wallace v. Chertoff*, charged that the State of Louisiana failed to consider and pursue "innovative voting schemes and methods to assure that displaced African-American voters would not be disenfranchised." During the period of time when legislative relief was under consideration, they faulted the State of Louisiana for failing to undertake or propose to take a number of actions which conceivably could have provided a feasible alternative to wholesale cancellation of elections, such as consolidation of precincts, designation of alternative voting locations, decreasing the number of voting machines at each precinct, increasing the number of voting machines to count absentee ballots, selecting facilities for voting and counting absentee ballots, increasing staffing, and making decisions about voting commissioners that were apparently allowed under existing state election laws. In their Bench Brief and Memorandum in Support of Motion for Preliminary Injunction,²³ the *Wallace* Plaintiffs asserted that the state had available, but did not pursue, numerous alternative processes:

Under the existing state election laws, Louisiana had a variety of measures available to respond to the effects of Hurricane Katrina. Under La. R.S. 18:401.1 and 18:401.2, the Secretary of State and local election officials could take measures to address the emergency and provide adequate notice to voters. Secretary of State and Clerk of Court may relocate polling places due to emergency, with notice to candidates and voters. La. R.S. 18:401.2.

Time,"Free Republic, March 31, 2006, available online at <http://www.freerepublic.com/focus/f-news/1607539/posts>.

²³*Wallace v. Chertoff*, No. 2-05-cv-05517, 2006 W.L. 361633 (Jan. 3, 2006)

Precinct boundaries must be set by City Council, by ordinance, with more than 300 and less than 2000 voters per precinct. La. R.S. 18:532. However, the Secretary of State may permit precincts with less than 300 voters under extraordinary and unforeseen circumstances. La. R.S. 18:532. City Council can change precinct boundaries. La. R.S. 18:532.1. If a secure location cannot be found within the precinct, the City Council may select a location "which is within the nearest precinct having proper facilities." La. R.S. 18:533. Polling place locations may be changed due to an emergency caused by an act of God, or when private property used as a polling place becomes unavailable through no fault of the government. La. R.S. 18:534. Notice is required for changing polling place location. La. R.S. 18:536. Polling places may be consolidated and the number of voting machines may be reduced by the parish board of election supervisors. La. R.S. 18:425.1. A polling place may not open, if the Registrar of Voters determines that there are no likely voters for that precinct. La. R.S. 18:531.1.²⁴

Similarly, in the *ACORN* civil action,²⁵ the plaintiffs, a 9000-member organization in the New Orleans and a 150-member nonprofit organization of residents of the Ninth Ward, were critical of the election delay and Act 40, the initial legislation enacted by the Louisiana legislature in late 2005 to facilitate post-Katrina elections. The gravamen of their Class Action Complaint for Declaratory and Injunctive Relief was that existing state law as applied to the post-Katrina landscape was inadequate to protect the voting rights of displaced African-American residents during emergency conditions. They charged that legislative actions taken thus far would not provide significant relief to the displaced residents, who were at risk of being disenfranchised as a result of an unprecedented depopulation of a major metropolitan area and imminent but now indefinitely delayed elections. They claimed that the Secretary of State's emergency plan would deny African-American voters an equal opportunity to participate in the Orleans parish elections in violation of Section 2 of the Voting Rights Act of 1965, as amended.²⁶

In each lawsuit, different groups of individual and organizational plaintiffs alleged that the actions of Louisiana Governor Kathleen Blanco, Secretary of State Al Ater and other state officials were in violation of Section 2²⁷ of the Voting Rights Act of 1965, Section 5 of the Voting Rights

²⁴*Id.* at *6.

²⁵*Association of Communities for Reform Now (ACORN) v. Blanco*, No. 2:06-cv-00611 (E.D. La.)

²⁶42 U.S.C. § 1973

²⁷Section 2 of the Voting Rights Act is codified in 42 U.S.C. § 1973, and provides in its amended form that was enacted in 1982:

(a) No qualification or prerequisite to voting or standard, practice or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or

Act, the Fourteenth Amendment and other federal and state laws, and that injunctive relief should be granted to prevent further violation of the plaintiffs' civil rights and voting rights. In addition to seeking declaratory relief that their voting rights would be abridged, minority voting rights would be diluted, and actions and decisions of federal, state and local officials would have a discriminatory impact and effect upon minority voters, the plaintiffs in this triad of litigation sought injunctive relief that fell into the following categories:

(1) Speedy elections: the Governor and other defendants should be ordered to take all necessary actions to assure that displaced New Orleans voters would be able to effectively exercise their right to vote in upcoming elections, which should be scheduled and conducted with all due speed;

(2) Voter participation: immediate steps should be taken to identify and enable the hundreds of thousands of displaced New Orleans voters to participate through absentee balloting, reconfigured precincts, and other measures in those elections;

(3) Delayed elections: state and local voting officials should be enjoined from indefinitely delaying the Orleans Parish elections that were scheduled for February 4, and March 4, 2006, elections which were in fact rescheduled by executive order that set April 22, 2006 as the new date for the Orleans Parish primary election and May 20, 2006 for the general election;

(4) Purged rolls: federal, state and local voting officials should be enjoined from purging the voter registration rolls for Orleans Parish;

