

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

GREATER BIRMINGHAM  
MINISTRIES, et al.,

Plaintiffs,

v.

JOHN MERRILL, in his official  
capacity as the Alabama Secretary of  
State,

Defendant.

Civil Action No.:  
2:15-cv-02193-LSC

**DECLARATION OF GREGORY M. BIGGS**

1. My name is Gregory M. Biggs. I am over the age of 19; I am qualified to give this declaration; and, I have personal knowledge of the matters set forth herein.

2. I am a 1980 graduate of the University of Alabama in Huntsville and a 1985 graduate of the Cumberland School of Law at Samford University. I was admitted to the Alabama Bar that same year. Additionally, I graduated from the FBI Academy in Quantico, Virginia in 1988, and served as a Special Agent in the Federal Bureau of Investigation from May 1988 until June 1989. I am presently an Associate General Counsel at the Alabama Securities Commission where, for the past seven years, I have prosecuted and convicted several who used a wide variety of investment schemes to defraud using securities.

3. I worked as an Assistant Attorney General at the Alabama Attorney General's Office from October 1995 until April 2001. During that time, I successfully prosecuted election fraud cases in Wilcox County, Greene County, Hale County, and Winston County.

4. I am convinced that impersonation of voters at the polls occurred in Alabama while I was working election fraud cases and I certainly heard of the dead voting; however, my prosecutions actually focused around absentee election fraud. In that realm, I saw cases where the victim-voters did not even know that they had requested absentee ballots or that they had voted in a particular election. I also spoke with a large number of African-Americans who were outraged that someone had tried to steal – or had stolen – their votes.

5. Based on my prosecutorial experience, any time a county's absentee ballots end with a double-digit percentage of the total votes cast, fraud should be suspected and is likely involved.

6. Following convictions for election-related crimes, the numbers of absentee ballots cast throughout the state tended to drop to a normal range.

7. While absentee ballot fraudsters are typically focused on local elections, their cumulative affect can impact statewide elections.

8. My first election fraud prosecution was in Wilcox County. The State of Alabama offered Doris Mason and her daughter, Johnita Mason, to plead to misdemeanor charges related to the 1994 elections because their complicity was small and their pleas substantiated that there was voter fraud. At the time, there was general denial that voter fraud was even happening, and many argued that it was politically motivated. I thought it was important that the State be able to demonstrate that those accused would finally admit their fraud and plead guilty to criminal voter fraud. This was a difficult prosecution because the local power brokers and politicians denied the fraud and accused the State of singling out African Americans. Ironically, the victims were African Americans.

9. My next election fraud prosecution was in Greene County, where evidence demonstrated that multiple defendants created an assembly line process to complete the stolen absentee applications, affidavits, and ballots. At that time, anyone could make application to vote absentee; neither a witness nor identification was required. Thereafter, the absentee affidavit and its ballot would be mailed to the voter or a convenient address selected by the fraudster. Mandated by statute, the circuit clerk published a list of persons who chose to vote absentee and this list would be posted outside the clerk's office at the courthouse. The absentee ballot fraudster would monitor the lists to see who applied, which ballots went out, and when they would possibly be mailed. Sometimes the absentee ballot fraudster requested the application materials and ballots without the voters' knowledge, and other times they followed the U.S. Postal Service taking the materials out of the mailbox. Sometimes the absentee ballot fraudster would approach the unsuspecting victim-voter who received their ballot. The absentee ballot fraudster would either convince, threaten, or bribe the victim-voter to give up their voting materials. On some occasions, the fraudulent scheme would require the absentee ballot fraudster to sway the voter to sign the affidavit without completing the ballot. On these occasions, the victim-voter would be convinced that they were actually voting by only signing their name to the absentee affidavit. In sum, the victim-voters completed some of the absentee ballot paperwork without ever seeing the actual ballot. Regardless of the absentee ballot scheme to defraud, the key of the absentee ballot fraudsters in the commission of the crime was getting control of the absentee voting materials and ballots. If gathered in bulk by absentee ballot fraudsters, the blank absentee materials were typically completed at settings in an assembly line process.

10. With exception of Winston County, the victim-voters in all other cases were almost invariably African-American. Even though most of these victim-voters were not well educated and

extremely poor, their vote had importance and great value to them. In some instances, the victim-voters would tell us that they were told by absentee ballot fraudster that they had actually voted because the victim-voter had signed their names to parts of absentee election paperwork – even though they had not actually seen and completed a ballot with names of candidates.