(5) Displaced residents: voting officials should be enjoined from preventing voters from casting ballots or refusing to count ballots in the upcoming elections, on the grounds that the voter no longer resides within their New Orleans precinct, unless the voter had affirmatively indicated an intent to change domicile for voting purposes to another Parish or to another state, or does not have sufficient identification, if the voter could produce other documentation showing their identity

in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

and New Orleans residence;

(6) Absentee ballots: voting officials should be enjoined from preventing voters from casting absentee ballots or refusing to count absentee ballots in the upcoming elections, on the grounds that the voter has not previously voted in person;

(7) Electoral access: all displaced New Orleans voters should be provided meaningful and effective access to the polls at the places where they are presently located, equal to or better than the access mandated for voters residing overseas or serving in the armed forces, under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff, et seq.;

(8) FEMA temporary address data access: FEMA should be ordered to provide unrestricted access to address data for all displaced New Orleans voters who had registered with FEMA to Louisiana and Orleans Parish elections officials, and Louisiana and Orleans Parish election officials should be ordered to compile a list of the temporary addresses of displaced New Orleans voters based upon the FEMA data, the Orleans Parish voter registration data, United States Postal Service Change of Address requests, data from the Red Cross, and other information sources, or alternatively, FEMA should be ordered to determine the names, addresses, telephone numbers, ward and precinct data, party affiliation, gender and other information usually available regarding New Orleans voters, and to promptly provide a means for election officials, candidates, parties, political committees and others to communicate with all or selected segments of the New Orleans voters by mail, telephone, e-mail, and other means;

(9) Voter registration data access: Louisiana and Orleans Parish election officials be ordered to make the list of the addresses of displaced New Orleans voters available to political parties, candidates, and other persons and groups that would normally have access to the voter registration data;

(10) Voter notification: federal, state and local governments be ordered to contact all New Orleans voters and inform them of their voting rights, absentee voting procedures, and the upcoming election dates by mail, newspaper advertising, radio, television, Internet and/or other media and methods;

(11) Absentee voting by alternative methods: federal, state and local governments should be ordered to afford all displaced New Orleans voters the opportunity to absentee vote by mail, by facsimile, via e-mail, and at polling places at the locations where they are temporarily residing, nationwide, or by other methods, based on court-approved procedures for absentee voting, alternatively, that the defendants be ordered to provide transportation to the polling places for displaced New Orleans voters, at government expense;

(13) Student identification: federal, state and local governments be ordered to contact all New Orleans voters who had not previously voted in person and inform them of their rights to obtain absentee ballots by mail upon submission of student identification or other proof of enrollment at an institution of higher learning, pursuant to the 2005 amendments to La. R.S. 18:115, effective on

January 1, 2006; and

(14) FEMA funding and assistance: FEMA should be ordered to provide sufficient funding and assistance to the State of Louisiana and Orleans Parish to accomplish these efforts to assure that all New Orleans voters could participate in the upcoming elections.

Communication of Meaningful Information to Displaced Voters

A common thread running through the complaints and motions for preliminary injunctive relief was a perceived lack of communication by public officials with citizens to obtain their input or to provide meaningful information about the how, when, and where to conduct the elections. Lack of effective communication and the resulting lack of citizen participation thus formed the center of a litigation storm aimed directly at a host of federal, state and local government officials.

Each group of plaintiffs was critical of the perceived lack of aggressive, innovative (and perhaps experimental and untested) measures by federal, state and local officials to maximize minority voter participation. As the plaintiffs in the *Wallace* litigation put it in their Motion for Preliminary Injunction and Request for Expedited Hearing filed on December 7, 2005:

There have been few efforts by federal, state and local officials to communicate with displaced New Orleans voters. Officials could have asked the many movie and television production companies that have been filming in Louisiana, or New Orleans advertising agencies to produce advertisements pro bono, which could have been broadcast nation-wide on network and cable television as public service announcements, at no cost to the Secretary of State. Billboard firms in cities with large numbers of displaced New Orleans voters might have posted informational signs at a discounted rate, or pro bono, instead of having blank bill boards, if they had been asked. Officials could have launched an Internet and e-mail campaign, and could have worked with local and national charities and advocacy groups to inform New Orleans voters of their rights, at minimal expense. Instead, the Secretary of State has been negotiating for FEMA funding, and other officials have done almost nothing, based on their public statements.²⁸

Mardi Gras and Governmental Priorities

Even Mardi Gras could not escape the wrath of the plaintiffs. With Mardi Gras parades and celebrations scheduled to begin on February 18, 2006, city, state and federal officials were also faced with significant logistical and coordination efforts, involving the City of New Orleans, the Louisiana State Police, the Department of Homeland Security and other federal, state and local agencies. Heavy demands were made for thinly stretched resources to be provided for the safety, security, medical needs, and sanitation for Mardi Gras participants and tourists. The plaintiffs in

²⁸*Wallace v. Chertoff*, Motion for Preliminary Injunction and Request for Expedited Hearing, 2005 W.L 3776534, at *4 (Dec. 7, 2005).

these lawsuits were critical of what they perceived as misplaced governmental priorities. They understandably wanted to know how it was that parades and parties were more important to federal, state and local officials than voting. They demanded immediate federal judicial intervention as the only way to “prevent African-American New Orleans voters from being denied their fundamental constitutional right to vote by the arbitrary and capricious decisions, acts and omissions of federal, state and local officials.”²⁹

Efforts to Provide Electoral Access and Promote Participation

The accusations of massive denial of voting rights and wholesale disenfranchisement of African-American voters displaced by Hurricane Katrina must be evaluated in context. The State of Louisiana, through the efforts of its executive and legislative branches, was already in the process of setting up voting stations across the state with extended voting schedules. Thousands of residents had already requested absentee ballots. At public expense, the state was putting on informational television and radio advertisements in areas with large numbers of displaced citizens. Candidates were campaigning and debating in Atlanta, Houston and other cities. All official efforts were aimed toward the common goal of promoting voter turnout, access and participation, with the bulk of those efforts targeting African-Americans displaced by Hurricane Katrina.

The Governor, Secretary of State and Registrar of Voters for Orleans Parish stated in their Memorandum in Response to the Plaintiffs’ Request for Additional Relief,³⁰ that the defendants had done all that had been requested and more to assure that all voters would have a reasonable opportunity to participate in the upcoming elections. Their efforts included the following:

- The defendants had worked with several plaintiffs to establish a mail-out with comprehensive election-related information to be sent to displaced voters.

- The Secretary of State obtained computer data from FEMA from which could be extracted the latest addresses FEMA had on file of Louisiana evacuees who had requested aid from FEMA and computer data from the U.S. Postal Service containing changes of addresses by Louisiana citizens.

- The mail-out included instructional information on the various ways eligible voters could vote, a form to request an absentee ballot along with instructions on how to fill it out, and the dates and types of elections that would be held on April 1 (municipal primary), April 22 (parish primary), April 29 (municipal general) and May 20 (parish general).

²⁹*Wallace v. Chertoff*, No. 2-05-cv-05517, 2006 W.L. 361633, at *3 (Jan. 3, 2006)

³⁰Memorandum in Response to the Plaintiffs' Request for Additional Relief at 4, Feb. 21, 2006, filed in *Wallace v. Chertoff*, No. 2-05-cv-05517, *Tisserand v. Blanco*, No. 05-cv-6487, and *ACORN v. Blanco*, No. 2:06-cv-00611 [hereinafter “Consolidated Actions”].

- Contact information was provided, including telephone numbers to the registrars of voters and an 800-number to the Secretary of State’s office for voters to use to get information or assistance in participating in the election.

- The defendants had sought and obtained legislation that authorized satellite voting places at ten key sites throughout the state as well as legislation affording the same rights to displaced voters to vote absentee as is extended to those in the military and overseas voters and legislation addressing the first time mail registrants, whereby first-time voters who registered by mail were allowed to vote by absentee ballot.

- The Secretary of State was conducting a media campaign to inform displaced voters of their right to vote in the upcoming elections, using both print and broadcast media.

New Demands for Out of State Voting Sites

After the state legislature adjourned in February 2006, the *Wallace* Plaintiffs came forward with new demands for relief. As part of the remedial relief to which they claimed entitlement by reason of alleged violations of Section 2 of the Voting Rights Act, they now demanded that the federal court order out of state voting sites to be established. No such request had been made while the Louisiana legislature was still in special session, but more significantly, no precedent existed for elections of state and local officials in one state to be held in another state. Aside from the issue of out of state voting sites, the efforts by the state legislature and state officials to assure that minority participation would occur were scorned by the litigants. The *ACORN* Plaintiffs labeled these legislative and administrative measures “a pittance” that could not ensure displaced, predominantly African-American voters had a full and equal opportunity to participate in the elections.³¹ They asserted, moreover, that the financial burden of displaced minority residents purchasing a postage stamp and making a request for a ballot with which to vote absentee by mail would be severely burdensome, despite the fact the voting by mail had already been precleared by the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act.

In their Section 2 claim, the *Wallace* Plaintiffs cited Louisiana’s long history of pervasive racial discrimination, including racial discrimination and polarization in voter registration, voting and districting,³² New Orleans’ long history of pervasive *de facto* and *de jure* racial discrimination, including racial discrimination in voter registration, voting and districting,³³ and Louisiana’s history

³¹[*ACORN*] Plaintiffs' Omnibus Reply and Objection to Defendants' Responses to *Wallace* Plaintiffs' Request for Injunctive Relief at *11, Feb. 20, 2006, *ACORN v. Blanco*, No-06-cv-00611.

³²*Reno v. Bossier Parish School Board*, 520 U.S. 471 (1997)

³³*Major v. Treen*, 574 F.Supp. 325 (E.D. La. 1983); *Chisom v. Roemer*, 501 U.S. 380 (1991).

of low voter registration among minority and impoverished residents.³⁴ The plaintiffs also pointed out that New Orleans and the State of Louisiana were covered jurisdictions under the preclearance provisions of Section 5 of the Voting Rights Act of 1965, and that any changes to voting standards, practices, procedures, polling places, and districts in the state or city required pre-clearance by the United States Justice Department or the U.S. District Court for the District of Columbia before such changes could be effective as law.

The *Wallace* Plaintiffs also alleged that before Hurricane Katrina, about 300,000 voters were registered and lived in Orleans Parish, and that about 189,500 New Orleans voters were African-American, many living in the Ninth Ward, and that now less than 100,000 people had returned to New Orleans. They alleged that the other New Orleans voters, including the great majority of African-American voters, were scattered throughout the country and could not return to New Orleans because their homes were uninhabitable.