11. The Greene County prosecution was a lengthy joint prosecution by the Alabama Attorney General's Office, the U.S. Justice Department and FBI. In the initial federal prosecution, Frank (Pinto) Smith, who at one point was a county commissioner, and Connie Tyree, who had been a county employee, in Tuscaloosa were convicted and sentenced to 33 months, though Tyree did get a little relief on appeal.

12. After those convictions, former county commission chairman Garria Spencer, former county chief of staff Booker Cooke Jr., former Eutaw councilman Spiver Gordon, former Greene County racing commissioner Lester "Bop" Brown, Althenia Spencer and Felephus "Flea" Hardy entered pleas of guilt and admitting their crimes in the voting process.

13. Smith and Tyree argued that their indictment should have been dismissed due to selective prosecution based on race and political affiliation. A magistrate judge conducted a 4½-day hearing on the issue. I testified and denied the allegations. Adopting the magistrate judge's recommendation, U.S. District Judge Smith Lynwood Smith rejected the claims. The Eleventh Circuit affirmed.

14. By letter dated January 23, 1998, and attached hereto as **Exhibit A**, Louis J. Freeh, then-Director of the FBI, thanked me for "all [I] did . . . to help prosecute former Greene County Commissioner Frank Smith and Connie Tyree for various violations relating to voting irregularities in the 1994 general election in Greene County." The letter specifically acknowledged the selective prosecution hearings.

15. In August 1999, I received the FBI Director's Award for Superior Performance as a Special Assistant U.S. Attorney. **Exhibit B.** It was presented to me by then-Attorney General Janet Reno.

16. My next election fraud prosecution involved the municipal elections held in Greensboro in Hale County. Without help from any federal agencies, the State of Alabama prosecuted Aaron "Dudley" Evans, a police officer, for conduct related to a February 1995 election in the city of Greensboro. This prosecution was built by a sole ABI agent, Perry Beasley.

17. Evans was defended by the Honorable J.L. Chestnut, Collins Pettaway, Robert Turner, and Marvin Wiggins.

18. My co-counsel in this case were Stephanie Billingslea, a career prosecutor with the Attorney General's office, and Verne Speirs, who was awaiting his bar results and then went on to the U.S. Attorney's Office. Verne and I are white, and Stephanie is African-American.

19. Evans' defense counsel again argued that the State of Alabama had engaged in selective prosecution and further that the prosecution violated the Voting Rights Act of 1965 because we were trying to chill African-American citizens from voting. These allegations were baseless and the court properly rejected them. I would never choose, and I have never chosen, to prosecute someone on the basis of race. Moreover, the State of Alabama was in Hale County to defend and protect the rights of citizens who desired to cast their own ballots without unlawful interference, and they generally welcomed us. The only thing that we were hopefully chilling was criminal activity at the hands of a rogue law enforcement officer.

20. At trial, victims testified that they had not completed or signed absentee ballot applications and/or affidavits that were submitted in their names, and a handwriting expert, Richard Roper, testified that Evans may have forged some of the documents. Some victims



testified that they completed paperwork for family members at Evans' direction. For instance, Annie Ward, who completed paperwork for herself and three of her children, testified: "I did what he asked me to do, and I thought it was legit because he was a police officer and why should he tell a lie." Transcript at 517. Floyd Herrod repeatedly testified that Evans threatened to put him in jail if he did not vote; inexplicably, he also testified that he was not afraid of Evans.

21. Some of the victims were vulnerable. Not all read and wrote well, and some did not understand the process. At least one completed absentee ballot paperwork because Evans told her to even though, as she told him, she always votes at the polls.

22. Evans was convicted of one count of 2<sup>nd</sup> degree criminal possession of a forged instrument, seven counts of illegal absentee voting, and seven counts of 2<sup>nd</sup> degree forgery. On appeal, one count of illegal absentee voting and the possession of a forged instrument count were reversed. Those counts concerned Rosia Gray, who had given her daughter permission to sign the forms for her. The convictions as to victims Annie Ward, Sophia Ward, Charlie Fowler, Charles O. White, Ronnie Hedgeman, and Floyd Herrod were all upheld on appeal. All of the victims of Evans' crimes were African American.