Specific Claims of Vote Dilution under Section 2

A brief review of the requirements and preconditions for establishing vote dilution in violation of Section 2 of the Voting Rights Act will help provide some perspective and legal context for the claims of the plaintiffs in these three civil actions. The essence of a Section 2 claim is that a certain electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. In asserting claims under Section 2 of the Voting Rights Act of 1965, the plaintiffs argued that the process utilized by the government, cancellation of elections rather than making provisions for alternative voting or following existing emergency election schemes, had disproportionately affected African-American voters. As the plaintiffs in *Wallace* put it:

Perhaps there is no greater evidence of the State's bad faith than the fact that the Governor has called for special elections in St. Bernard Parish and Jefferson Parish on April 1 and April 29, 2005. In addition, delaying the February 4 and March 4, 2006 elections will effectively continue the terms of the present Orleans Parish elected officials for several months, contrary to Louisiana statutes and the provisions of the New Orleans Home Rule Charter that require Orleans Parish officials to be elected in primary and general elections in February and March of every fourth year, and provide that those officials take office on the first Monday in May following those elections.

In the first §2 vote dilution case decided after the 1982 Voting Rights Act amendments, *Thornburg v. Gingles*, 478 U.S. 30 (1986), the Court set out three "necessary preconditions" for plaintiffs to prevail in a vote dilution case:

(1) Geographical compactness,

³⁴*Association of Community Organizations for Reform Now v. Fowler*, 178 F.3d 350 (5th Cir. 1999)

- (2) Minority political cohesion, and
- (3) Legally sufficient white racial bloc voting.

Senate Report Factors and Totality of Circumstances

The Senate Report that accompanied the amendments to Section 2 in 1982 specified factors which typically may be relevant to a Section 2 claim:

- (1) the history of voting-related discrimination in the State or political subdivision;
- (2) the extent to which voting in the elections of the State or political subdivision is racially polarized;
- (3) the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting;
- (4) the exclusion of members of the minority group from candidate-slating processes;
- (5) the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process; the use of overt or subtle racial appeals in political campaigns; and
- (6) the extent to which members of the minority group have been elected to public office and the jurisdiction.

The Senate Report also noted that the following evidence may have probative value in determining the substantiality of a Section 2 claim:

- (7) evidence demonstrating that elected officials are unresponsive to particularized needs of the members of the minority group, and
- (8) evidence that the policy underlying the State's or the political subdivision's use of the contested practice of procedure is tenuous.

Proving all three *Gingles* preconditions does not automatically establish a §2 violation, but the Court must also consider the Senate Report factors and other relevant evidence under the "totality of circumstances." As required by 42 U.S.C. §1973, plaintiffs are also required to show that "based on the totality of circumstances...the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a [protected minority] in that its members have less opportunity than other members of the electorate to

participate in the political process and to elect representatives of their choice."

The plaintiffs in the raft of litigation brought against the Governor and other officials asserted that the actions and inactions of these elected officials resulted in impermissible vote dilution, proscribed by Section 2 of the Voting Rights Act. The *Wallace* Plaintiffs asserted, for example, that

"[t]he Voting Rights Act seeks to prevent political bodies from implementing election systems or practices that operate, whether intentionally or not, to minimize, cancel, or dilute the voting strength or political effectiveness of minority groups." *St. Bernard Citizens for Better Government v. St. Bernard Parish School Board*, No. 02-2209 (E.D. La. 2002) 2002 U.S. Dist. Lexis 16540, *6; *White v. Alabama*, 74 F.3d 1058, 1069 (11th Cir. 1996). "The essence of a § 2 claim is that a certain electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *St. Bernard Citizens for Better Government v. St. Bernard Parish School Board*, No. 02-2209 (E.D. La. 2002) 2002 U.S. Dist. Lexis 16540, *6. See also *Reno v. Bossier Parish School Board*, 520 U.S. 471, 479; 117 S. Ct. 1491, 1498(1997).³⁵

The *Wallace* Plaintiffs also pointed to a lack of official responsiveness to the needs and concerns of African-American citizens following the devastation wrought by Hurricane Katrina, alleging in part that

Among the factors that this Court should consider are the lack of responsiveness of elected officials to the particularized needs of displaced New Orleans voters and the tenuous, at best, explanations offered by state officials for their failure to act. See *St. Bernard Citizens for Better Government v. St. Bernard Parish School Board*, No. 02-2209 (E.D. La. 2002) 2002 U.S. Dist. Lexis 16540, *27 - 28; *National Association for the Advancement of Colored People v. Fordice*, 252 F.3d 361, 367 (5th Cir. 2001) (explaining totality of the circumstances factors). Election officials should not be allowed to use their own delays to justify indefinitely delaying New Orleans elections. See *Larios v. Cox*, 305 F.Supp.2d 1335, 1341 (N.D. Ga. 2004). See also *Hubbard v. City of Grenada, Mississippi*, 990 F.Supp. 478, 481 (N.D. Miss. 1997).³⁶

Turning to the cancellation and indefinite delay of the upcoming elections in Orleans Parish, the plaintiffs argued in their supporting memoranda that delaying the elections following Hurricane Katrina was contrary to the Voting Rights Act, notwithstanding the fact that state law pertaining to the holding of elections after a state of emergency was declared provided that once elections were

³⁵[*Wallace* Plaintiffs'] Bench Brief and Memorandum in Support of Motion for Preliminary Injunction, *supra*, 2006 W.L. 361633 at *5.

³⁶*Id.*

postponed because of an emergency, they had to be held as soon as practicable. Even though the Governor, Secretary of State, state legislature and others had taken remarkable steps pursuant to Act 40 for the purpose of assuring compliance with Section 2 of the Voting Rights Act, the *Wallace* Plaintiffs made this claim:

Freezing present representation for an indefinite time on the eve of a statutorily required election, as the Governor and the Secretary of State just did, is not permissible. See *Ramos v. State of Illinois*, Nos. 90 C 7211, 90 C 7447 (N.D. Ill. 1991) 1991 U.S. Dist. Lexis 1644. "The indefinite delay of an election is far more than an administrative inconvenience. Voters continue to be represented by [officials] who [may] no longer command the support of their constituency, or who no longer wish to serve."³⁷

The violations of the vote dilution prohibitions of Section 2 of the Voting Rights Act, alleged the *Wallace* Plaintiffs, vested in the federal court plenary equitable power to provide for a massive, unprecedented remedy.³⁸

The unprecedented remedy for this unprecedented situation is for this Court, the last line of defense for the voting rights of the people of Orleans Parish, to order the Louisiana Secretary of State, FEMA, the City of New Orleans, the Clerk of Criminal Court, the Registrar of Voters, to immediately provide a process, pursuant to which all persons eligible to participate in the election process on August 29, 2005, the day of Hurricane Katrina, are allowed to participate in an election of local government on the earliest possible date and time, as determined by this Court. The election should proceed with the speed befitting the right to vote, from which springs all other American rights.³⁹

The *Wallace* Plaintiffs asked the federal district court to enjoin State and local officials from indefinitely cancelling elections

to preserve the fundamental right to vote and prevent significant and irreparable harm. See *Larios v. Cox*, 305 F.Supp.2d 1335, 1343 (N.D. Ga. 2004); *Cane v. Worcester County, Maryland*, 874 F.Supp. 695, 698 (D. Md. 1995). Here, as in *Chisom v. Roemer*, 853 F.2d 1186, 1189 (5th Cir. 1988), the public interest requires that the elections go forward, rather than be cancelled.

³⁷*Id.*

³⁸"When the court has determined that there has been a [Voting Rights Act] violation, it has the power to, and normally should, order that remedial steps be taken. The scope of the federal court's power to remedy [election] violations is defined by principles of equity. It is within the scope of those equity powers to order a governmental body to hold special elections to redress violations of the VRA." *Arbor Hill Concerned Citizens Neighborhood Association v. County of Albany*, 357 F.3d 260, 262 (2nd Cir. 2004).

³⁹*Id.* at *2.

Innovative Voting Schemes

At the core of the voting rights claims asserted by the *Wallace* Plaintiffs, and to a lesser extent by the *Tisserand* and *ACORN* Plaintiffs⁴⁰ were repeated assertions that the defendants violated Section 5's preclearance requirement by cancelling and delaying scheduled elections without seeking preclearance from the Justice Department, that Hurricane Katrina had disproportionately displaced and impacted African-American residents of Orleans Parish, that it would be "severely burdensome" for displaced voters to vote absentee by mail,⁴¹ and that without immediate federal judicial intervention and compulsory implementation of such drastic measures as out of state voting sites, taxpayer-funded "innovative voting schemes" including absentee voting by fax, internet and e-mail,⁴² all New Orleans voters would not be able to freely and fully exercise their constitutional rights to campaign and vote in those municipal and parish elections, the 2006 congressional election, and other upcoming elections.

In their prayer for declaratory relief, the *Wallace* Plaintiffs asked for a declaratory judgment that their voting rights were in imminent danger of being abridged due to the acts and omissions of federal, state and local officials, that minority voting rights were in danger of being diluted, and that the events, actions and decisions of federal, state and local officials in the aftermath of Hurricane Katrina would have a discriminatory impact and effect upon minority voters.

In their prayer for injunctive relief, the *Wallace* Plaintiffs claimed that Governor Blanco by choosing to cancel the New Orleans elections, rather than initiate aggressive voter participation measures, and by failing to follow existing emergency voting statutes,

engaged in a "process or procedure" which had a disproportionate and discriminatory effect on its African-American population. Despite several opportunities to enact aggressive, proven innovative voting reform as proposed by several elected officials, Louisiana refused to act, except to legislate Act 40 providing for additional bureaucratic delay. In failing to work cooperatively with its own political subdivisions, Louisiana ignored its existing statutory scheme for election emergencies. The situation was exacerbated by FEMA's misinformed and unreasonable refusal to allow access to address data for New Orleans voters. Unfortunately, this process or procedure continues to date, diluting African-American voting strength in New Orleans. Meanwhile the State has acted to allow elections and even

⁴⁰[*ACORN*] Plaintiffs' Omnibus Reply and Objection to Defendants' Responses to *Wallace* Plaintiffs' Request for Injunctive Relief at *11-16, Feb. 20, 2006, *ACORN v. Blanco*, No-06-cv-00611.

⁴¹*Id.* at *11 ("Voting absentee by mail is a multi-step, time-consuming, onerous procedure" that "requires the voter to incur the costs of postal service, facsimile charges, or commercial delivery to request an absentee ballot and to submit the ballot itself.")