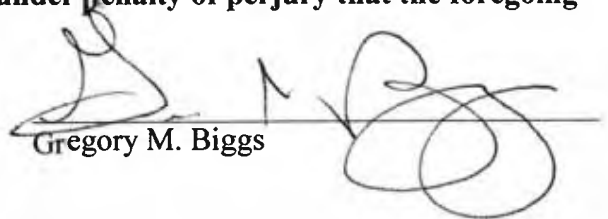
23. My final election fraud prosecution occurred in Winston County, which is nearly entirely white and Republican. This prosecution was also in conjunction with the U.S. Attorney's office of the Northern District of Alabama and the FBI. The prosecution began with information from a bootlegger that an election was going to be rigged. He had been at a meeting at a restaurant where the Winston County District Judge, the Sheriff of Winston County, the Circuit Clerk of Winston County, and other bootleggers were sitting around and conspiring about how they would manipulate absentee ballots of the upcoming election. All actors were white Republicans. The scheme involved the Sheriff of this "dry" county who was to exchange confiscated alcohol to

bootleggers to use to bribe voters to receive their blank absentee voting materials and ballots. My recollection is that everyone pled guilty and the officeholders resigned.

24. A photo ID requirement is generally a proactive way to try to protect the integrity of the election system. Alabama's photo ID requirement likely does not help where voters are being manipulated, but it should slow down the instances of ballot brokers casting ballots without the involvement of the voters. Photo IDs submitted with absentee ballots can also be helpful in the investigative process. Based on my experiences, I would like to see Alabama require that voters request absentee ballots in person and show a photo ID at that time; in my opinion, it would shut down some of the fraud.

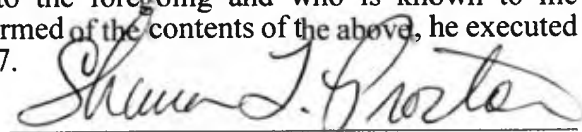
25. I am a registered voter in the State of Alabama.

**Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July 7, 2017.**

  
Gregory M. Biggs

STATE OF ALABAMA     )  
MONTGOMERY COUNTY )

I, the undersigned authority, a Notary Public in and for said county and state, hereby certify that Gregory M. Biggs, whose name is signed to the foregoing and who is known to me acknowledged before me on this day, that being informed of the contents of the above, he executed the same voluntarily on this the 7<sup>th</sup> day of July, 2017.



Notary Public

My Commission Expires: \_\_\_\_\_

My Commission Exp. 10/20/2018

## **Exhibit A**





U.S. Department of Justice

Federal Bureau of Investigation

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Office of the Director

Washington, D.C. 20535

January 23, 1998

Mr. Greg Biggs  
Assistant Attorney General  
State of Alabama  
Montgomery, Alabama

Dear Mr. Biggs:

I want to thank you on behalf of the FBI for all you did in your capacity as a Special United States Attorney to help prosecute former Greene County Commissioner Frank Smith and Connie Tyree for various violations relating to voting irregularities in the 1994 general election in Greene County.

Your contributions to the selective prosecution hearings and the pretrial preparations benefited the investigative and prosecutive teams immeasurably and had a tremendous impact on the convictions of both defendants. I know how proud you must be of the significant role you played in this notable accomplishment, and rightfully so.

Our representatives in Birmingham join me in congratulating you on a job well done.

Sincerely yours,

A handwritten signature in dark ink, which appears to read "Louis J. Freeh", is written over the typed name.

Louis J. Freeh  
Director

## **Exhibit B**

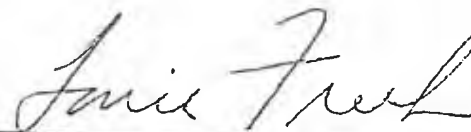
**U.S. Department of Justice  
The Federal Bureau of Investigation**

**is proud to recognize**  
**Special Assistant U.S. Attorney Gregory M. Biggs**  
of the Alabama Attorney General's Office

for your outstanding record in the prosecution of offenders brought to justice through the combined efforts of local law enforcement agencies and the FBI. The role of a prosecutor is always demanding but there are special challenges in these complex cases that involve both state and federal laws. The FBI is grateful for your notable contributions to the criminal justice system.

August 1999

*Date*



*Louis J. Freeh*

*Director*

*Federal Bureau of Investigation*