⁴²[*Wallace* Plaintiffs'] Bench Brief and Memorandum in Support of Motion for Preliminary Injunction, *supra*, 2006 W.L. 361633 at *11.

special elections in the adjoining parishes of St. Bernard and Jefferson.⁴³

Indefinite Delay of Elections as a Process Subject to the Voting Rights Act

One of the issues on which the plaintiffs' claims under the Voting Rights Act turned was whether the official decision of Governor Blanco to delay the elections was covered by the Act. In *Chisom v. Roemer*, 501 U.S. 380 (1991), the U.S. Supreme Court held that the Voting Rights Act covers "all action necessary to make a vote effective in any primary, special or general election, including but not limited to, registration, listing pursuant to this subchapter or other action required by law prerequisite to voting, casting a ballot, and having such ballot counted properly and included in the appropriate totals of votes cast." *Id.* at 387 n. 7. Minor, administrative or ministerial changes made by state and local election officials are subject to the Voting Rights Act and must not adversely impact minority voters.⁴⁴ "Any abridgement of the opportunity of members of a protected class to participate in the political process inevitably impairs their ability to influence the outcome of an election."⁴⁵ This action in postponing and then rescheduling the primary and general elections was ultimately precleared, rendering the plaintiffs' Section 5 claims moot.

FEMA's Role in the Electoral Process

The plaintiffs in the *Wallace* litigation sought to compel FEMA to disclose the temporary addresses of displaced New Orleans residents to enable those voters to be informed and vote. They argued that voters' addresses were already matters of public record, and that by compiling the data obtained from FEMA into the Secretary of State's computerized list of registered voters, along with addresses from requests for absentee ballots, postal change of address requests and other sources, the fact that a particular voter registered with FEMA or obtained benefits from FEMA would be shielded. The plaintiffs in the *Wallace* litigation accordingly asserted that FEMA had wrongfully refused to disclose the names and addresses of displaced New Orleans voters, a decision that was challenged as "an overly strict interpretation of the Privacy Act." In a section of their Bench Brief and Memorandum in Support of Motion for Preliminary Injunction entitled "FEMA Should Be Ordered To Assist," the *Wallace* Plaintiffs asserted:

[T]he Secretary of State could update the address lists in the Louisiana voter database without disclosing that a particular voter registered with FEMA or obtained FEMA benefits. See La. R.S. 18:31 (requiring Secretary of State to compile computerized list and providing for receipt of revenues from sales of the list); La. R.S. 18:175 (computerized list must be provided to parish clerk and registrar of voters). ...

Plaintiffs urge this Court to order the Federal Emergency Management Agency ("FEMA")

⁴³*Id.* at *1.

⁴⁴ See *Young v. Fordice*, 520 U.S. 273, 284 - 285, 117 S. Ct. 1228 (1997)

⁴⁵ *Chisom*, 501 U.S. at 397; *United States v. Wood*, 295 F.2d 772 (5th Cir. 1961).

to provide FEMA's data on the present addresses of New Orleans residents to Louisiana state election officials without restrictions on disclosure of the information to candidates, political parties and the public. This Court should order Louisiana election officials to compile a list of the temporary mailing addresses of all New Orleans voters, based upon the pre-hurricane voter registration rolls, the FEMA data, United States Postal Service change of address requests, and the Red Cross Hurricane Katrina and Hurricane Rita evacuee lists, and other information sources. This Court should order state and local elections officials to make a list of the temporary addresses of all New Orleans voters available to all political parties, candidates, and to all other persons or groups, that would normally have access to the voter registration rolls for Orleans Parish.

Alternatively, this Court should order FEMA to determine the names, addresses, telephone numbers, ward and precinct data, party affiliation, gender and other information usually available regarding New Orleans voters, and should order FEMA to promptly provide a means for election officials, candidates, parties, political committees and others to communicate with all and/or selected segments of the New Orleans voters by mail, telephone, e-mail, and other means, so that voters will be fully informed about their voting rights, voting procedures, candidates and issues.

Plaintiffs further urge this Court to order that New Orleans voters be allowed to present alternative forms of identification to vote, including but not limited to FEMA relief applications, Red Cross documents, other documents showing their New Orleans address, and/or provide a written statement attesting to their New Orleans address.⁴⁶

As noted above, computer data from both FEMA and the U.S. Postal Service was ultimately obtained by the Secretary of State, and through this data the latest addresses of Louisiana evacuees who had requested aid from FEMA and change of address information for Louisiana citizens was extracted and utilized in connection with the mail-outs of information about absentee voting, satellite polling stations in Louisiana and election dates to evacuees. Other efforts by litigants to obtain the FEMA list of addresses for residents displaced by Hurricane Katrina were rebuffed in a state court proceeding in the 19th Judicial District Court in Baton Rouge on February 22, 2006, the district court judge in that case holding that the State of Louisiana was not obligated to hand over that information since the list was not a public record.⁴⁷

Out of State Voting Rights Meetings

In addition to conducting a massive public education campaign through the newspapers,

⁴⁶[Wallace Plaintiffs'] Bench Brief and Memorandum in Support of Motion for Preliminary Injunction, *supra*, 2006 W.L. 361633 at *9,11-12.

⁴⁷See generally "FEMA List Deemed Off-Limits," Feb. 23, 2006, available online at <http://www.nola.com/prnter/prnter.ssf?/base/news-3/1140682786242810.xml>

radio and television, Louisiana Secretary of State Al Ater undertook to reach out to displaced voters in other states. He carried out a major pre-election effort to provide those voters with information about the specifics of voting by mail absentee ballot, voting at satellite registrars' offices within Louisiana during the early voting period and voting in Orleans Parish on election day. Town hall meetings were held in Houston and San Antonio, Texas, on March 29, Dallas, Texas, and Jackson, Mississippi, on March 30, and Atlanta, Georgia, on March 31 to discuss voting rights information with displaced voters. By the end of March, the Secretary of State's office has mailed out information to over 700,000 households.⁴⁸ Secretary of State Ater also established a command center at the Marriott-Convention Center in New Orleans, equipped with a press briefing room and press working room for members of the working media, and hosted a walk-through for the media on April 21 of the tabulation room, the command center and one of the mega-polling places at the University of New Orleans.⁴⁹ The schedule for municipal and parish primary and general elections was precleared by the U.S. Attorney General pursuant to Section 5 of the Voting Rights Act.

Dismissal of Claims in All Cases

Following evidentiary hearings and oral argument on February 23-24, 2006, District Judge Lemelle concluded, *inter alia*, that the state legislature had enacted laws which were sufficient to protect the rights of plaintiffs and of African-American voters, and that the defendants had undertaken and were planning actions sufficient to protect the rights of all voters in Orleans Parish. The Court ordered that the claims of Plaintiffs in all cases be dismissed without prejudice. The order of dismissal was entered on March 8, 2006.

Motion to Reconsider Rejected: Democracy Delayed is Democracy Denied

After the defendants had implemented extraordinary measures to accommodate displaced voters, after candidates had begun to move forward full speed ahead in their campaigns, after the Secretary of State had made plans for an aggressive outreach to displaced voters living in Atlanta, Houston, San Antonio, Jackson and Dallas, and after the District Court had made it clear as a bell that these elections were going to proceed, the *Wallace* Plaintiffs filed a Motion to Reconsider the dismissal. In their Motion filed on March 21, 2006, they again claimed that (1) the requirements for absentee by-mail voting remained unduly restrictive, (2) the eligibility requirements for using the satellite early voting centers were unduly restrictive, (3) the overall impact of the state legislature's enactments of legislation relating to first-time voters, satellite early voting and voting absentee by mail did not cure the alleged racial disparities or vote denial with respect to displaced voters, (4) injunctive relief now rather than after the election would best protect the voting rights of minority voters, (5) the state had undertaken no meaningful efforts to assess the feasibility of satellite voting centers outside of the State of Louisiana, and (6) newly discovered evidence indicating that local and

⁴⁸<http://www.sos.louisiana.gov/admin/press/press-index.htm> (Media Advisories, March 22, March 23, and March 24, 2006).

⁴⁹*Id.*, Media Advisory, March 21, 2006.

state officials were inadequately prepared for the upcoming primary and general elections that were going to be held under an emergency election plan that officials continued to revise substantially.

In their Opposition to the Motion to Reconsider, Governor Blanco and other defendants reminded the Court that “[t]his matter impacts an historic election for municipal officers of a unique city devastated by the greatest natural disaster in modern American history,”⁵⁰ and that the power of a federal court to intervene in and enjoin state elections was an awesome power to be “jealously guard[ed] and sparingly use[d]”.⁵¹ These defendants pointed out that the plaintiffs presented no new evidence other than a revised polling place assignment list, and that it was imperative that the elections be allowed to proceed as originally encouraged by the Court. They concluded with the simple, yet powerful, argument that “[t]he citizens of New Orleans deserve to proceed with their lives and these elections will serve as a figurative and literal symbol that New Orleans is finally on its way to recovery. An election delayed now will essentially be democracy denied.”⁵²

Joint Report of Parties

Following a March 27, 2006, hearing on the Motion to Reconsider, District Judge Lemelle denied the motion, but in recognition of the importance of the issues raised and the need for further monitoring, directed all counsel to meet and submit to the Court an update on voter information/outreach initiatives, absentee balloting, polling locations and staffing, and election day monitoring.⁵³ A Joint Report of Parties was submitted to the Court on April 7, 2006, in which the parties expressed the need for Court intervention relative to election day monitoring, polling place deficiencies and related issues. In his Order entered after the joint report was filed, Judge Lemelle (1) allowed additional election-day monitoring by representatives of named plaintiffs, subject to a joint agreement of the parties on terms, identifying information on proposed monitors and elected precincts for monitoring, (2) confirmed that polling places have been reasonably identified and efforts to reasonably assure access by voters, including those with special needs, are ongoing; and (3) advised the parties that the Court would entertain a timely request for expedited hearing on these and other issue upon making good faith efforts to confer prior to seeking formal relief.

Early Voting, Mega-Precincts & Campaigning in Atlanta and Dallas

⁵⁰Defendants Kathleen Blanco et al Opposition to *Wallace* Plaintiffs’ Motion to Reconsider, at 2, filed Mar. 27, 2006 in Consolidated Actions.

⁵¹*Chisom v. Roemer*, 853 F. 2d 1186, 1189 (5th Cir. 1988).

⁵²Defendants Kathleen Blanco et al Opposition to *Wallace* Plaintiffs’ Motion to Reconsider, at 13, filed Mar. 27, 2006 in Consolidated Actions.

⁵³Minute Entry, Mar. 27, 2006, in Consolidated Actions.

The executive and legislative branches of Louisiana's state government sought to provide equal access to the electoral process and a fair opportunity to participate in the political process for all minority and non-minority citizens of the state, including those displaced by the ravages of Hurricanes Katrina and Rita. Those official efforts were not perfect, but few would argue that the conditions prevailing after August 29, 2005 on the U.S. Gulf Coast were conducive to perfect governance. Katrina's winds brought some strange changes to the face of New Orleans politics. As early voting got underway, town hall meetings were being held in Atlanta, Dallas and other cities. Busloads of voters were expected to arrive at the offices of registrars in Lake Charles, Shreveport and Baton Rouge. The new mega-precincts that substitute for the dozens destroyed by flooding met their first crowds of voters, and have functioned as intended. While political science professors continued to ask such unanswerable questions as who would vote, where were the voters, what campaign messages were reaching the voters, how would so many new precincts in the City of New Orleans affect turnout, and to what extent were people going to use the 10-city early voting system, voters were showing up to vote for the candidate of their choice among a total of 120 running for offices that ranged from mayor and seven city council seats to sheriffs, court clerks and a coroner.⁵⁴

The substantial rights of the minority community in Orleans Parish and the City of New Orleans were preserved and protected throughout this ordeal. The actions of the Louisiana Legislature sufficient to prevent any adverse impact upon minority electoral access and minority participation in the municipal and parish political process. No violation of Section 2 of the Voting Rights Act resulted from those executive and legislative actions. Invocation of Section 2 and claims of vote dilution in virtually every aspect of the electoral process following a major natural disaster, while sincerely asserted by the plaintiffs, ran into a wall: a wall of judicial reluctance to delay democracy. Extraordinarily chaotic conditions taxed the very ability of the state government to function. Its post-catastrophic efforts to ensure that minority voting rights would be protected and not adversely impacted were nothing short of phenomenal. As District Judge Lemelle noted in dismissing the Section 2 claims, the election would be far from perfect, but holding it now outweighed any benefits of further delay.

The race card was played skillfully throughout this voting rights litigation. Charges of racial motivation and disregard for the rights of African-American citizens oozed through the pleadings and into the media reports of this lawsuit frenzy. No opportunity was missed to castigate federal, state and local government officials and branches of state government, although such tactics did not prevent the implementation of a reasonable, fair and comprehensive electoral process under unprecedented post-catastrophic conditions. Properly invoked, Section 2 of the Voting Rights Act serves a valid purpose in cases where it is used to invalidate state and local laws, customs, practices and procedures that result in a vote dilution, denial of equal access to the political process, and denial of equal participation in the electoral process on the part of minority voters for whom this landmark provision of the Voting Rights Act was enacted almost 25 years ago. In the aftermath of

⁵⁴“Voting in Crescent City Kicks Off Today,” April 10, 2006, available online at <http://www.theadvertiser.com/apps/pbcs.dll/aarticle?AID=/20060410/NEWS01/604100311/>

Hurricane Katrina, however, a catastrophe that decimated communities located throughout the U.S. Gulf Coast area caused the City of New Orleans to suffer extensive loss of life and property damage. The same was true for Biloxi, Long Beach, Ocean Springs, Pascagoula and many other towns and cities in neighboring Mississippi. Katrina did not target the Lower Ninth Ward of New Orleans. Katrina did not seek out African-American residents upon whom to inflict pain, suffering and loss. When Katrina made landfall on August 29, 2005, she did not aim for minority, white, rich, poor, old, or young citizens. She struck with the arbitrary force of a major hurricane, destroying lives and property in her random path.

CONCLUSION

This catastrophic event stands as a testament to the ravaging forces of nature and the corresponding efforts of people and their government to respond quickly, effectively and comprehensively. In its aftermath, Katrina now symbolizes a massive and surprisingly successful effort by government at all levels to coordinate its actions, marshal its resources, preserve the essence of the electoral process and protect the fundamental right to vote on the part of all affected citizens. Despite a few bumps in the road, and plenty of reminders that public officials are as human and imperfect as the rest of us, the elections in the City of New Orleans are indeed a symbol that this historic treasure is on the road to recovery.

*Ben Griffith is a partner in the Cleveland, Mississippi firm of Griffith & Griffith. His practice focuses on representing state and local governments in federal and state civil litigation involving election law, redistricting and vote dilution claims under the Voting Rights Act. He is Vice-Chair of the ABA Section of State & Local Government Law, liaison to the ABA Standing Committee on Election Law, member of the Governmental Liability Committees of DRI, TTIPS and the Litigation Section of the ABA, and has authored many publications in his field of practice. Admitted to practice in the Fourth, Fifth and Eleventh Circuits and U.S. Supreme Court, he has represented cities and counties in VRA litigation at the trial and appellate level in each of these circuits since 1982. He served as president of the National Association of County Civil Attorneys and chair of IMLA's Counties and Special Municipal Districts Department. He is board certified in Civil Trial Advocacy. He earned his *Juris Doctor* in 1975 at the University of Mississippi School of Law. Married to the former Kathy Lee Orr of Batesville, Mississippi, they have two children, Clark, 25, and Julie, 23.